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Minister of Communications

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GENERAL NOTICE

NOTICE 786 OF 2002**MINISTER OF COMMUNICATIONS****PUBLICATION OF THE INVITATION TO APPLY FOR THE
PROVISION OF PUBLIC SWITCHED TELECOMMUNICATION SERVICES**

I, Dr. Ivy Matsepe-Casaburri, Minister of Communications, hereby publish the following Invitation to Apply for the provision of public switched telecommunication services in terms of section 35A of the Telecommunications Act, 1996 (Act 103 of 1996) as amended. This Notice must be read together with General Notice 755 published in Government Gazette No. 23427 of 15 May 2002.

Dr. Ivy Matsepe-Casaburri
MINISTER OF COMMUNICATIONS

INTRODUCTION**1 SUBJECT OF THE INVITATION TO APPLY**

- 1.1 The Minister of Communications of the Republic of South Africa (the "Minister") invites applications for the provision of public switched telecommunication services ("PSTS") in the Republic of South Africa. The successful applicant for the 51% equity, together with the successful Black Economic Empowerment (BEE) applicant for the 19% equity stake and ESKOM and TRANSTEL jointly (30%) (hereinafter referred to as the "SNO Licensee") shall be entitled and required to provide PSTS through the design, leasing, construction, maintenance and operation of the network in accordance with the Telecommunications Act (Act 103 of 1996), as amended ("the Act") and the Licence issued by the Independent Communications Authority of South Africa ("the Authority"), following the evaluation of the process set out hereunder.
- 1.2 The PSTS in respect of which the license is to be issued, is provided for in section 36 of the Act. The PSTS shall include, at a minimum, local, national and international services, voice telephone services, fixed mobile, data services, emergency services, directory information services and operator-assisted services. PSTS provision shall take into account the requirements of business and residential users and the provision of modern information services.
- 1.3 Pursuant to the Act, the Minister hereby determines the form and manner of the Invitation as follows:
- 1.3.1 Subject matter of this Invitation: the provision of PSTS.
- 1.3.2 Number of licences: one (1) PSTS Licence.
- 1.3.3 Term of Licence: Twenty-five (25) years from the date of issue of the Licence (hereinafter referred to as "the effective date") coupled with an expectancy that the Licence may be renewed by the Authority subject to the conditions set out in the licence.
- 1.3.4 Mandatory telecommunications facilities leasing and/or sharing: The Licensee may in terms of section 32(A)(2)(a) of the Act be entitled to share the telecommunications facilities of Telkom South Africa Limited on a commercial basis for a period of two (2) years from the commencement date, which shall be the date of commencement of services for commercial use by the Licensee.
- 1.3.5 The Applicant shall be a company incorporated under the laws of the Republic of South Africa ("RSA") as contemplated under the Companies Act, No. 61 of 1973.
- 1.3.6 An Applicant shall be responsible for the review and interpretation of the Invitation, including all attachments and the draft Licence. No liability shall accrue to the Minister, the Authority and the Government of the RSA if, due to the applicant's failure to comply with such requirements, the Application is rejected or disqualified by the Authority.
- 1.3.7 Each Applicant shall be responsible for the assessment and analysis of the South African telecommunications market and the relevant regulatory environment. Neither the Minister, the Authority, nor the Government of the RSA, their officials and/or employees shall be responsible for any disadvantage suffered by an Applicant, prior to, during or subsequent to the Application process as a result of the inaccurate assessment and analysis of the South African telecommunications market or regulatory environment, or for any other reason whatsoever. In addition, Applicants shall be responsible for the procurement and interpretation of data necessary for the fulfilment of their obligations, and shall bear all liability incurred in connection with the use thereof. Applicants shall seek their own counsel in the preparation of application.
- 1.3.8 Any queries in relation to this Invitation must be submitted in writing (via post, e-mail, fax) to:

Name	Mashila Matlala
Title	SNO Project Leader
Physical Address	399 Duncan Street Iparioli Office Park Hatfield, Pretoria
Postal Address	Private Bag X860 Pretoria 0001
Fax	27 (0) 12 427-8102
E-Mail	mashila@doc.pwv.gov.za

- 1.3.9 All queries shall be communicated in writing to the Minister up to three weeks after the date of publication of this Invitation. Queries shall not be directed to the Authority.
- 1.3.10 Prospective Applicants should not wait until the deadline and are encouraged to submit queries/questions as soon as possible. Relevant questions and answers will be published in a government gazette by the Minister.
- 1.3.11 Neither the Minister nor the Authority shall entertain *ex parte* contacts with regard to this Invitation, the Invitation process nor any other matter relating to the proceedings for the application for the PSTS Licence initiated by the Invitation.

2 SCHEDULE OF THE APPLICATION PROCESS

- 2.1 The Application process shall be conducted in accordance with the following schedules:

SCHEDULE A

PUBLICATION OF INVITATION.	24 May 2002
TRANSMISSION OF QUESTIONS BY POTENTIAL APPLICANTS TO THE MINISTER.	14 June 2002
PUBLICATION OF QUESTIONS AND ANSWERS.	21 June 2002

SCHEDULE B

DUE DILIGENCE: BEE, ESKOM AND TRANSNET.	14 June 2002 to 15 August 2002
DEADLINE FOR SUBMISSION OF APPLICATIONS.	30 August 2002

SCHEDULE C

EVALUATION, RECOMMENDATION AND GRANTING.	NOVEMBER AND DECEMBER
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3 APPLICATION FEE AND OTHER COSTS RELATING TO THE APPLICATION

- 3.1 A non-refundable application fee of ZAR two hundred and fifty thousand rands (R250 000,00) shall be paid by the Applicant at the time of filing their application. The application fee shall be in the form of a bank guaranteed cheque drawn on a bank registered in South Africa, made payable to the Independent Communications Authority of South Africa. Payments not made in the form of a bank guaranteed cheque will be disqualified by the Authority.
- 3.2 Applicants shall not be entitled to claim reimbursement of such Application fee for any reason whatsoever.
- 3.3 Applicants shall bear all costs incurred in connection with the preparation and submission of the Application. Regardless of the outcome of the application, Applicants may under no circumstances claim reimbursement from the Minister, the Authority or the Government of the RSA of any costs related directly or indirectly, to the Application.

4 CONDITIONS OF ELIGIBILITY IN RESPECT OF THE APPLICATION

- 4.1 Only natural and legal persons and the consortia so formed may submit an application. An individual Applicant or a member of a consortium may not submit or have an interest in more than one application, either individually or as a member of any other consortium. Applications shall include an original copy of the consortium agreement concluded by their members, countersigned by a notary public or certified as a true copy by a Commissioner of Oaths.
- 4.2 Applicants shall be subject to the provisions of regulations promulgated in terms of section 52 of the Act. (Gazette No. 23190, Notice No. 300 of 2002 limitation of ownership and control of telecommunication services.) Further eligibility restrictions are as follows:
- 4.2.1 No employee of the Ministry of Communications, the Authority or any civil servant of the Government of the Republic of South Africa shall be part of any application of the Licence either individually or as part of a legal entity.

- 4.3 An Applicant must provide evidence that, it or at least one member of the consortium, has a customer base that exceeds five hundred thousand (500 000) fixed line subscribers.
- 4.4 The Applicant shall unconditionally warrant the fulfilment of the undertakings set out in its application and meet the conditions of qualification to apply as set out in this Invitation.

5 SUBJECT AND CONTENT OF THE LICENCE

- 5.1 Description of the service: The PSTS shall be provided in the territory of the Republic of South Africa in accordance with the conditions of the Licence, which at a minimum shall include the provision of local, national and international services, without limitation.
- 5.2 The SNO Licensee shall be entitled and required to construct, maintain and operate a PSTS network capable of the provision of PSTS to collaborate with other licensed telecommunications operators whose networks are interconnected with that of the Licensee and to provide subscribers with PSTS in accordance with the terms and conditions of the Licence.
- 5.3 For purposes of meeting its obligations under the Licence and the provision of other services, the Licensee shall be entitled to be granted a DCS 1800 MHz and 3G spectrum licence.

6 TERMS AND CONDITIONS RELATING TO THE LICENCE ACTIVITIES

- 6.1 A draft PSTS Licence to be issued in terms of this Invitation is attached hereto. The draft Licence sets out the rights and obligations of the Licensee and the terms and conditions relating to the Licence activities.
- 6.2 An Applicant is invited to make comments and representations with respect to the draft Licence. The Authority will consider such comments and representations in finalising the Licence.

7 OWNERSHIP STRUCTURE OF THE LICENSEE

- 7.1 The Minister in concurrence with the Minister of Public Enterprises has in terms of section 32B determined that Eskom and Transnet shall hold 30% equity interest in the SNO.
- 7.2 The final determination of the equity interest of Eskom and Transnet in the SNO shall be determined by the value of the contribution of Eskom and Transnet, as the case may be, in the SNO.
- 7.3 Collectively, Eskom and Transnet shall be required to make a capital contribution in the Licensee, calculated in accordance with South African generally accepted accounting principles ("GAAP").
- 7.3.1 The capital contribution referred to above may include, amongst other things:
- * Cash;
 - * Rights of way;
 - * Movable and Immovable property;
 - * Personal rights; and,
 - * Other assets, including existing infrastructure, facilities and equipment.
- 7.3.2 An Applicant shall have equal and non-discriminatory access to Eskom and Transnet for the purpose of, among other things, management presentations and discussions, conducting customary due diligence and engaging in commercial discussions. A notice setting out the procedures for access to Eskom and Transnet is attached hereto.
- 7.4 In terms of Notice 27 of 2002 in the Government Gazette 23010, and pursuant to the Act, the Minister aims to further the empowerment of historically disadvantaged persons through a set-aside mechanism. In this regard a separate invitation inviting Black Economic Empowerment Groups ("BEE") to apply for the 19% equity interest has been published in Notice 27 of 2002 in the Government Gazette 23010 as amended by Notice 299 of 2002 in the Government Gazette 23189. Such empowerment applicants are not prohibited from participating in submitting an application pursuant to this application, however, should such applicant be successful in the BEE application process, such applicant shall be required to dispose of such interest.

8 LICENCE FEE AND TERMS OF PAYMENT

- 8.1 The non-recurring Licence fee: The company established for the operation of the Licence shall pay a non-recurring Licence fee of ZAR 300 000 000 (three hundred million). The Licensee shall be entitled to pay the Licence fee over ten years at an annual percentage rate of prime plus one percent.
- 8.2 Amount of annual Licence fee: The annual Licence fee payable from the anniversary of the effective date shall be an amount equal to 0,1% of the Licensee's net invoiced annual revenues realised from the provision of the PSTS.

9 OTHER FEES PAYABLE BY THE LICENSEE

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

10 SUBSCRIBER TARIFFS

An Applicant shall within the framework stipulated by applicable law and/or regulations, determine subscriber tariffs in accordance with business considerations.

11 CONFIDENTIAL TREATMENT OF INFORMATION

- 11.1 The Applicant shall acknowledge that all data, information and communication exchanged and to be exchanged in connection with this Application process is not confidential and will be open for public inspection.
- 11.2 If the Applicant wishes to exclude certain information from public inspection as provided for in terms of the General Notice 755 issued in terms of section 35A of the Act, the Applicant shall submit two additional copies marked "For Public Inspection", which copies shall exclude such confidential information and shall clearly indicate where such confidential information has been excluded therefrom, together with the Applicant's request to the Authority to have that confidential information excluded from public inspection in terms of the general notice in terms of section 35A of the Act.

12 AMENDMENT OF THE INVITATION

- 12.1 The Minister, in consultation with the Authority, may only amend this Invitation prior to the date specified for the submission of the applications.
- 12.2 The Minister shall publish a notification regarding the amendment of the Invitation in the same way as the Invitation itself was announced and shall publish such amendment in the Government Gazette.

13 TERMS AND CONDITIONS RELATING TO THE APPLICATION

- 13.1 The language of Application and any communication in connection therewith between the Minister, the Authority and the Applicant, including any requests of the Authority regarding the supply of data and any supplementary documents submitted by the Applicant in relation to the Application, shall be in English. Support materials to the Application shall be submitted in English.
- 13.2 The Application shall be prepared in accordance with the structure and order as set out in the Application Form attached hereto and shall adhere to the numbering sequence set out therein.
- 13.3 The Applicant shall make the following statements in its Application:
- 13.3.1 The Applicant shall make the certifications and representation as set out in clause 4 above.
- 13.3.2 The Applicant shall warrant that there exists no cause for disqualification or curtailment against it, and that acceptance of its application in this process would not result in the creation of such causes for disqualification or curtailment.
- 13.3.3 The Applicant shall warrant that none of the companies with equity interests in excess of 5% in the Applicant — including consortium members — or any entities which hold a majority interest, is not under dissolution, liquidation or bankruptcy procedure. The information supporting such representation shall be provided in an attachment to the Application.

- 13.3.4 The Applicant shall certify the extent that the Applicant, shareholder(s) holding a majority in the Applicant or any venture in which any Applicant holds a majority interest has tax, official fee or liabilities, or liabilities towards allocated public funds that are overdue for one (1) year. The information necessary for the assessment of the extent and the nature of such overdue payments shall be provided in an attachment to the Application. The Applicant, and members of the consortium thereof, shall provide relevant certificates from the South African Revenue Services to this effect.
- 13.3.5 The Applicant shall state the extent that the Applicant, any shareholder holding a majority interest in the Applicant or venture in which the Applicant holds a majority interest has had any judgment of a court of law, ruling(s) of the Competition Commission or Competition Tribunal against them that became effective within the last three (3) years in relation to civil, criminal or competition offences committed within their business capacity. If such judgments exist attach an exhibit to the application summarising the details.
- 13.3.6 The Applicant shall indicate if the Applicant or any shareholder, has any judicial and/or collection procedure currently in progress, or has had such procedure in process in the last three (3) years against the Applicant, any shareholder holding a majority interest in the Applicant or any venture in which the Applicant holds a majority interest. If such judicial and/or collection procedures exist attach an exhibit to the application summarising the details.
- 13.3.7 The Applicant shall warrant as to whether there exists any civil law suit in progress against the Applicant, any shareholder(s) holding a majority interest in the Applicant or any venture in which the Applicant or any such shareholder holds a majority interest which is the subject of any judicial action. If such civil law suit exists attach an exhibit to the application summarising the details.
- 13.4 The duly executed statements and representations set forth above shall be submitted by the Applicant in an appropriate form, together with all accompanying documents. Applications without the statements and representations may be disqualified by the Authority. The Authority reserves the right to request submission of additional information, documents, statements and representations.
- 13.5 All declaration, documents and information submitted in support of the Application, in particular business plans and technical plans, shall form an integral part of the Application.

14 BINDING EFFECT OF THE APPLICATION

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

15 RIGHTS RELATING TO APPLICATION DOCUMENTATION

- 15.1 The Applicant must acknowledge that the Authority shall have a non-exclusive right to use, for the entire period, the Application documents, including any information included therein. Such right shall extend to the reproduction of the Application through printing or by electronic means, for use in materials prepared by the Authority in connection with the Application, or any other uses relating to the adjudication process, the selection of the successful applicant, conclusion, issue and the potential revision and/or amendment of the Licence. Such right shall be transferable to the Minister, the Authority, officials of, or experts appointed by the Minister and/or Authority, or any other person(s) or organisation(s) authorised to act on their behalf.
- 15.2 The Applicant must acknowledge that such applications shall be accessible by the Minister, the Authority, their officials and experts, as well as any other persons and organisations authorised by applicable law to have access to any information, declared confidential in terms of clause 11 of this Invitation.

16 SUBMISSION OF APPLICATION

- 16.1 Format, signing and packaging of Applications:
- 16.1.1 Original and duplicate copies of the Application shall be prepared in printed form in accordance with the Application form. The Applicant shall submit as a part of the Application an executive summary not exceeding fifteen (15) pages.
- 16.1.2 The Application documentation (including the executive summary but excluding the attachments) shall not exceed two hundred (200) pages. Each page of the Application documentation (including the Application, the executive summary and the attachments), other than the attachments the submission of which is not required by this invitation to the Application, shall be

signed by the representatives of the Applicant. Any correction, rider or deletion shall only be valid if countersigned by the representatives of the Applicant. Copies of the documents concerning representation (signature specimen and power of attorney in a notarised document or a private document providing conclusive evidence) shall be submitted in the original document, while duplicate copies of these documents may be attached to duplicate copies of the Application.

- 16.1.3 The Applicant shall submit one (1) original copy and twenty (20) numbered duplicate copies of the Application. One copy shall be unbound and unstapled and shall be marked as "ORIGINAL COPY" and the rest shall be bound and marked "DUPLICATE COPIES" each with a number from 1 to 20. The Applicant shall also submit on copy of its entire application, including attachments on one or more PC compatible CD-Rom disk.
- 16.2 In case of any conflict among the contents of the original and duplicate copies of the Application, the original copy shall prevail. All tables and financial submissions shall be prepared in accordance with South African GAAP as part of the Application and shall also be submitted on PC compatible CD-Rom, in MS Excel 8.0 (Office 2000) format. In case of any conflict between the hard copy and copy submitted on the CD-Rom disk, the hard copy shall prevail.
- 16.3 The Application shall be submitted in sealed sturdy containers addressed to the Chairperson of the Authority, indicating the name and contact address of the Applicant. The envelopes shall be labelled as: "PSTS LICENCE APPLICATION".
- 16.3.1 Each document (that is, the Application and the attachments), the bank guaranteed cheque for the application fee and certificates shall be placed inside the above container.

17 PLACE AND DEADLINE FOR SUBMISSION OF APPLICATIONS

- 17.1 The Application shall be submitted between 09h00 and 14h00, South African time on or before 30 August 2002.
- 17.2 The Application shall be submitted to the following address:

**The Chairperson
Independent Communications Authority of South Africa (ICASA)
SNO ITA Process
64 Pin Mill Farm
164 Katherine Street
Sandton
South Africa
(011) 321-8202 (T)
(011) 321-8547 (F)**

- 17.3 The Application shall be received by the Authority in the presence of an independent auditor. When receiving the applications, the Authority shall affix on each container the time of receipt and shall provide each Applicant with an acknowledgement. Applications received after this time may be rejected and returned unopened to the Applicant by the Authority. The process set out herein shall be open to the public and press. Applicants are invited to attend.
- 17.4 Upon receipt of the applications the Authority shall disclose to the persons the names of the Applicants and any other information it deems important.

18 AMENDMENT AND WITHDRAWAL OF APPLICATIONS

- 18.1 Unless otherwise determined by the Authority, the Applicant shall not be entitled to amend its application during the period of binding effect specified in this Invitation.
- 18.2 Should the Applicant withdraw its application during such period, the Applicant shall forfeit the Application fee.
- 18.3 If the Authority decides to allow amendments to applications, it shall establish the rules, procedures and time frames for submitting such amendments by notice in the Government Gazette.

19 SUBSTANTIVE INVALIDITY OF APPLICATIONS

- 19.1 The Authority shall examine the content of the applications submitted as to whether they fulfil the formal and

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

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

20 EVALUATION OF APPLICATIONS

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

21 EVALUATION CRITERIA

- 21.1 The evaluation criteria to be applied by the Authority when considering applications emanate from the provisions of the Act.
- 21.2 The evaluation criteria and the associated evaluation points set out below, shall be applied by the Authority in evaluating submitted and valid applications. The evaluation points set forth below represent the weight of each criterion within the complete evaluation. In relation to the evaluation criteria, the Authority shall establish the points to be received by the Application in the framework of the points set out below by means of assessing the compliance with the relevant evaluation criterion, and shall rate the applications in accordance with the points received.

Criteria	Points
1. Financing and business Plan	30
2. Experience in the provision of PSTS, strategic vision regarding the integrated provision of the service and a competitive strategy	15
3. Human Resource Development Policy and practices for training and promotion especially for entry level positions	10
4. Demonstration of the technical feasibility of the project	15
5. Proposed integration of the BEE into management of the Licensee company and board representation	10
6. Proposed integration of Eskom and Transnet into management of the company and board representation	10
7. Empowerment of women, disabled persons and youth	10
Total	100

22 INTERGATION OF EQUITY HOLDERS

- 22.1 The Minister, by notice in the Government Gazette, shall—

- (a) publish the names of the equity holders and the stake that each hold in the Second National Operator, and
- (b) direct the Authority to facilitate the integration of the equity holders into a juristic entity, incorporated in accordance with the laws of the Republic of South Africa, as the Second National Operator.

ANNEXURE A:**THE APPLICATION FORM****SECTION ONE: EXECUTIVE SUMMARY**

1. Provide a brief overview of the key aspects of the Application, highlighting the distinguishing characteristics of the Applicant.

SECTION TWO: THE APPLICANT

2. Provide the full legal name of the Applicant and the following details:

- 2.1 Telephone number

- 2.2. E-mail address

- 2.3. Telefax number

- 2.4. Postal address

- 2.5. Physical address

3. Provide details of two (2) individuals authorised by the Applicant to respond to communication from the Independent Communications Authority of South Africa ("the Authority") about this Application, in each of the following categories: general and legal, financial and technical:

- 3.1 Names

- 3.2 Telephone numbers

- 3.3 Mobile numbers

- 3.4 E-mail addresses

- 3.5 Telefax numbers

- 3.6 Postal addresses

- 3.7 Physical addresses

4. Provide details of no more than two individuals duly authorised by the Applicant to respond to communication from the public and press:

- 4.1 Names

- 4.2 Telephone numbers

- 4.3 Mobile numbers

- 4.4 E-mail addresses

- 4.5 Telefax numbers

- 4.6 Postal addresses

- 4.7 Physical addresses

SECTION THREE: OWNERSHIP AND CONTROL

5. Provide a brief description of the Applicant's legal status.
6. Provide certified copies of all relevant founding documentation in respect of the Applicant.
7. Provide a brief description of how and when the Applicant was formed and how it has developed since then.
8. Provide a complete and detailed description of all direct and indirect ownership interests in the Applicant, including beneficial ownership interests.
9. Provide a brief description of all persons who hold a direct or indirect ownership interest in the Applicant providing the information required in items 5 and 6 for each such person.
10. Provide a complete and detailed description of all direct and indirect voting interests in the Applicant, including beneficial voting interests, if different from item 8.
11. Provide a complete and detailed description of all direct and indirect financial interests in the Applicant, including beneficial financial interests, if different from item 8.
12. Provide a complete and detailed description of the corporate governance of the Applicant, for example the board of directors, indicating how such governance body is implemented.

13. Indicate whether any person(s) is in a position to appoint or veto the appointment of at least half of the directors of the board of directors or other members of similar governing bodies or in any way to direct or restrain the Applicant on substantial management or other issues.
14. Management
 - 14.1 Provide a brief description of the corporate management of the Applicant.
 - 14.2 Provide details of each member of the Applicant's senior corporate management including directors, senior officers, members, partners, trustees, as the case may be. Provide the following details: name, date of birth, identity number, address, nationality, occupation and a brief *curriculum vitae*, with relevant experience.
15. Provide a complete description of all agreements or other arrangements relating to contingent direct and indirect ownership and control interests in the Applicant, including, without limitation, voting, financial, governing and management interests. Examples of arrangements relating to contingent ownership and control interests include, without limitation, options and rights of pre-emption or of first refusal.
16. Provide a complete description of the nature of the participation of all shareholders in the Applicant, including, without limitation, direct and indirect ownership and control interests, including, without limitation, voting, financial, governing and management interests.
17. Provide copies of all formal documentation relating to the Applicant and to persons having direct ownership or control interests in the Applicant. Formal documentation includes, without limitation, shareholders' agreements, annual reports, prospectus and similar documentation, as applicable.
18. Provide details of persons, other than those described as having an ownership or control interest in the Applicant, who are assisting the Applicant in preparing the Application, such as legal, financial or technical advisors and research consultants and state their roles in assisting the Applicant.
19. Provide details of any direct or indirect ownership or control interests held by the Applicant or persons who hold a direct or indirect ownership or control interest in the Applicant, in any other telecommunication licence granted or deemed to have been granted in terms of the Telecommunications Act, 2001.
20. Provide any other relevant information regarding the ownership or control of the Applicant.

SECTION FOUR: EXPERIENCE/ABILITY

21. Financial ability
 - 21.1 Provide details of how the Applicant intends to fund initial construction and operations as projected in item 26.4. In this regard, detail the success of funding the Applicant intends to access and provide detailed proof of such funding, for example:
 - 21.1.1 Capital

The information required in terms of this item 21.1.1 as set out below is premised on the Applicant being a company. In the event that the Applicant is a natural person or an entity other than a company, provide the required certificates, descriptions and proof that would be appropriate for the Applicant, ensuring that the substantive information required has been provided.

 - 21.1.1.1 Provide Directors' certificates in respect of the amount of issued and paid-up share capital, the aggregate values of shareholders loans to the company and a detailed breakdown of such loans.
 - 21.1.1.2 Provide a description of the method by which share/loan capital is to be raised.
 - 21.1.1.3 Provide a description of any additional commitments or obligations of any of the Applicant's shareholders to provide further funds to the Applicant.
 - 21.1.1.4 Provide proof that a shareholder referred to in item 21.1.1.3 above is financially capable of providing such funds.
 - 21.1.2 Leasing/Financing Facilities

Provide a description of leasing and/or financing facilities or alternative vendor financing

arrangements and proof that the person providing such facilities or arrangements is committed to entering into the necessary arrangements in respect thereof.

21.1.3 Bank Facilities

Provide a description of and proof of bank facilities or other credit arrangements, for example—

21.1.3.1 Banker's certificate of the amount of deposits available;

21.1.3.2 Banker's certificate of the amount of overdraft facilities available;

21.1.3.3 Banker's certificate of the amount of other credit facilities; or

21.1.3.4 Bank guarantees.

21.1.4 Grants or Donations

Provide a description of and proof of any grants or donations.

21.1.5 Other

Provide a description of and proof of any other funding sources.

21.2 Provide copies of the audited financial statements and auditors' reports thereon for the previous three years, together with the most recent interim results of the Applicant and persons who have a direct ownership interest in the Applicant.

22. Technical experience

Provide details of the experience of the Applicant and persons having a direct ownership interest in the Applicant in the technical aspects of the provision of telecommunication services.

23. Business experience

Provide details of the experience of the Applicant and persons having a direct ownership interest in the Applicant in the business aspects of the provision of telecommunication services.

SECTION FIVE: BUSINESS PLAN

24. Proposed Management

24.1 Provide a brief description of the proposed operational management.

24.2 Provide details of each member of the Applicant's proposed senior operational management, including the following key areas: financial, technical, marketing, regulatory, human resources, and in any other operational areas. Provide the following details: name, date of birth, identity number, address, nationality, occupation and a brief personal background and indication of experience.

24.3 Provide a staffing organisational chart showing proposed operational management and staff posts indicating the proposed reporting structure.

24.4 Provide a list of any activities, which are proposed to be contracted out.

25. Marketing Plan

25.1 Provide complete details of market studies conducted.

25.2 Provide details of proposed marketing objectives and proposed marketing plan.

26. Financial Plan

When providing any financial information in terms of this item 26, ensure that South Africa Generally Accepted Accounting Practice is applied and that financial forecasts are made in respect of each year of the first six (6) years of operation. The tables presented in the attachments are to be used as a guide in the preparation of Applications and represents the minimum information required of Applicants. Applicants are however invited to supplement the information in respect of additional operational, financial, market segments and other information considered important.

- 26.1 Provide an overview of financial plans indicating profitability forecasts.
- 24.2 Detail the main financial, business, tariffing and other assumptions underpinning the Applicant's financial plan.
- 26.3 Provide detailed *pro forma* financial statements, as follows:
 - 26.3.1 projected cash flow statements — estimating financing and operating activities;
 - 26.3.2 projected income statement — estimating annual revenue and expenditure;
 - 26.3.3 projected annual operating expenses;
- 26.4 Provide details on projected debt/equity ratios, interest cover and related information, if applicable.
- 26.5 Provide details of total funding requirements for initial planned construction and operations for six (6) years.

SECTION SIX: TECHNICAL PLANS

- 27. Provide an overview of the Applicant's proposed technology, including a description of the operation of the system and frequency requirements.
- 28. Provide evidence that the proposed technology has been proven in terms of internationally accepted standards.
- 29. Frequency Requirements
 - 29.1 Provide details of the Applicant's proposed frequency spectrum use.
 - 29.2 Provide details of spectrum efficiency.
 - 29.3 Provide evidence that the proposed frequency spectrum is available with reference to the South African frequency band plan.
 - 29.4 Provide details of proposed future frequency spectrum requirements for third generation services, if any.
- 30. Provide an overview of Applicant's proposed network design, including without limitation, information on the proposed location of equipment, interconnection of equipment with the network, redundancy and system flexibility and provide details regarding the following matters:
 - 30.1 interconnection of equipment within the network;
 - 30.2 redundancy;
 - 30.3 system capacity, including, without limitation, capabilities to handle urban or other congestion;
 - 30.4 system flexibility; and
 - 30.5 initial capacity and capabilities for expansion of capacity.
- 31. Provide a description of any capabilities of the proposed technology for transition to third generation services standards or the provision of third generation services with the initial proposed technology.
- 32. Provide details of proposed air interfaces.
- 33. Provide details of proposed security and protection of the integrity of the network as well as physical security of the network equipment.
- 34. Provide details of proposed service quality, including, without limitation, network loss, congestion, uptime, dropped calls, and voice quality.
- 35. Provide details of proposed equipment including details of plans for equipment use and evidence of any negotiations to enter into agreements with manufacturers, vendors, suppliers, etc.
- 36. Provide details for the proposed interconnection with public switched telecommunication networks and other mobile cellular telecommunication networks, including plans for such interconnection and strategies for ensuring effective negotiations for interconnection agreements.

37. Provide details of proposed facilities leasing from the public switched telecommunication network operator including plans for such facilities leasing and strategies for ensuring effective negotiations for facilities leasing agreements.
38. Provide details of proposed domestic roaming including plans for such roaming and strategies for ensuring effective negotiations for roaming agreements.
39. Provide details of international roaming including plans for such roaming, strategies for ensuring effective negotiations for roaming agreements and a brief discussion of Applicant's proposed technology's capabilities for such roaming.
40. Provide proof that the Applicant's proposed technology and the proposed operations would permit number portability and carrier pre-selection.

SECTION SEVEN: NETWORK ROLL OUT

41. Provide details of the proposed initial network design, including, without limitation, proposed transmitter locations, antenna heights, output power and coverage footprints, to be constructed.
42. Provide details of both population and geographic coverage based on the proposed network design in 41 above and provide supporting evidence.
43. Provide details of both business and residential population and geographic coverage proposed network design in 41 above and provide supporting evidence.
44. Provide details of expansion of the proposed network design by providing the details called for in items 41, 42 and 43 to be constructed by the end of each of the years two to six.
45. Provide details of proposed infrastructure sharing and domestic roaming in regard to the proposed network design detailed in the preceding items in this section seven.

SECTION EIGHT: SERVICE IMPLEMENTATION

46. Provide details of the services to be provided including, without limitation, voice telephone services, data services, emergency services, directory services, operator assisted services, and value added network services and provide details of implementation time frames.
47. Provide details of proposed future third generation services to be provided, if any.
48. Provide details of plans that cover matters such as the distribution of customer premises equipment and accessories and the servicing of such equipment.
49. Provide details of how network usage will be metered and of billing systems.
50. Provide any other relevant details concerning the management and the servicing of the customer base.
51. Provide details of proposed quality of service standards.
52. Provide details of proposed complaint resolution procedures.

SECTION NINE: UNIVERSAL ACCESS AND UNIVERSAL SERVICE OBLIGATIONS

53. Provide details of proposed international, national and local services for business and residential customers, including details of needs research, locations, services, budgets and deployment time frames.
54. Provide details of proposed advanced PSTS services.
55. Provide details of proposed services standards including without limitation, quality of service targets, publication of charges, billings, consumer protection and other customer services considered necessary by the Applicant.

SECTION TEN: ECONOMIC DEVELOPMENT

63. Provide details on the extent of projected job creation and job transfers, that is the number and nature of jobs created and jobs transferred as a result of Applicant's proposals.
64. Provide details of plans for the participation of local contractors, suppliers, manufacturers, etc.

65. Provide details of plans for the participation of small, medium and micro enterprises.
66. Provide details on any other economic development matter including, without limitation:
 - 66.1 the amount and percentage of local goods and services to be used compared to imported goods and services; and
 - 66.2 local research and development initiatives.

SECTION ELEVEN: ENVIRONMENT

67. Provide details of any anticipated positive and negative environmental impact of the Applicant's proposals.

SECTION TWELVE: PERFORMANCE GUARANTEE

68. Indicate whether Applicant will be willing to accept a performance guarantee as a licence condition and if so, provide details of such, including, without limitation, details of the amount of the guarantee and proposed commitments related to coverage, roll-out, quality of service and universal service.

SECTION THIRTEEN: APPLICANT VOLUNTEERED INFORMATION

69. Provide brief details of any other matter which the Applicant considers the Authority necessary.

Attachment 2

List of applicable laws, regulations and policy directions

1. Telecommunications Amendment Act 2001
2. The Independent Communications Authority of South Africa Act No. 13 of 2000
3. Independent Broadcasting Authority Act No. 153 of 1993
4. Sentech Act No. 63 of 1996
5. Post Office Act No. 44 of 1958
6. Interception and Monitoring Prohibition Act No. 127 of 1992
7. Labour Relations Act No. 66 of 1995
8. Employment Equity Act No. 55 of 1998
9. Constitution of the Republic of South Africa Act No. 108 of 1996
10. National Small Business Act No. 102 of 1996
11. Skills Development Act No. 97 of 1998
12. Skills Development Levies Act No. 9 of 1999
13. National Environment Management Act No. 107 of 1998
14. Promotion of Access to Information Act No. 2 of 2000
15. State of the Nation Address of 2000 by the President
16. White Paper on Telecommunications Policy of 1996
17. White Paper on National Strategy for the Development and Promotion of Small Business in South Africa (1995)
18. Licence issued to Telkom SA Limited to provide Telecommunications services under Section 36 of the Telecommunications Act, 1996 (Government Gazette: Notice 768 of 1997)
19. Competition Act No. 89 of 1998
20. National Environment Management Act No. 107 of 1998

Business Plan: Key Financial Output (ANNEXURE B)

2002 Rand million
Income Statement

	Y1	Y2	Y3	Y4	Y5	Y6
Revenues						
Operating Expenses						
EBITDA						
Depreciation						
EBIT						
Net Financial Income/(Expenses)						
Profit before tax						
Tax						
Net Income						

Business Plan: Key Financial Output

Rand millions
Balance Sheet

	Y1	Y2	Y3	Y4	Y5	Y6
Tangible Fixed Assets						
Current Assets						
Liquid Assets						
Total Assets						
Debt						
Other Short term liabilities						
Other Long term liabilities						
Shareholders Interest						
Total Liabilities						
% Net Debt/Equity						

Business Plan: Key Financial Output

Rand millions
Cash Flow

	Y1	Y2	Y3	Y4	Y5	Y6
EBITDA						
Taxes						
Interest						
Dividends						
Other cash/non cash items						
Cashflow from Operations						
Change in Working Capital						
Capital Expenditures						
Cash Flow before Financing						

Business Plan: Key Inputs

Revenues Traditional PSTN

	Y1	Y2	Y3	Y4	Y5	Y6
Tariffs						
% Real Increase/(Decrease)						
Local						
Long Distance I						
Long Distance II						
Long Distance III						
Neighbouring States						
International						

Business Rental						
Residential Rental						

Market Shares (1 January 2001 = 100%)						
Business						
Local						
Long Distance						
Neighbouring States						
International						

Residential						
Local						
Long Distance						
Neighbouring States						
International						

Volume Growth (minutes per line)						
Business						
Local						
Long Distance						
Neighbouring States						
International						

Residential						
Local						
Long Distance						
Neighbouring States						
International						

Business Plan: Key Inputs

Revenues

	Y1	Y2	Y3	Y4	Y5	Y6
Market						
Revenues per (Rand value in 2002)						

Payphones						
Real increase/(decrease) in revenues per payphone p.a.						

Other Revenues						
Rand value in millions (in 2002 Rands)						
Gross fixed to mobile revenues						
Interconnection Revenues in respect of mobile telephony						
Value-added services						
Business network services						
CPE (excluding rental on basic services)						
Other International Revenue						
Circuits leased lines						
National leased lines						
National data services						
Other sales and services						
Other revenues not included above						

Interconnect (Not related to mobile telephony)						
Interconnect revenue for minutes of lost local & long distance market share						
Interconnect rate as a % of long distance band I tariff						
Interconnect rate as a % of long distance band II tariff						

International accounting rates p.a.						
Ratio of incoming call minutes to outgoing call minutes						
% of incoming call minutes sender keeps all						

Business Plan: Key Inputs

Operating Expenses

	Y1	Y2	Y3	Y4	Y5	Y6
Traditional network related operating expenses						
% Real increase/(decrease) in cost per line						
Additional operating costs in underserved areas						
% of revenues generated by underserved lines						
Rent and Utility costs						
% Real increase/(decrease) per annum						
Employee expenses (see detailed schedule below)						
General and administrative						
% Real increase/(decrease) per annum						
Marketing						
% of revenues spent on marketing						

Cellular interconnect expenses						
Data processing costs						
Data processing costs as a % of revenue						
Transport and Travel						
% Real increase/(decrease) per annum						
Bad debt expense						
Bad debt expense as a % of revenues						
International Interconnection/Roaming payments						
International account rates						
% real increase/(decrease) in accounting rates p.a.						
% of outgoing call minutes sender keeps all						

Business Plan: Key Inputs

Operating Expenses

	Y1	Y2	Y3	Y4	Y5	Y6
Employee Expenses						
Core Operations						
Total number of employees in core operations						
New Hires etc.						
Retirements						
Other natural attrition						
Implied voluntary retirements						

Split of employees by skill level						
A						
B						
C						
D						
E						
F						

% of real increase/(decrease) in basic remuneration by skill level per annum						
A						
B						
C						
D						
E						
F						

Support Services						
Total number of employees in support services						
% real increase/(decrease) in basic remuneration p.a.						
Efficiency gains						
% savings in support services as a % of support services total						
Employee costs						

Business Plan: Key Inputs

Capital Expenditure

Y1

Y2

Y3

Y4

Y5

Y6

Line Rollout						
By Customer Segment						

Cost of Network Rollout (2002 Rand)						
By Customer Segment						
Other Capital Expenditure (2002 Rand)						

Network Related Capital Expenditure						
Replacement & Update						
"Information Highway" — supporting new products						
Network Management						
International & Satellite						
Facilities Leasing Costs						
IT/Data processing						
Other						

Customer Segment Target

Attachment

YEAR

TOTAL

	Y1	Y2	Y3	Y4	Y5	1-6 YEARS
1. Total Customer Target (2 + 3)						
2. Business Customer Target						
3. Residential Customer Target						
4. Advanced PSTS						
5. Public Payphone Target						
6. Internet Connections						
7. Community Customers						
8. Other						

Quality of Service

INDICATORS	Y1	Y2	Y3	Y4	Y5	1-6 YEARS
1. Customer fault reports per 1 000 lines per annum (excluding faults to Customer Premises Equipment and internal wiring): 1.1 Business customers 1.2 Residential customers						
2. Percentage of faults cleared within 48 hours (excluding Faults due to Customer Premises Equipment and internal wiring): 2.1 Business customers 2.2 Residential customers						
3. Serviceability of Public Pay-telephones (excluding bureaus and Renters): 3.1 Coin phones 3.2 Card phones						
4. Customer Pipeline: Percentage of orders met within a specified number of days: 4.1 % orders met in 28 days 4.2 % orders met in 90 days Residential customers: 4.3 % orders met in 28 days 4.4 % orders met in 120 days						
5. Percentage Reduction of Existing Waiting List: 5.1 Business customers: 100% reduction 5.2 Residential customers: 100% reduction 5.3 Pay-telephone (Renters): 100% reduction						



Independent Communications Authority of South Africa

Pinmill Farm, 164 Katherine Street, Sandton

Private Bag X 10002, Sandton, 2146

Draft Licence Agreement

for

SNO Licensing Process

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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 defined in the Telecommunications Act, 1996 (Act No. 103 of 1996) as amended.
- 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.

"Applicable Interest Rate" means the prime interest rate as published from time to time of the South African Reserve Bank established by section 9 of the Currency and Banking Act, No. 31 of 1920, and operating in terms the South African Reserve Bank No. 90 of 1989.

"Approved Equipment" means telecommunication equipment which has been approved by the Authority under Chapter VI of the Act.

"Basic Telephone Service" means a telecommunication service comprising technical features which are the minimum necessary to allow the establishment of a telephony channel for the purpose of providing a telecommunication service in order to convey voice grade signals between two Items of Customer Premises Equipment connected to the Public Switched Telecommunication Network.

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

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

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

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

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

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

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

"Community Service Telephone" means Terminal Equipment:

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

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

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

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

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

“Customer Pipeline” means a register of applications maintained from time to time by the Licensee identifying persons who have requested and are awaiting the telecommunication services referred to in condition 3.1 and whose requests for such services are to be processed in accordance with the relevant Service Targets set forth herein but shall exclude people on the waiting list.

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

“Directory Information Services” means the services described in condition 7.

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

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

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

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

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

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

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

“Interconnection Service” means a telecommunication service which an Operator has requested from the Licensee and which the Licensee is obliged to enter into an agreement to provide in accordance with section 43 of the Act and the guidelines contemplated thereunder.

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

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

“ITU” means the International Telecommunications Union.

“Library” means a fixed or permanent public facility that, in the Authority’s opinion, is established for the primary purpose of lending or making books available to the community.

“Licence” means this licence issued by the Authority to the Licensee under section 36 of the Act.

“Licensee” means _____, a duly incorporated company which has been issued with the second PSTS Licence as required by the Act.

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

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

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

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

“Maritime Service” means an International Telecommunication Service consisting of two-way telecommunication (including, without limitation, manually and automatically switched voice and data services) between the International Network and seagoing vessels or other floating structures, which is compliant with the relevant Radio Regulations of the ITU.

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

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

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

“Network Connection Point” means any point within an item of Network Connection Equipment

comprised in one telecommunication system at which signals are conveyed to or from a corresponding point in another item of Network Connection Equipment comprised in another telecommunication system.

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

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

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

"Outstanding Demand" means the sum total of the Customer Pipeline and the Waiting List.

"Overdue Interest Rate" means the prime interest rate as published from time to time of the South African Reserve Bank plus 3%.

"Point of Connection" means a fixed point between—

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

"Post Office" means any facility defined or described as such in the Postal Services Act.

"Postal Services Act" means Act No. 124 of 1998, as amended.

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

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

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

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

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

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

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

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

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

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

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

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

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

"School" means—

- (a) an institution registered as such in terms of any applicable law; or

- (b) an educational institution or part of an educational institution at which education is provided to pupils, whether such institution is public or private.

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

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

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

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

"Township" means a piece of land or settlement, whether surveyed as such or established in any informal manner, predominantly inhabited by communities historically discriminated against on the basis of race.

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

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

"Wholesale Activities" means those activities of the Licensee involving the provisions of telecommunication services to Operators, including, without limitation, use of the Public Switched Telecommunication Network and the services that are incidental to such use.

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

2. RIGHTS AND OBLIGATIONS TO PROVIDE TELECOMMUNICATIONS SERVICES

- 2.1 The Licensee shall be entitled to construct, maintain and use the Public Switched Telecommunication Network in the Republic and to provide Public Switched Telecommunication Services in terms of section 36 of the Act.
- 2.2 The Licensee may, in terms of section 32(A)(2)(a), use the telecommunications facilities of Telkom South Africa Limited for a period of two years from the date of commencement of service. Upon expiration of the two-year period, the Licensee shall be entitled to use telecommunications facilities in accordance with section 44 of the Act.
- 2.3 Without prejudice to conditions set forth in clause 2.2 and subject to section 43 of the Act and the guidelines contemplated thereunder, the Licensee is authorised—
 - (a) to connect, or cause or allow to be connected, to any telecommunication system or telecommunication service which the Licensee is entitled to provide under the terms of this Licence—
 - (i) any telecommunication system or telecommunication service in the Republic which is licensed under the terms of the Act, the licence for which permits that connection, or which the Authority has prescribed can be provided without a licence;
 - (ii) any telecommunication system or telecommunication service situated outside the Republic except where such connection would contravene a treaty or other agreement to which the Republic is a party;
 - (iii) any Customer Premises Equipment; and
 - (iv) any telecommunication equipment which is installed in a vehicle, vessel or other floating structure, aircraft or satellite;
 - (b) to convey to and from that connected telecommunication system, telecommunication service or telecommunication equipment, any signal and to perform any switching incidental to that conveyance; and
 - (c) to provide any telecommunication service that is incidental to that connection or conveyance.
- 2.4 Without derogating from the conditions set forth in clause 2.2, the Licensee—
 - (a) shall be entitled—
 - (i) to sell or lease the use of; or
 - (ii) to install or maintain, or both;

any telecommunication apparatus, including, without limitation, any Customer Premises Equipment, whether or not it is owned by the Licensee, subject to any terms and conditions that may from time to time be prescribed by the Authority under Chapter V of the Act which may be relevant to the sale, lease, installation or maintenance of any telecommunication apparatus;

- (b) Shall be entitled to manufacture telecommunication apparatus, including, without limitation, Customer Premises Equipment; and
- (c) Shall be entitled to 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.

- (d) The Licensee shall not be entitled to sell such Telecommunications equipment or to use in South Africa such network facilities which are maintained by or purchased or leased from a company with its seat registered outside South Africa which holds a direct or indirect ownership interest in the Licensee.
- 2.5 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 Public Switched Telecommunication Network and provide all or any of the Public Switched Telecommunication Services together with all or any other rights granted to the Licensee under this Licence.
- 2.6 The Licensee is authorised to exercise its rights granted pursuant to the Licence throughout the Republic of South Africa, including South African territorial waters and airspace (the "Territory"), by itself and/or in co-operation with a third party agent, contractor, network operator or service provider, provided that—
 - (a) the Licensee enters into a written agreement with any such third party agent, contractor, network operator or service provider;
 - (b) the Licensee remains responsible to the Authority for the performance of its obligations under the Licence irrespective of the acts and omissions of each such third party agent, contractor, network operator or service provider; and
 - (c) the written agreement stipulates adequate terms to provide that in the exercise of any of the rights granted to the Licensee, such third party agent, contractor, network operator or service provider uses its best efforts not to contravene any of the conditions of this Licence, including without limitation, Licence terms relating to users or applicable laws, and regulations in force.
- 2.7 The Licensee shall notify the Authority of any agreement entered into by the Licensee pursuant to clause 2.6 at least 30 days prior to the commencement of activities pursuant to such agreement. The Authority may require the Licensee to modify the proposed agreement or may prohibit such cooperation by notifying the Licensee thereof within 15 days of receipt of the notice described in the previous sentence.
- 2.8 Subject to the Act and clause 2.10 below, the Licensee shall have the right to contractually bind any person licensed to provide Value Added Network Services—
 - (a) not to resell capacity on any telecommunication facility so obtained, or cede or assign its rights to use that telecommunication facility, or to sublet or otherwise part with control of it, until the date fixed by the Minister pursuant to section 40(4) of the Act; and
 - (b) not to convey voice telephony as part of any Value Added Network Service.
- 2.9 Subject to the Act and clause 2.10 below, the Licensee shall have the right to contractually bind any person licensed to provide Private Telecommunication Networks—
 - (a) not to resell capacity on any telecommunication facility so obtained, or cede or assign its rights to use that telecommunication facility or to sublet or otherwise part with control of it, until the date fixed by the Minister pursuant to section 41(5) of the Act.
- 2.10 Any contract entered into containing the restrictions set out in clause 2.8 and/or 2.9 above, shall contain a provision whereby the restriction shall automatically expire and have no more legal force and effect on the date that providers of Value Added Network Services or Private Telecommunication Networks, as the case may be, are legally permitted to engage in the activities set out in clause 2.8(a) and (b) and clause 2.9(a).
- 2.11 Nothing in this Licence shall prejudice any rights or privileges granted or afforded to the Licensee under all or any of the provisions of the Act and any other legislation or under any other licence issued to the Licensee under the Act.
- 2.12 Unless otherwise approved by the Authority, the total funded debt of the Licensee shall not exceed two-thirds ($\frac{2}{3}$) of the total equity of the Licensee.

3. SERVICES TO BE PROVIDED

- 3.1 Subject to the Act and other provisions of this Licence, the Licensee is authorised to provide the following elements of the Public Switched Telecommunication Service:
 - (a) the National Long-distance Telecommunication Service;
 - (b) the International Telecommunication Service;
 - (c) the Local Access Telecommunication Service;
 - (d) the Public Pay-telephone Service;
 - (e) maritime Telecommunication services;
 - (f) service comprising the provision of Telegram;
 - (g) fixed mobile services;
 - (h) the supply of telecommunications equipment, the installation, bringing into service, maintenance and repair of that part of the public switch telecommunication network that is provided, maintained and operated by the public switch telecommunication services Licensee for the purposes of providing any telecommunication service, such as the provision of telecommunication circuits for—
 - (i) Private Circuits;
 - (ii) links between sites of the same Operator or multiple Operators;

- (iii) telecommunication facilities used for the provision of private telecommunication networks;
- (iv) telecommunication facilities used for the provision of value-added network services;
- (v) telecommunication facilities used for the provision of telecommunication services in under serviced areas contemplated in section 40A of the Act;
- (vi) telecommunication services used to provide voice over Internet protocol;
- (vii) third generation telecommunication facilities;
- (viii) telecommunication facilities to provide fixed mobile services in the 1.800 MHz frequency band; and
- (i) any other service authorised by the Authority or reasonably complementary to the provision of those services (whether provided on a fixed or fixed mobile basis) such as the provision, repair and maintenance of equipment located on a Customer's premises and any other telecommunications apparatus of any kind;
- (j) all or any telecommunication facilities to be used by any person for the provision of Value Added Network Services;
- (k) all or any telecommunication facilities comprising fixed lines to be used by any Operator for the provision of Mobile Telecommunication Services; and
- (l) all or any telecommunication facilities to be used by any person for the provision of any Private Telecommunication Network, other than a Private Telecommunication Network, referred to in section 41(2) of the Act.

4. ROLL OUT TARGETS AND PERFORMANCE GUARANTEE

- 4.1 The Licensee shall meet or exceed the Roll Out obligations as set out in the roll out plan attached herein in accordance with the terms and conditions and within the timeframes specified therein.
- 4.2 The Licensee shall within fourteen (14) days of the issue of this Licence, provide the Authority with a performance guarantee in the amount of R50 000 000,00 (fifty million Rand).
- 4.3 In the event of the Licensee failing to furnish the performance guarantee required by clause 4.2, the Authority shall notify the Licensee in writing of such failure, and shall require the Licensee to remedy its failure by no later than twenty-one (21) calendar days after such written notification.
- 4.4 In any case where the Licensee fails to satisfy its obligations under this License or otherwise violates any term or conditions of this License, any applicable regulation, or the Act and such failure or violation is determined by the Authority to be material, the Authority shall have the right to draw upon the guarantee to satisfy any sanction imposed by the Authority in accordance with clause 30 of this Licence and consistent with the Act.
- 4.5 The Authority shall be entitled to regularly review compliance by the Licensee with the License obligations. In performing a review or any other regulatory duties the Authority shall be entitled to request further information from the Licensee, review documents, propose sanctions and perform other such duties as authorised by the Act.

5. PROVISION OF UNIVERSAL ACCESS AND COMMUNITY SERVICE OBLIGATIONS

5.1 Basic Service Provisions

- 5.1.1 Subject to clause 5.1.2 below, the Licensee shall provide over the Public Switched Telecommunication Network the following telecommunication services:

5.1.1.1 to every person in the Republic who request it, any of the following:

- (i) Basic Telephone Services;
- (ii) the installation and connection to an item of Terminal Connection Equipment an item of Customer Premises Equipment capable of making use of the Basic Telephone Services; and
- (iii) the maintenance or repair of that item of Customer Premises Equipment supplied by the Licensee or in the case of Customer Premises Equipment supplied by a person other than the Licensee, maintenance or repair of that item pursuant to terms and conditions of any agreement entered into between the Licensee and such user on terms satisfactory to the Licensee;

5.1.2 a Public Pay-telephone Services which satisfies the requirements of section 24.2 below; and

5.1.3 access to the public Emergency Call Services and Directory Information Services by means of either the telecommunication services referred to in section 5.1.1(a)(i) or (b);

except to the extent that, in the Authority's opinion, based on a showing by the Licensee, including any information supplied by the Licensee at the request of the Authority or other information the Authority may consider, any demand for such telecommunication services is, or can be met, without prejudice to any of the Roll-out Targets, by other means and that, accordingly, it would be unduly burdensome from both a business and financial perspective in the circumstances for the Licensee to provide the telecommunication service requested.

5.1.4 In addition to the exception set out in clause 5.1.1 above, the obligation to provide the telecommunication service referred to in clause 5.1.1 above to any person who requests it shall be subject to the following exceptions:

- (a) the Licensee shall be treated as being in compliance with clause 5.1.1 where at the relevant time the Licensee is in compliance with its obligations set out in the attachment herein and the provisions of this Licence relating thereto and any necessary telecommunication apparatus or telecommunication facility necessary to provide the relevant telecommunication service in that area has been installed and become operational; and

5.1.5 the person requesting the telecommunication service has entered into a contract for services in accordance with clause 16 below and otherwise has satisfied the terms and conditions set out in such contract.

5.2 Community Service Obligations

5.2.1 The Licensee shall establish and maintain School Internet Laboratories (computer laboratories with Internet Connectivity) in 2 500 (two thousand five hundred) schools in peri-urban and rural areas designated by the Authority, over 10 (ten) years as specified in **Attachment 1**.

5.2.2 The licensee shall construct, operate and maintain 30 000 (thirty thousand) Community Service Telephones over 10 (ten) years, in rural areas designated by the Authority in terms of the geographic information survey conducted by the Universal Service Agency as specified in **Attachment 1**.

6. GENERAL CONDITIONS

6.1 Licence Term

6.1.1 The licence term shall be twenty five (25) years from the Effective Date.

6.1.2 The Authority will extend, the period of the licence as set out in clause 6.1.1 above in accordance with and under the following conditions:

- (a) Except where the Licensee has repeatedly and materially failed to satisfy the conditions of the License or to comply with applicable regulations or applicable laws over the course of the License term.
- (b) At least eighteen (18) months prior to the expiration of the License term, the Licensee shall file with the Authority a written certification of substantial and material compliance based on annual reports required pursuant to clause 20 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 section 6.1.2(b) above.
- (d) Where the Licensee timely files the certification required in section 6.1.2(b) above, unless otherwise notified in writing by the Authority within six (6) months of filing of the certification that extension will be denied effective on the expiration date of the License, extension of the License shall be granted for an additional term, effective upon the expiration date of the License, provided the Licensee has paid, or made other arrangements to the reasonable satisfaction of the Authority, any applicable taxes, fees, and/or other charges, including any outstanding fines or forfeitures due as of the Licence expiration date.
- (e) Prior to any Licence extension, the Authority may take necessary steps in cooperation with the Licensee, to review and make modifications to the terms and conditions of the Licence in accordance with the existing regulatory framework at that time.
- (f) Prior to denying any request for extension pursuant to clause 6.1.2(d), the Authority shall request in writing that the Licensee take such specified action as the Authority deems necessary to rectify or compensate for the substantial and material non-compliance by the Licensee. A time period shall be specified for such action (being not more than 8 months). If such rectification/compensation is not achieved, only then may the Licence expire without extension.

6.2 Licence Fee and Terms of Payment

6.2.1 The Licensee shall pay a non-recurring licence fee of R300 000 000,00 (three hundred million Rand) exclusive of value added tax. The Licensee shall be entitled to pay the licence fee over a period not exceeding ten (10) years at an annual percentage rate of prime plus one percent (1%).

6.3 Annual Licence Fee:

6.3.1 The annual licence fee payable by the Licensee, from twelve (12) months after the effective date of the Licence shall be equal to 1% of the net invoiced annual sales realized from the PSTS revenue computed in accordance with South African GAAP. Such amount is exclusive of value added tax. If the amount of the annual licence fee does not exceed R10 000 000,00 (ten million Rand), the licence fee may be paid in two instalments: the fee payable for sales realised in the first six (6) months shall be due by August 31 of the same year and the second instalment by March 31 of the following year. If the amount of annual licence fee exceeds R10 000 000,00 (ten million Rand) the fee shall be payable as follows: the first instalment shall be due by January 15 of the following year, while the second instalment shall be due by June 15 of that year.

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

6.4 Bank Guarantee

6.4.1 Where the Licensee fails to make any payment or to make full payment of the amounts due under clause 6.2 or clause 6.3 above, the Authority may use the bank guarantee secured pursuant to clause 4.3.1 above to satisfy any outstanding payment obligation(s) of the Licensee.

6.5 Amendment of the Licence

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

6.5.2 If a proposed amendment to this Licence relates to universal access or universal service obligations, including, without limitation, any of the Roll-out Targets or New Line Roll-out Targets, contemplated in section 36 (2) or section 48(1) (a) of the Act, this Licence may be amended only with the concurrence of the Licensee.

7. DIRECTORY SERVICES

7.1 The Licensee shall provide users of its Public Fixed Telecommunication Services with Directory Services at points served by its Public Switched Telecommunication Network.

7.2 The Licensee shall provide Directory Services whereby callers may receive information concerning the telephone numbers of subscribers listed or to be listed in the printed directories described in clause 7.4 below (including any corrections or updates).

7.3 The Licensee may impose a charge approved by the Authority for the provision of Directory Services. In approving any charge, the Authority may allow for a reasonable minimal number of free inquiries prior to the Licensee applying any approved charge and, in accordance with section 24 below, may treat public telephones differently where user access to printed directories may be limited.

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

(i) The telephone directories shall also include Emergency service number 112 and the numbers for Emergency 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.

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

7.5 Each subscriber has the right to be listed free of charge in the telephone directory. Where requested in writing by a subscriber, the Licensee shall keep that subscriber's name, address and telephone number confidential and not include such information in any published directory or otherwise make such information available in connection with the Licensee's directory services.

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

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

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

8. RESTRICTION ON TRANSFER OF LICENCE, SHARES, OWNERSHIP AND CONTROL

8.1 No ownership interest or control of the Licensee shall be transferred or otherwise assigned prior to the Licensee first submitting a written application to the Authority and obtaining the prior written approval of the Authority. This clause 8.1 shall be governed by and construed in accordance with the regulations promulgated by the Authority under section 52 of the Act.

9. ACCESS TO EMERGENCY CALL SERVICES AND OPERATOR ASSISTANCE

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

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

9.3 The Licensee shall provide Public Emergency Services by which any member of the public may, at any time and as swiftly as practicable, communicate with any of the Emergency Organisations for the purpose

of notifying them of an emergency at no charge using the Emergency call numbers "112" and "999" and without having to use coins or cards from pay telephones provided by the Licensee. This will include the provision of such service on a suspended line.

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

- 10.1 The Licensee shall, after consultation with the authorities responsible for Emergency Organisations and such departments of central and local government as the Authority may from time to time determine and whose names are notified to the Licensee for that purpose, make plans or other arrangements for the provision or, as the case may be, the rapid restoration of such telecommunication services as are practicable and may reasonably be required in Emergencies.
- 10.2 The Licensee shall, on request by any such person as is designated for the purpose in the relevant plans or arrangements, implement those plans or arrangements insofar as is reasonable to do so.
- 10.3 Nothing in this Condition precludes the Licensee from:
 - 10.3.1 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
 - 10.3.2 making implementation of any plans or arrangements conditional upon the person or persons for whom or on whose behalf that plan or arrangement is to be implemented indemnifying the Licensee for all costs incurred as a consequence of the implementation.

11. PRICE REGULATION

- 11.1 The Licensee shall file rates as well as the relevant terms and conditions with the Authority pursuant to which the Licensee proposes to offer PSTS that are subject to the Rate Regime determined pursuant to section 45(2) of the Act. Such rates shall be filed at least thirty (30) Business Days before the proposed date on which such rates are to become effective where the Licensee proposes to increase rates and at least five (5) days before the proposed date on which such rates are to become effective where the Licensee proposes to decrease rates. Rates shall be filed with and in the form specified by the Authority. The Authority may disapprove the proposed rates only if:
 - 11.1.1 the calculations contain mathematical errors; or
 - 11.1.2 the terms and conditions violate applicable laws, including, without limitation, policy directions, regulations and the Rate Regime, in a material respect.
- 11.2 Disapproval of the rates by the Authority shall be in writing. In the case of rate increases, if the Authority does not deliver to the Licensee a notice in writing of disapproval at least fifteen (15) Business Days before the proposed Effective Date of the rates, the rates shall be deemed to be approved. For rate decreases, the rates shall be deemed to be approved if the Authority does not deliver to the Licensee a notice in writing of disapproval at least twenty-four (24) hours prior to the proposed Effective Date.
- 11.3 Tariffs shall be non-discriminatory for comparable telecommunication services rendered to the same categories of users. In meeting its obligation pursuant to this paragraph, the Licensee may establish different tariffs taking into account: subscriber usage or volume, service packages and feature groups purchased, and the number of accounts or subscriber numbers purchased by a single subscriber. The Licensee may also apply different tariffs for limited duration in connection with promotions supporting its marketing efforts for any service offering.

12. PREPARATION OF ACCOUNTS

- 12.1 Subject to clause 12.4, the Licensee shall prepare, in respect of each of its financial years, accounts on an historic and a current cost basis in respect of—
 - 12.1.1 the Licensee's Retail Activities; and
 - 12.1.2 the Licensee's Wholesale Activities,(together referred to as the "Regulatory Accounts").
- 12.2 The Licensee shall establish the Regulatory Accounts in accordance with the Chart of Accounts and the Cost Allocation Manual (COA/CAM).
- 12.3 The Licensee shall prepare sufficient accounting and reporting arrangements to enable it to comply with this condition.
- 12.4 The Licensee shall not be required to prepare Regulatory Accounts in accordance with this condition until it has put in place the necessary accounting and management information systems which will enable it to do so. The Licensee shall put such systems in place by the fifth anniversary of the Effective Date, provided that Licensee shall not be required to do anything under this condition which would impose an undue burden on the Licensee having regard to its obligations under the remaining conditions of this Licence.
- 12.5 The Licensee shall, if requested by the Authority to do so, procure in respect of each set of Regulatory Accounts an audit report by the Licensee's auditors in which they will state whether in their opinion the Regulatory Accounts comply with the Chart of Accounts and the Cost Allocation Manual, and fairly

present the assets, liabilities, revenues, and expenses in respect of the Licensee's Retail Activities and Wholesale Activities.

- 12.6 The Licensee shall send a copy of each set of Regulatory Accounts to the Authority within twenty (20) Business Days of the completion of the audit referred to in condition 13.5 or, if no audit is requested by the Authority pursuant to that condition, within three (3) months of the end of the relevant financial year.
- 12.7 The Chart of Accounts and the Cost Allocation Manual may be changed as agreed from time to time by the Licensee and the Authority and the Licensee shall be entitled to a reasonable period within which to implement any such changes. Until such time as the initial Chart of Accounts and the Cost Allocation Manual are agreed between the Licensee and the Authority audited annual financial statements shall be prepared in accordance with generally accepted accounting principles, consistently applied.

13. FAIR TRADING

- 13.1 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—
- 13.1.1 the provision of any telecommunication services (including, without limitation, maintenance services) in accordance with any obligations imposed by this Licence;
 - 13.1.2 the connection of Approved Equipment to the Public Switched Telecommunication Network;
 - 13.1.3 the granting of permission to connect any Operator's telecommunication system with the Public Switched Telecommunication Network in accordance with section 43 of the Act and the guidelines contemplated thereunder; and
 - 13.1.4 the quality and terms of any Interconnection Services provided by the Licensee to an Operator under any agreement between them.
- 13.2 The Licensee may be deemed to have shown undue preference or undue discrimination as described in clause 13.1 if the Authority determines that it unfairly favours to a material extent any business carried on by it so as to place at a significant competitive disadvantage persons lawfully competing with that business.
- 13.3 The Licensee shall not, without the consent of the Authority, make—
- 13.3.1 the acquisition from any person in the Republic by the Licensee or any of its Wholly-owned Subsidiaries, or
 - 13.3.2 the provision of services by any person in the Republic to the Licensee or any of its Wholly-owned Subsidiaries, with respect to any telecommunication services or apparatus, conditional upon agreement that those services and apparatus shall be supplied exclusively to the Licensee.
- 13.4 Clause 13.3 shall not apply with respect to the supply of any telecommunication services or apparatus where—
- 13.4.1 the Licensee or any of its Wholly-owned Subsidiaries holds any Intellectual Property Right in that telecommunication service or apparatus; or
 - 13.4.2 the telecommunication apparatus is distinguishable by its external appearance, or by any marking or similar feature, from other telecommunication apparatus of the same type, and is intended, by virtue of those distinguishing features, to be associated with the Licensee or its Wholly-owned Subsidiary;
 - 13.4.3 the Licensee, or any of its Wholly-owned Subsidiaries, makes available research, design or development work, or agrees to finance that work on condition that the telecommunication service or apparatus concerned shall be exclusively supplied to it; or
 - 13.4.4 the Licensee has an exclusive right to supply the telecommunication service or apparatus concerned.
- 13.5 For the purpose of this condition, "Intellectual Property Right" includes, without limitation, patents, trademarks, designs, know-how, copyright and other trade secrets, and all rights or forms of protection of a similar nature.
- 13.5.1 The Licensee shall not make it a condition of—
- (a) providing any telecommunication service in the Republic by means of the Public Switched Telecommunication Network;
 - (b) supplying any telecommunication apparatus in the Republic for connection to the Public Switched Telecommunication Network; or
 - (c) connecting any telecommunication apparatus or system in the Republic to the Public Telecommunication Network;
- that any person requesting the telecommunication service, apparatus or connection concerned should acquire from the Licensee or any other person specified by it any telecommunication service other than the particular telecommunication service requested, except where the telecommunication service requested cannot otherwise be provided, or the telecommunication apparatus requested cannot otherwise reasonably be used.

- 13.6 The above clause shall not prevent the Licensee from—
- 13.6.1 imposing any terms and conditions as are permitted under section 43 of the Act and the guidelines contemplated thereunder;
 - 13.6.2 where it supplies as part of the same transaction, or related series of transactions, offering discounts based on term commitments or commitments for multiple services or for purchasing two or more telecommunication services which are of a similar type (or so related as to permit economies of scale where they are provided together), or for purchasing two or more items of telecommunication apparatus, offering quantity discounts or from offering more favourable terms and conditions in respect of those telecommunication services or apparatus; and
 - 13.6.3 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, referred to in clause 13.5 as are reasonably incidental to such provision, supply or connection or as may otherwise be agreed by the Authority.
- 13.7 The Licensee will not unfairly cross-subsidise its service offerings and any cross subsidisation shall be in accordance with COA/CAM regulations prescribed by the Authority.
- 13.8 Any question relating to whether any act done or course of conduct pursued by the Licensee amounts to unfair cross-subsidisation, undue preference or undue discrimination as described in clause 13.1 or 13.7 shall be determined by the Authority, but nothing done in any matter by the Licensee shall be regarded as undue preference, undue discrimination or unfair cross-subsidisation for the purposes of this clause 13 if, and to the extent that, the Licensee is required or permitted to do the relevant matter or thing in such manner by or under any provision of this Licence, any regulation or the Act.

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

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

15. REQUIREMENT TO OFFER CONTRACTS FOR TELEPHONE SERVICES

- 15.1 The Licensee shall provide the Public Switched Telecommunication Services authorised pursuant to this License pursuant to a subscriber contract.
- 15.2 The subscriber contract shall either specify the type of service offered and the terms and conditions on which the telephone service is to be provided under the contract or shall make reference to publicly available terms and conditions. The contract or publicly available terms and conditions shall at least specify, if relevant:
- 15.2.1 the supply time for initial connection;
 - 15.2.2 the service covered by and the terms of the contract;
 - 15.2.3 the financial penalties the subscribers have to pay in case of payment delay;
 - 15.2.4 the conditions referring to suspension or interruption of the service in case of non-payment by the subscriber;
 - 15.2.5 the types of maintenance service offered;
 - 15.2.6 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;
 - 15.2.7 a summary of the method of initiating procedures for the settlement of disputes; and
 - 15.2.8 information on service quality levels offered.
- 15.3 The form or model of the subscriber contract, including the general terms and conditions and any amendment thereto used by the Licensee to satisfy its obligations under this Section 16 shall be approved by the Authority. Any amendments to the form or model of the contract shall be submitted to the Authority at least 60 days prior to its coming into force.
- 15.4 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.
- 15.5 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.

- 15.6 The Licensee shall retain each subscriber contract or a copy thereof in its records for at least one year following termination of the respective subscriber's contract. The Licensee shall retain all telephone activity and billing records for each subscriber for at least one year following the corresponding activity and billing.

16. NUMBERING PLAN

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

17. NUMBER PORTABILITY

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

18. CARRIER PRE-SELECTION

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

19. PROVISION OF INFORMATION

- 19.1 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.
- 19.2 Subject to applicable law, the Authority shall, at the written request of the Licensee, use its reasonable endeavours to ensure that all or any part of the report referred to in clause 19.1 above reasonably justifying confidentiality, such as commercially sensitive or proprietary information relating to the financial capacity or business plans of the Licensee, trade secrets, etc., shall not be open to public inspection or disclosed to any third party.
- 19.3 For purposes of this clause 19.1 commercially sensitive documents or information or other matters reasonably justifying confidentiality shall exclude documents or information that was or becomes, or as a matter of law should be, generally available to the public.

20. BILLING ARRANGEMENTS

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

the billing process; providing all back up and support documentation and other information that the Authority may request and otherwise assisting the Authority in the process.

21. ITEMISED BILLS

- 21.1 The Licensee shall provide each subscriber who so request an itemised bill in such a form and with appropriate explanation to plainly show the call details of the subscriber for the billing period to verify the billed amount.
- 21.2 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
- 21.3 The Licensee shall ensure that calls which are free of charge to its Subscribers, including calls to help lines, shall be identified in its Subscribers' itemised bills.
- 21.4 The Licensee may make an itemised bill available in a secure location on its website if so requested by a subscriber.

22. NON-PAYMENT OF BILLS

- 22.1 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—
 - 22.1.1 be proportionate and non-discriminatory;
 - 22.1.2 be set out in the subscriber contract entered into with the subscriber pursuant to clause 16 above and published in accordance with that clause;
 - 22.1.3 give due warning in advance of any consequent service interruption or disconnection to the Subscriber; and
 - 22.1.4 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.

23. PUBLIC PAY-TELEPHONE SERVICES

- 23.1 The Licensee shall install and maintain its Public Pay-telephones in working order. The Licensee shall choose the type of Public Pay-telephones and place for their installation, taking into consideration the penetration of the Public Switched Telecommunication Network and the population density in the respective area.
- 23.2 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.
- 23.3 Public Pay-telephones that are installed, modified or replaced by the Licence shall be accompanied by information panels placed on or near them in plain view of users which shall specify: instructions for use, applied tariffs (or a telephone number where up-to-date tariff information may be obtained), and telephone numbers for Emergency services, operator assistance and directory information services. Calls from Public Pay-telephones for purposes of accessing Emergency services, operator assistance and directory information services shall be free of charge unless otherwise authorized by the Authority.
- 23.4 In addition to the information required to be available at each Public Pay-telephone pursuant to clause 23.4, the Licensee shall also post the name, address and telephone number for the reporting of complaints.

24. SERVICES FOR DISABLED PERSONS

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

25. CONFIDENTIALITY OF INFORMATION

- 25.1 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.
- 25.2 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.
- 25.3 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.
- 25.4 The prohibitions contained in clause 25.1 above do not apply with respect to the name, address and telephone number of subscribers for purposes of providing printed and directory information services in accordance with clause 7 above.

26. CODE OF CONDUCT ON THE CONFIDENTIALITY OF CUSTOMER INFORMATION

- 26.1 The Licensee shall take all reasonable steps to ensure that its employees observe the provisions of a code of conduct which:
- 26.1.1 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
 - 26.1.2 Regulates the information about any such subscriber or his business that may be disclosed without his consent.
- 26.2 The Licensee shall within twelve (12) months of the Effective Date of this License file a draft of its code of conduct with the Authority for its approval. In the event of a disagreement between the Licensee and the Authority on the contents of the code of practice or any portion thereof, the Authority's ruling shall prevail.
- 26.3 This condition is without prejudice to the general duties at law of the Licensee towards its subscribers.

27. EMPLOYMENT EQUITY, HUMAN RESOURCE DEVELOPMENT AND TRAINING

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

28. MISCELLANEOUS

- 28.1 Adherence to International Standards
- 28.1.1 The Licensee shall comply with the applicable standards and requirements of the ITU, WTO and any other international institutions as agreed to or adopted by the Republic.
- 28.2 Legal Compliance
- 28.2.1 The Licensee shall comply with all applicable laws of the Republic and with all international obligations to which the Republic is bound and, unless expressly indicated to the contrary, nothing in this Licence shall be construed or understood so as to relieve or exempt the Licensee or any other party, including any of the Licensee's employees, agents, contractors or Service Providers, from complying with the provisions of this Licence, the Act or any other law to the extent that it may be applicable.
- 28.3 Access to Network Facilities
- 28.3.1 The Licensee shall grant unhindered access to all its facilities, installations and records to all officers authorised as inspectors by the Authority for such purposes.
 - 28.3.2 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.
- 28.4 Notices and Addresses
- 28.4.1 Any notice or certification given by the Authority to the Licensee shall be in writing;
 - 28.4.2 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
 - 28.4.3 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.

29. REVOCATION

- 29.1 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:
- 29.1.1 If the Licensee agrees in writing with the Authority that this Licence should be revoked;
 - 29.1.2 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
 - 29.1.3 if the Licensee is placed in final liquidation or under a provisional or final judicial management order.
- 29.2 Except in cases set out in clause 29.1 above, where a breach or violation of this Licence occurs, no fine, penalty or sanction shall be imposed on the Licensee in the absence of written notice ("Notice of Non-Compliance") having been given to the Licensee, stating clearly and specifically the nature of the alleged breach or infraction and stating the precise penalty or sanction which might be imposed in the absence of a cure of the alleged breach or infraction.
- 29.3 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.

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

ATTACHMENT 1**(A) SNO Roll-Out Plan**

1. The Licensee shall roll out its network according to the following network roll-out plan:
 - 1.1 Within 5 (five) years of the date when the licence is issued to the licensee, the Licensee shall have covered all the major metropolitan cities as shall be determined by the Authority.
 - 1.2 Within 10 (ten) years of the date when the licence is issued to the licensee, the Licensee shall have covered 80% (eighty percent) of the geographical territory of the Republic.
2. If additional spectrum in appropriate bands is allocated, the network roll-out plan shall be changed by agreement between the Authority and the Licensee.
3. Should the Licensee fail to meet its commitments in respect of the geographic area roll-out plan as set out above within each applicable period, the Authority may impose a penalty not exceeding R50 000 000 (fifty million Rand) that bears the same proportion to R50 000 000 (fifty million Rand) as the geographic area of the Territory not covered bears to the required percentage that ought to have been covered according to the roll-out plan.

(B) Community Service Obligations

1. The Licensee shall construct, operate and maintain Community Service Telephones in rural areas to be designated by the Authority excluding those areas determined to have less than 5% teledensity by the Minister.
2. Should the Licensee be prepared to locate its Community Service Telephones in specific locations identified by the Authority in terms of the geographic information survey conducted by the Universal Service Agency, the Authority will credit the licensee through a multiple count accreditation system.
3. The Licensee will discharge its obligations as set out in paragraph 1 above in accordance with the following implementation timetable:
 - 3.1 Within 3 (three) years of the date of issue of the licence, the Licensee shall have installed a total of 5 000 (five thousand) Community Service Telephones in rural areas as set out above;
 - 3.2 within 5 (five) years of the date of issue of the licence, the Licensee shall have installed a total of 10 000 (ten thousand) Community Service Telephones in rural areas;
 - 3.3 within 10 (ten) years of the date of issue of the licence, the Licensee shall have installed a total of 15 000 (fifteen thousand) Community Service Telephones in rural areas.
4. The Licensee shall submit to the Authority an annual roll-out plan for Community Service Telephones, that specifies the rural areas and Community Centres where such Community Service Telephones are to be installed, taking into account the Licensee's spectrum allocation, network coverage and capacity.
5. The roll-out plans referred to above shall be submitted to the Authority at least 3 (three) months prior to the projected commencement date of the roll-out plan concerned.
6. The roll-out plans referred to above may be supported by statistical data available to the Licensee and acceptable to the Authority relating to percentage penetration of fixed lines.
7. The roll-out plan referred to above may be amended by agreement between the Licensee and Authority to include any proposals made by the Authority within the 3 (three) month period referred to in paragraph 5.
8. For the purposes of determining whether the Licensee has complied with its obligations set out above, the Authority and the Licensee shall use their best endeavours to reach agreement, within 6 (six) months of the Commercial Date, on the applicable performance indicators which shall include indicators such as universality, accessibility, the extent to which the Community Service Telephones are usable, maintained and meet the needs of people leaving in rural areas. In the event that no agreement is reached within the time period stipulated above, the Authority shall determine such applicable performance indicators.
9. The implementation of the Licensee's obligations may, subject to the provisions hereof, be coordinated between the Licensee, similar licensees, PSTS licensees and the Universal Service Agency under the supervision of the Authority.
10. Save as specifically approved by the Authority, services provided in Community Centres shall not be taken into consideration for the purposes of the Community Service Telephone obligations of the Licensee as set out in the abovementioned implementation timetable unless such Community Centres are in rural areas.
11. Subsequent to the second anniversary of the date when the licence was issued to the licensee, the Authority shall periodically assess the Licensee's level of compliance with its obligations to construct, operate and maintain Community Service Telephones in rural areas in accordance with the implementation timetable set out in paragraph 1. In the event of the Licensee failing to comply with any of its abovementioned obligations, the Authority shall be entitled from time to time, and after due enquiry, to impose reasonable fines, alternatively such fines as the Authority may prescribe by regulation, upon the Licensee, provided that any fine so imposed shall not result in a reduction of the Licensee's community service obligations and shall not preclude the Authority from imposing further fines upon the Licensee in the event of the Licensee persisting with its failure to comply with any particular obligation set out in paragraph 1.

(C) Internet School Laboratories

1. The Licensee shall establish and maintain 2 500 (two thousand five hundred) internet laboratories in peri-urban and rural schools to be designated by the Authority in accordance with the following implementation timetable:
 - 1.1 Within 3 (three) years of the date of issue of the licence, the Licensee shall have installed a total of 500 (five hundred) Internet laboratories in the designated schools as set out above;
 - 1.2 within 5 (five) years of the date of issue of the licence, the Licensee shall have installed a total of 1 000 (one thousand) internet laboratories in designated schools as set out above;
 - 1.3 within 10 (ten) years of the date of issue of the licence, the Licensee shall have installed a total of 2 500 (two thousand five hundred) internet laboratories in designated schools as set out above.
2. The Licensee shall submit to the Authority an annual roll-out plan for Internet school laboratories, that specifies the schools where such internet laboratories have been established.
3. The roll-out plans referred to above shall be submitted to the Authority at least 3 (three) months prior to the projected commencement date of the roll-out plan concerned.
4. The roll-out plan referred to above may be amended by agreement between the Licensee and Authority to include any proposals made by the Authority within the 3 (three) month period referred to in paragraph 5.
5. For the purposes of determining whether the Licensee has complied with its obligations set out above, the Authority and the Licensee shall use their best endeavours to reach agreement, within 6 (six) months of the Commercial Date, to establish the extent to which the internet laboratories are functional, maintained and meet the needs of the schools in such areas.
6. The implementation of the Licensee's obligations may, subject to the provisions hereof, be coordinated between the Licensee, similar licensees, PSTS licensees and the Universal Service Agency under the supervision of the Authority.
7. Subsequent to the second anniversary of the date when the licence was issued to the licensee, the Authority shall periodically assess the Licensee's level of compliance with its obligations to establish and maintain internet laboratories in the designated schools, in accordance with the implementation timetable set out in paragraph 1. In the event of the Licensee failing to comply with any of its abovementioned obligations, the Authority shall be entitled from time to time, and after due enquiry, to impose reasonable fines, alternatively such fines as the Authority may prescribe by regulation, upon the Licensee, provided that any fine so imposed shall not result in a reduction of the Licensee's obligations to establish internet school laboratories and shall not preclude the Authority from imposing further fines upon the Licensee in the event of the Licensee persisting with its failure to comply with any particular obligation set out in paragraph 1.



TRANSTEL

**CONFIDENTIALITY AND
NON-DISCLOSURE
AGREEMENT**

Entered into by and between

TRANSTEL
a Division of TRANSNET LIMITED

AND

("the Recipient")

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1. PARTIES

- 1.1 **TRANSTEL**, a division of **TRANSNET LIMITED** [Registration No. 1990/000900/06], a public company with limited liability and duly incorporated in compliance with the company laws of the Republic of South Africa, with its registered address at Forum III, Braampark, 33 Hoofd Street, Braamfontein.
- 1.2 The Recipient is an entity/person(s) listed in Appendix A.

2. INTERPRETATION

- 2.1 The headnotes to the clauses of this Agreement are inserted for reference purposes only and shall in no way govern or affect the interpretation hereof.
- 2.2 Unless inconsistent with the context, the expressions set forth below shall bear the following meanings :
 - “**Confidential Information**” information which is indicated, marked and considered by Transtel to be confidential, including but not limited to, information relating to business plans, technological plan, roll-out plans, financial results, technologies, operations, technical specifications and details, business strategies, clients lists, trade secrets, software, licences, whether relating to its current business or in contemplation of its participation in the Second Network Operator (“SNO”);
 - “**Due Diligence**” refers to examination by the Recipient of Transtels Proprietary and Confidential Information;
 - “**ICASA**” refers to Independent Communications Authority of South Africa;
 - “**ITA**” refers to Invitation To Apply issued by the Government of the Republic of South Africa, Department of Communications;
 - “**Parties**” refers collectively to Transtel and the Recipient. “**Party**” refers to either of them.
 - “**Proprietary Information**” any and all information relating to the business of Transtel which are proprietary and have economic value developed by, owned by, possessed or in custody of Transtel and disclosed by Transtel to the Recipient; verbally or in material, document form (including, without limitation, any written document and any information contained in electronic format).
 - “**Recipient**” means the Party referred to in subclause 1.2 above, including its agent, representative, advisor or consultant;
 - “**Signature Date**” The date of signature of this Agreement by the last Party signing.
 - “**the Specified Period**” A period of 12 (twelve) months commencing on the Signature Date.
 - “**the/this Agreement**” This Agreement together with any schedules hereto and any agreed amendments thereto.
 - “**Transtel**” The Party referred to in clause 1.1 above.
- 2.3 If any provision in a definition is a substantive provision conferring rights or imposing obligations on any Party, notwithstanding that it is only in the definition clause, effect shall be given to it as if it were a substantive provision of this Agreement.
- 2.4 Unless inconsistent with the context, an expression which denotes—
 - 2.4.1 any gender includes the other genders;
 - 2.4.2 a natural person includes an artificial person and vice versa;
 - 2.4.3 the singular includes the plural and vice versa.

3. INTRODUCTION

- 3.1 Transtel has been set aside an unspecified equity interest in the Second National Operator (“SNO”), in terms of Section 32B of the Telecommunications Amendment Act 64 of 2001.
- 3.2 The Recipient wishes to gain access into Proprietary Information and/or Confidential Information for purposes of Due Diligence exercise (“Due Diligence”). Transtel is willing to provide such access subject to the conditions and terms that follows.
- 3.3 The Recipient acknowledges that the unauthorised disclosure or use of the Proprietary Information and/or the Confidential Information may result in Transtel suffering irreparable financial and/or other harm.
- 3.4 The Parties agree to regulate the disclosure of the Proprietary Information and/or Confidential Information in accordance with the terms and conditions of this Agreement.
- 3.5 The Recipient acknowledges the Data Room Procedures in Appendix C and warrants their compliance thereto, upon signing of this Agreement.

4. DURATION

This Agreement shall commence on the Signature Date and shall endure, for the Specific Period or for such longer period as Transtel may, at its discretion, determine.

5. DISCLOSURE OF INFORMATION

- 5.1 Transtel agree to disclose the Proprietary Information and the Confidential Information on a need-to-know basis to the Recipient solely or exclusively for purposes of a Due Diligence to the extent it deems necessary or desirable and to enable the Recipient to achieve the purpose set forth in the ITA.
- 5.2 The Recipient acknowledges that the Proprietary Information and the Confidential Information has an economic and financial value to Transtel and it is special and unique asset confidential to Transtel.
- 5.3 The Recipient undertakes that it/he/she will not, during the course of the due diligence or thereafter and in particular for the Specified Period, disclose the Proprietary Information and/or Confidential Information to any third party (including but not limited to the competitors or potential competitors of Transtel or the SNO, for any reason or purpose whatsoever at all and/or without the express prior written consent of Transtel or the SNO, where applicable.
- 5.4 Notwithstanding anything to the contrary contained in this Agreement, Transtel agrees that the Recipient may disclose Proprietary Information and/or the Confidential Information to its employees, advisors, agents and consultants (on a strict need-to-know basis) provided the Recipient takes all necessary steps and ensures that its employees, advisors, agents and consultants and takes all steps necessary steps and abide by the terms of this Agreement to prevent the (unauthorised) disclosure of the Proprietary Information and/or the Confidential Information to third parties.
- 5.5 The Recipient agrees that the unauthorised disclosure of the Proprietary Information and/or the Confidential Information to a third party may cause irreparable loss, harm and damage to the other Party. Accordingly, the Recipient will indemnify and hold Transtel harmless against any loss, action, expense, claim, harm or damage, of whatever nature, suffered or sustained by Transtel arising from pursuant to a breach by the Recipient, its employees, agents, advisors and consultants, whether arising negligently or intentionally, of the provisions of this clause 5.
- 5.6 The Recipient shall be jointly and severally liable in respect of any wilful or negligent action or omission, whatsoever arising, caused by itself, its employees, agents, advisors or consultants, in breach of the provisions of this Agreement.
- 5.7 The Recipient agrees that Transtel makes no representations or warranties as to the accuracy or completeness of the Confidential Information disclosed.
- 5.8 The Recipient agrees to desist from any conduct that may have the effect, of, or be calculated to have the effect of disclosing Proprietary and Confidential information to any third party except as stated in clause 5.4. Transtel shall be entitled, at its discretion, to order, advice or request the Recipient from conducting itself in or manner that will give rise to, lead to or have the effect of breaching the provisions of this Agreement.

6. TITLE

All the Proprietary Information and the Confidential Information disclosed by Transtel to the Recipient is acknowledged by the Recipient—

- 6.1 to be confidential; and
- 6.2 not to confer any rights to the Recipient or its agents, employees, advisors or consultants of whatever nature in such Proprietary Information or Confidential Information.

7. RESTRICTIONS ON DISCLOSURE AND USE OF THE PROPRIETARY INFORMATION AND THE CONFIDENTIAL INFORMATION

Notwithstanding the provisions of subclause 5.4, the Recipient undertakes not to use the Proprietary Information and/or the Confidential Information for any purpose other than—

- 7.1 that for which it is disclosed; and
- 7.2 in accordance with the provisions of this Agreement.

8. STANDARD OF CARE

- 8.1 The Recipient agrees that they shall protect the Proprietary Information and the Confidential Information disclosed pursuant to the provisions of this Agreement using the same standard of care that the Recipient applies to safeguard its own Confidential, Secret or Proprietary Information and that the Proprietary Information and Confidential Information shall be stored and handled in such a way as to prevent any unauthorised disclosure thereof.

- 8.2 Upon the Recipient suspecting, becoming aware or detecting any form of breach or threatened breach of the provisions of subclause 8.1, then the Recipient shall forthwith notify Transtel in writing of the said breach or threatened breach and co-operate with Transtel in taking whatever steps that Transtel deems necessary to protect the Confidential and/or Proprietary information or its interests under this Agreement.

9. RETURN OF MATERIAL CONTAINING OR PERTAINING TO THE PROPRIETARY INFORMATION AND/OR THE CONFIDENTIAL INFORMATION

- 9.1 Transtel may, at any time, request the Recipient to return any material containing, pertaining to or relating to information disclosed pursuant to the terms of this Agreement.
- 9.2 The Recipient also agrees to return any material containing, pertaining to or relating to information disclosed pursuant to the terms of this Agreement if the Recipient decides not to participate in the SNO, negotiations with the Recipient are terminated, the SNO process is abandoned or the Recipient is unsuccessful
- 9.3 Recipient shall furnish a written statement (signed by its Director or authorised representative) to the effect that, upon such return described in subclauses 9.1 and 9.2, the Recipient has not retained in its possession, or under its control, either directly or indirectly, any such material.
- 9.4 As an alternative to the return of the material contemplated in subclause 9.3 above, the Recipient shall, at the instance of Transtel, destroy such material and furnish Transtel with a written statement to the effect that all such material has been destroyed or if requested by Transtel, furnish such proof as is reasonably necessary to satisfy Transtel that the material has indeed been destroyed.
- 9.5 The Recipient shall comply, in terms of this clause 9, within seven (7) days of date of such a request or the occurrence of events noted in subclause 9.2.

10. EXCLUDED INFORMATION

The obligations of the Parties pursuant to the provisions of this Agreement shall not apply to any information that—

- 10.1 is known to, or is in the possession of the Recipient prior to disclosure thereof by Transtel;
- 10.2 is or becomes publicly known, otherwise than pursuant to a breach of this Agreement by the Recipient;
- 10.3 is developed independently of Transtel by the Recipient in circumstances that do not amount to a breach of the provisions of this Agreement;
- 10.4 is disclosed by the Recipient to satisfy an order of a court of competent jurisdiction or to comply with the provisions of any law or regulation in force from time to time; provided that in these circumstances, the Recipient shall advise Transtel to take whatever steps it deems necessary to protect its interests in this regard; provided further that the Recipient will disclose only that portion of the information which it is legally required to disclose and the Recipient will use its best endeavours to protect the confidentiality of such information to the widest extent possible in the circumstances;
- 10.5 is disclosed to a third party pursuant to the prior written authorisation of the other Party;
- 10.6 is received from a third party in circumstances that do not result in a breach of the provisions of this Agreement.

11. EXCLUSIVITY

The Recipient hereby undertakes that it/he/she will not, for the duration of this Agreement, either as principal, agent, partner, representative, shareholder, consultant, advisor, financier, demonstrator, employee or in any other like capacity, and whether alone or jointly with or as agent for any other person—

- 11.1 use or reveal or benefit from the Proprietary Information and/or the Confidential Information other than for the Due diligence and in their capacities as participants in the possible business relationship between the Parties. The Recipient will only use the Proprietary Information and/or the Confidential Information exclusively for the purposes of the Due diligence and the Parties' business relationship;
- 11.2 enter into negotiations or in any way be involved in any activity similar to or relating to the proposed business relationship between the Parties, without the prior written consent of the other Party.

12. REPRESENTATION AND WARRANTY

Each Party represents and warrants that it has the authority necessary to enter into this Agreement and to do all things necessary to procure the fulfilment of its obligations in terms of this Agreement.

The Recipient warrants that all individuals disclosed in Appendix A are authorised to act on the Recipients behalf for the Due Diligence exercise.

13. BREACH

Should the Recipient ("the Defaulting Party") commit a breach of any of the provisions hereof, then Transtel ("the Aggrieved Party") shall be obliged to give the Defaulting Party twenty-four (24) hours written notice to remedy the breach. If the Defaulting Party fails to comply with such notice, the Aggrieved Party shall be entitled to cancel this Agreement against the Defaulting Party or to claim specific performance (whether or not the due date for performance shall have arrived) in either event without prejudice to the Aggrieved Party's rights to claim damages. The foregoing is without prejudice to such other rights as the Aggrieved Party may have at law.

14. DISPUTE RESOLUTION

- 14.1 Any dispute arising out of or in connection with this Agreement shall in the first instance be referred for consideration and possible resolution to the representative of each Party who shall be duly authorised to act in its place in that matter.
- 14.2 Should the officers referred to in subclause 14.1 not be able to resolve the dispute within seven (7) days of it being referred to them, then they shall by agreement, appoint a third party to act as a mediator, and not as an arbitrator, to mediate in the resolution of the dispute. Should they not be able to agree on the mediator, then the mediator shall be selected by the Chairman for the time being of the Arbitration Foundation of Southern Africa ("AFSA").
- 14.3 Should the mediation referred to in subclause 14.2 fail to resolve the dispute within seven (7) days after the appointment of the mediator in terms of subclause 14.2, then either Party shall have the right to require that the dispute be referred to arbitration and that Party shall notify the other Party in writing identifying the disputes and setting out the relief required.
- 14.4 Any dispute referred to in subclause 14.3, shall be submitted to and determined by arbitration in accordance with AFSA Rules ("the Rules"). Such arbitration shall be held in Sandton unless otherwise agreed and shall be held in a summary manner with a view of it being completed as soon as possible.
- 14.5 There shall be one arbitrator, who shall be, if the question in issue is—
 - 14.5.1 primarily an accounting matter, an independent chartered accountant of not less than ten (10) years standing; and
 - 14.5.2 primarily a legal matter, a practicing Senior Counsel or Commercial attorney of not less than ten (10) years standing; and
 - 14.5.3 any other matter, a suitably qualified person.
- 14.6 The appointment of the arbitrator shall be agreed upon between the Parties, but failing agreement between them within a period of fourteen (14) days notice in writing to the other in terms of subclause 14.3, either of the Parties shall be entitled to request the Chairman for the time being of AFSA to make the appointment of the arbitrator who, in making the appointment, shall have regard to the nature of the dispute, and shall have regard to the Parties' requirement of a speedy arbitration.
- 14.7 The arbitrator shall have powers conferred upon an arbitrator under the Rules.
- 14.8 The decision resulting from such arbitration shall be made by the arbitrator as an expert and not an arbitrator and shall be final and binding on the Parties, and may be made an order of any court of competent jurisdiction. Each of the Parties hereby submits itself to and consents to jurisdiction of the Division of the High Court of South Africa in the area in which the arbitration is held should the other Party wish to make the arbitrator's decision an order of that Court.
- 14.9 Proceedings are to be held in camera and are confidential.
- 14.10 The provisions of this clause 14 shall not preclude any other Party from access to an appropriate court of law for—
 - 14.10.1 interim relief in the form of an interdict, mandamus or order for specific performance pending the outcome of an arbitration in terms hereof or in respect of such arbitration or expert determination, as the case may be;
 - 14.10.2 any other form of relief on the basis of facts which are not disputed, provided that if a *bona fide* dispute arises in the courts of the proceedings they shall be stayed pending an arbitration or on the dispute in terms hereof; or
 - 14.10.3 an order for the payment of liquidated damages money on the basis of facts which are not *bona fide* in dispute at the commencement of such proceedings.
- 14.11 The provisions of this clause 14 shall survive the invalidity and/or termination from whatever cause arising of any or all the terms of this Agreement.

15. ADDRESSES

- 15.1 Each Party chooses the address set out opposite its name below as its address at which all notices, legal processes and other communications must be delivered for the purposes of this Agreement.

15.1.1 As regards **Transtel:**

Physical Address

Forum 111, Braampark
33 Hoofd Street
Braamfontein
Gauteng Province
Telefax No.: 27 11 359 2587
Attention: Jacob Rakgoathe

Postal Address

P.O. Box 2504
Joubert park
2044

15.1.2 As regards **the Recipient:**

Physical Address

Telefax No.:

Attention:

Postal Address

- 15.2 Any notice or communication required or permitted to be given in terms of this Agreement shall be valid and effective only if in writing but it shall be competent to give notice by telefax.
- 15.3 Any Party may by written notice to the other Party change its chosen address to another physical address, provided that the change shall become effective on the fourteenth (14th) day after the receipt of the notice by the addressee.
- 15.4 Any notice to a Party contained in a correctly addressed envelope; and
- 15.4.1 sent by prepaid registered post to it at its chosen address; or
- 15.4.2 delivered by hand to a responsible person during ordinary business hours at its chosen address; shall be deemed to have been received in the case of subclause 16.4.1, on the fourteenth (14th) business day after posting (unless the contrary is proved) and, in the case of subclause 16.4.2 on the day of delivery.
- 15.5 Any notice by telefax to a Party at its telefax number shall be deemed, unless the contrary is proved, to have been received within two (2) hours of transmission where it is transmitted during normal business hours or within twelve (12) hours of the first business day after it is transmitted where it is transmitted outside those business hours.

16. JURISDICTION

The Parties irrevocably and unconditionally consent to the non-exclusive jurisdiction of the Witwatersrand Local Division of the High Court of South Africa in regard to all matters arising from this Agreement.

17. SEVERABILITY

In the event of any one or more of the provisions of this Agreement being held for any reason to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any of the provisions of this Agreement, and this Agreement shall be construed as if such invalid, illegal or unenforceable provision was not a part of this Agreement, and the Agreement shall be carried out as nearly as possible in accordance with its original terms and intent.

18. GENERAL

- 18.1 This document constitutes the sole record of the Agreement between the Parties in regard to the subject matter thereof.
- 18.2 No Party shall be bound by any express or implied term, representation, warranty, promise or the like, not recorded herein.
- 18.3 No addition to, variation or consensual cancellation of this Agreement shall be of any force or effect unless in writing and signed by or on behalf of all the Parties.
- 18.4 No indulgence which one Party may grant to another Party shall constitute a waiver of any of the rights of the Parties, who shall not thereby be precluded from exercising any rights against the other Party which might have arisen in the past or which might arise in the future.

19. OWNERSHIP AND NO CONFLICT OF INTEREST

- 19.1 The Recipient and Recipient's shareholders or members warrants that it has no equity interest, stake or financial or economic value based interest at all in any company, corporation, joint venture or partnership whatsoever, or personal capacity (whether as a proprietor, partner, director, shareholder, employee,

member, consultant, contractor, financier, agent, representative, assistant, trustee or beneficiary of a trust or otherwise and whether for reward or not, directly or indirectly) in a licensee in terms of the Telecommunications Act, 103 of 1996 as amended.

- 19.2 In the event that the Recipient has such interest, stake or value the Recipient agrees and undertakes to disclose same to Transtel in Appendix B.
- 19.3 The Recipient warrants that its participation in the Due Diligence and the SNO will not constitute a conflict of interest. In the case that it does, it will indemnify Transtel against any loss, claim, expenses, damages or action from any third party, however arising.
- 19.4 Should a conflict of interest arise after Confidential Information has been disclosed to the Recipient, Transtel must be advised in writing when such conflict occurs and Confidential Information must be returned as contemplated in clause 9 of this Agreement.

20. INDEMNITY

The Recipient agrees to indemnify and hold Transtel harmless against any loss, claim, damage, action, expenses, harm or damages, of whatever nature suffered or sustained by the Transtel arising from breach, by the Recipient, its employees, agents, advisors and/or consultants, whether arising negligently or intentionally, of the provisions of this Agreement.

Thus done and signed at on this day of
..... 2002

AS WITNESSES:

1.
2.

**for and on behalf of
TRANSNET LIMITED**

Name:

Capacity:

Who warrants his authority hereto

Thus done and signed at on this day of
..... 2002

AS WITNESSES:

1.
2.

**Recipient/for and on behalf of the
RECIPIENT**

Full Name:

Capacity if any:

Who warrants his authority hereto

APPENDIX A**DETAILS/PARTICULARS OF THE RECIPIENT AND/OR THEIR REPRESENTATIVES**

1. Full Names:
2. Identity Number:
3. Address:
4. Capacity:
5. Name of the entity you represent:
6. Your Company and Designation:
7. Your entity's Registration Number:
8. Please state your interest in the Due Diligence:

PLEASE NOTE THAT THIS APPENDIX MUST BE SIGNED OFF BY ALL THE REPRESENTATIVES, AGENTS, ADVISORS AND/OR CONSULTANTS OF THE RECIPIENT WHO WILL FORM PART OF THE DUE DILIGENCE TEAM

APPENDIX B**DECLARATION OF INTEREST**

I the Recipient hereby state that I represent myself/my company, corporation or partnership, being I/my company, corporation or partnership and related members thereof hold an interest, stake or value ina telecommunication company, registered in, registration number.....to the value of or

I confirm that to the best of my knowledge that I/my company, corporation or partnership and related members thereof do not hold any interest, stake or value, except as stated above in any licensed telecommunications company ("Telecommunication company") in the Republic of South Africa.

In the event that the Recipient, holds a stake, shares or stock or any similar interest ("the Interest") in a Telecommunication Company, please submit the following—

1. the name and registration number of the Telecommunication Company;
2. the value of the Interest; and
3. The capacity in which the Interest is held.

APPENDIX C

March 2002

STRICTLY PRIVATE AND CONFIDENTIAL

Name of Recipient

Address

Dear Madam or Sir

TRANSTEL — DATA ROOM PROCEDURES

The following procedures will apply to you and your team when attending the data room prepared in relation to Transtel, a division of Transnet Limited ("Transtel") in connection with the award of the Second National Operator licence in South Africa (the "Project")

1. Overview

The data rooms are located at the offices of Transtel, Forum III, Braampark, Braamfontein, Johannesburg, the Republic of South Africa. Further documents may be added, and documents may be removed from the data room during the course of the process by Transtel. Should this happen, a revised or supplementary index may be distributed.

No warranty will be given as to the accuracy of these documents.

2. Access & Check-in to Data Room

Access to the data rooms is conditional upon compliance at all times with the terms of this letter and the terms of the Confidentiality and Non-Disclosure Agreement with Transtel, signed by you (the "Confidentiality and Non-Disclosure Agreement").

The data rooms will be open at 08:00 and close at 19:00 from Monday to Friday. The data rooms accommodate a maximum of 12 people.

Appointments to visit the data rooms can be made by contacting Jacob Rakgoathe (+27 11 359-2796 or Cell +27 83 414 3641 or, in his absence, Fax Number +27 11 359-2587).

Before your visit, you should provide Jacob Rakgoathe with a list of those authorised to attend, their titles, identity numbers passport numbers and, where appropriate, their respective employers or consultancy firms, in the form set out in Appendix A of the Confidentiality and Non-Disclosure Agreement and with any special dietary requirements, if applicable. Such list may be amended during the data room opening period by means of an amendment to be faxed to Jacob Rakgoathe, with a minimum twenty-four (24) hour period prior to the arrival of any new representative, in all instances subject to the provisions of the Confidentiality and Non-Disclosure Agreement.

Check-in for entry into the data rooms will be at the pre-arranged time. You should check-in with the receptionist and all members of your team will be required to sign in, supplying proof of identification. During your visit, you must comply with any security/safety regulations imposed by Transtel. Members of your team will be allowed to bring in mobile telephones and lap top computers.

Members of your team will only be admitted to the data rooms on condition that Transtel are satisfied that each member is covered by the terms of the Confidentiality and Non-Disclosure Agreement. The right to refuse entry to any member of your team, without assigning any reason for such exclusion, is expressly reserved.

3. Data Room Procedures

Tea, coffee, soft drinks, and lunch will be supplied. The data room is equipped with a telephone.

During your visit, questions of an administrative nature may be raised with the data room co-ordinators. Any matters which cannot be resolved will be noted in writing, and passed on to the appropriate party who will endeavour to deal with the matter raised as soon as is practical.

You are asked to co-operate in maintaining information in the data rooms in an orderly fashion. All information must be returned to its original location by 19:00 each day and you will be responsible for confirming to the data room co-ordinator prior to leaving the data rooms that all information has been so returned.

4. Copies of Data Room Information

Photocopies of any documents contained in the data rooms may be made available for copying.

UNDER NO CIRCUMSTANCES MAY ANY DOCUMENTS BE REMOVED FROM THE DATA ROOMS.

The documents are available in English and no translation will be provided.

5. Security

Appropriate measures will be effected to ensure the security of the data rooms. CCTV cameras will be installed and will not be recording voice.

6. Check-out

Visitors must sign out with the data room co-ordinators upon leaving the data rooms at the end of each day. Visitors return all documents when they sign out.

7. Confidentiality

You are reminded that the information contained in the data rooms is confidential and is to be used by you and your representatives solely for the purpose of evaluating the Project and should not be used in a manner which is directly or indirectly detrimental to Transtel and Transnet. The provisions of the Confidentiality and Non-Disclosure Agreement apply to the documents contained in the data rooms.

8. Declaration

All visitors to the data rooms will be required to complete a declaration confirming that you have had access to all the information relevant to you contained in the data room.



**CONFIDENTIALITY AND
NON-DISCLOSURE
AGREEMENT**

Entered into by and between

ESKOM ENTERPRISES
a wholly owned subsidiary of **ESKOM**

AND

("the Recipient")

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1. PARTIES

- 1.1 **ESKOM ENTERPRISES**, a wholly owned subsidiary of **ESKOM** [Registration No. 1999/002761/07], a private company with limited liability and duly incorporated in compliance with the company laws of the Republic of South Africa, with its registered address at Maxwell Drive Megawatt Park, Sunninghill. Herein represented by the Telecommunication division.
- 1.2 The Recipient is an entity/persons listed in Appendix A.

2. INTERPRETATION

- 2.1 The headnotes to the clauses of this Agreement are inserted for reference purposes only and shall in no way govern or affect the interpretation hereof.
- 2.2 Unless inconsistent with the context, the expressions set forth below shall bear the following meanings:
- "Confidential Information"** information which is indicated, marked and considered by ESKOM ENTERPRISES to be confidential, including but not limited to, information relating to business plans, technological plan, roll-out plans, financial results, technologies, operations, technical specifications and details, business strategies, clients lists, trade secrets, software, licences, whether relating to its current business or in contemplation of its participation in the Second Network Operator ("SNO");
- "Due Diligence"** refers to examination by the Recipient of ESKOM ENTERPRISES' Proprietary and Confidential Information;
- "ICASA"** refers to Independent Communications Authority of South Africa;
- "ITA"** refers to Invitation To Apply issued by the Government of the Republic of South Africa, Department of Communications;
- "Parties"** refers collectively to ESKOM ENTERPRISES and the Recipient. "Party" refers to either of them.
- "Proprietary Information"** any and all information relating to the business of ESKOM ENTERPRISES which are proprietary and have economic value developed by, owned by, possessed or in custody of ESKOM ENTERPRISES and disclosed by ESKOM ENTERPRISES to the Recipient; verbally or in material, document form (including, without limitation, any written document and any information contained in electronic format).
- "Recipient"** means the Party referred to in subclause 1.2 above, including its agent, representative, advisor or consultant;
- "Signature Date"** The date of signature of this Agreement by the last Party signing.
- "the Specified Period"** A period of 12 (twelve) months commencing on the Signature Date.
- "the/this Agreement"** This Agreement together with any schedules hereto and any agreed amendments thereto.
- "ESKOM ENTERPRISES"** The Party referred to in clause 1.1 above.
- 2.3 If any provision in a definition is a substantive provision conferring rights or imposing obligations on any Party, notwithstanding that it is only in the definition clause, effect shall be given to it as if it were a substantive provision of this Agreement.
- 2.4 Unless inconsistent with the context, an expression which denotes—
- 2.4.1 any gender includes the other genders;
- 2.4.2 a natural person includes an artificial person and vice versa;
- 2.4.3 the singular includes the plural and vice versa.

3. INTRODUCTION

- 3.1 ESKOM ENTERPRISES has been set aside an unspecified equity interest in the Second National Operator ("SNO"), in terms of Section 32B of the Telecommunications Amendment Act 64 of 2001.
- 3.2 The Recipient wishes to gain access into Proprietary Information and/or Confidential Information for purposes of Due Diligence exercise ("Due Diligence"). ESKOM ENTERPRISES is willing to provide such access subject to the conditions and terms that follows.
- 3.3 The Recipient acknowledges that the unauthorised disclosure or use of the Proprietary Information and/or the Confidential Information may result in ESKOM ENTERPRISES suffering irreparable financial and/or other harm.
- 3.4 The Parties agree to regulate the disclosure of the Proprietary Information and/or Confidential Information in accordance with the terms and conditions of this Agreement.
- 3.5 The Recipient acknowledges the Data Room Procedures in Appendix C and warrants their compliance thereto, upon signing of this Agreement.

4. DURATION

This Agreement shall commence on the Signature Date and shall endure, for the Specific Period or for such longer period as ESKOM ENTERPRISES may, at its discretion, determine.

5. DISCLOSURE OF INFORMATION

- 5.1 ESKOM ENTERPRISES agree to disclose the Proprietary Information and the Confidential Information

on a need-to-know basis to the Recipient solely or exclusively for purposes of a Due Diligence to the extent it deems necessary or desirable and to enable the Recipient to achieve the purpose set forth in the ITA.

- 5.2 The Recipient acknowledges that the Proprietary Information and the Confidential Information has an economic and financial value to ESKOM ENTERPRISES and it is special and unique asset confidential to ESKOM ENTERPRISES.
- 5.3 The Recipient undertakes that it/he/she will not, during the course of the due diligence or thereafter and in particular for the Specified Period, disclose the Proprietary Information and/or Confidential Information to any third party (including but not limited to the competitors or potential competitors of ESKOM ENTERPRISES or the SNO, for any reason or purpose whatsoever at all and/or without the express prior written consent of ESKOM ENTERPRISES or the SNO, where applicable.
- 5.4 Notwithstanding anything to the contrary contained in this Agreement, ESKOM ENTERPRISES agrees that the Recipient may disclose Proprietary Information and/or the Confidential Information to its employees, advisors, agents and consultants (on a strict need-to-know basis) provided the Recipient takes all necessary steps and ensures that its employees, advisors, agents and consultants and takes all steps necessary steps and abide by the terms of this Agreement to prevent the (unauthorised) disclosure of the Proprietary Information and/or the Confidential Information to third parties.
- 5.5 The Recipient agrees that the unauthorised disclosure of the Proprietary Information and/or the Confidential Information to a third party may cause irreparable loss, harm and damage to the other Party. Accordingly, the Recipient will indemnify and hold ESKOM ENTERPRISES harmless against any loss, action, expense, claim, harm or damage, of whatever nature, suffered or sustained by ESKOM ENTERPRISES arising from pursuant to a breach by the Recipient, its employees, agents, advisors and consultants, whether arising negligently or intentionally, of the provisions of this clause 5.
- 5.6 The Recipient shall be jointly and severally liable in respect of any wilful or negligent action or omission, whatsoever arising, caused by itself, its employees, agents, advisors or consultants, in breach of the provisions of this Agreement.
- 5.7 The Recipient agrees that ESKOM ENTERPRISES makes no representations or warranties as to the accuracy or completeness of the Confidential Information disclosed.
- 5.8 The Recipient agrees to desist from any conduct that may have the effect, of, or be calculated to have the effect of disclosing Proprietary and Confidential information to any third party except as stated in clause 5.4. ESKOM ENTERPRISES shall be entitled, at its discretion, to order, advice or request the Recipient from conducting itself in or manner that will give rise to, lead to or have the effect of breaching the provisions of this Agreement.

6. TITLE

All the Proprietary Information and the Confidential Information disclosed by ESKOM ENTERPRISES to the Recipient is acknowledged by the Recipient—

- 6.1 to be confidential ; and
- 6.2 not to confer any rights to the Recipient or its agents, employees, advisors or consultants of whatever nature in such Proprietary Information or Confidential Information.

7. RESTRICTIONS ON DISCLOSURE AND USE OF THE PROPRIETARY INFORMATION AND THE CONFIDENTIAL INFORMATION

Notwithstanding the provisions of subclause 5.4, the Recipient undertakes not to use the Proprietary Information and/or the Confidential Information for any purpose other than—

- 7.1 that for which it is disclosed; and
- 7.2 in accordance with the provisions of this Agreement.

8. STANDARD OF CARE

- 8.1 The Recipient agrees that they shall protect the Proprietary Information and the Confidential Information disclosed pursuant to the provisions of this Agreement using the same standard of care that the Recipient applies to safeguard its own Confidential, Secret or Proprietary Information and that the Proprietary Information and Confidential Information shall be stored and handled in such a way as to prevent any unauthorised disclosure thereof.
- 8.2 Upon the Recipient suspecting, becoming aware or detecting any form of breach or threatened breach of the provisions of subclause 8.1, then the Recipient shall forthwith notify ESKOM ENTERPRISES in writing of the said breach or threatened breach and co-operate with ESKOM ENTERPRISES in taking whatever steps that ESKOM ENTERPRISES deems necessary to protect the Confidential and/or Proprietary information or its interests under this Agreement.

9. RETURN OF MATERIAL CONTAINING OR PERTAINING TO THE PROPRIETARY INFORMATION AND/OR THE CONFIDENTIAL INFORMATION

- 9.1 ESKOM ENTERPRISES may, at any time, request the Recipient to return any material containing, pertaining to or relating to information disclosed pursuant to the terms of this Agreement.

- 9.2 The Recipient also agrees to return any material containing, pertaining to or relating to information disclosed pursuant to the terms of this Agreement if the Recipient decides not to participate in the SNO, negotiations with the Recipient are terminated, the SNO process is abandoned or the Recipient is unsuccessful.
- 9.3 Recipient shall furnish a written statement (signed by its Director or authorised representative) to the effect that, upon such return described in subclauses 9.1 and 9.2, the Recipient has not retained in its possession, or under its control, either directly or indirectly, any such material.
- 9.4 As an alternative to the return of the material contemplated in subclause 9.3 above, the Recipient shall, at the instance of ESKOM ENTERPRISES, destroy such material and furnish ESKOM ENTERPRISES with a written statement to the effect that all such material has been destroyed or if requested by ESKOM ENTERPRISES, furnish such proof as is reasonably necessary to satisfy ESKOM ENTERPRISES that the material has indeed been destroyed.
- 9.5 The Recipient shall comply, in terms of this clause 9, within seven (7) days of date of such a request or the occurrence of events noted in subclause 9.2.

10. EXCLUDED INFORMATION

The obligations of the Parties pursuant to the provisions of this Agreement shall not apply to any information that—

- 10.1 is known to, or is in the possession of the Recipient prior to disclosure thereof by ESKOM ENTERPRISES;
- 10.2 is or becomes publicly known, otherwise than pursuant to a breach of this Agreement by the Recipient;
- 10.3 is developed independently of ESKOM ENTERPRISES by the Recipient in circumstances that do not amount to a breach of the provisions of this Agreement;
- 10.4 is disclosed by the Recipient to satisfy an order of a court of competent jurisdiction or to comply with the provisions of any law or regulation in force from time to time; provided that in these circumstances, the Recipient shall advise ESKOM ENTERPRISES to take whatever steps it deems necessary to protect its interests in this regard; provided further that the Recipient will disclose only that portion of the information which it is legally required to disclose and the Recipient will use its best endeavours to protect the confidentiality of such information to the widest extent possible in the circumstances;
- 10.5 is disclosed to a third party pursuant to the prior written authorisation of the other Party;
- 10.6 is received from a third party in circumstances that do not result in a breach of the provisions of this Agreement.

11. EXCLUSIVITY

The Recipient hereby undertakes that it/he/she will not, for the duration of this Agreement, either as principal, agent, partner, representative, shareholder, consultant, advisor, financier, demonstrator, employee or in any other like capacity, and whether alone or jointly with or as agent for any other person—

- 11.1 use or reveal or benefit from the Proprietary Information and/or the Confidential Information other than for the Due diligence and in their capacities as participants in the possible business relationship between the Parties. The Recipient will only use the Proprietary Information and/or the Confidential Information exclusively for the purposes of the Due diligence and the Parties' business relationship;
- 11.2 enter into negotiations or in any way be involved in any activity similar to or relating to the proposed business relationship between the Parties, without the prior written consent of the other Party.

12. REPRESENTATION AND WARRANTY

Each Party represents and warrants that it has the authority necessary to enter into this Agreement and to do all things necessary to procure the fulfilment of its obligations in terms of this Agreement.

The Recipient warrants that all individuals disclosed in Appendix A are authorised to act on the Recipients behalf for the Due Diligence exercise.

13. BREACH

Should the Recipient ("the Defaulting Party") commit a breach of any of the provisions hereof, then ESKOM ENTERPRISES ("the Aggrieved Party") shall be obliged to give the Defaulting Party twenty-four (24) hours written notice to remedy the breach. If the Defaulting Party fails to comply with such notice, the Aggrieved Party shall be entitled to cancel this Agreement against the Defaulting Party or to claim specific performance (whether or not the due date for performance shall have arrived) in either event without prejudice to the Aggrieved Party's rights to claim damages. The foregoing is without prejudice to such other rights as the Aggrieved Party may have at law.

14. DISPUTE RESOLUTION

- 14.1 Any dispute arising out of or in connection with this Agreement shall in the first instance be referred for consideration and possible resolution to the representative of each Party who shall be duly authorised to act in its place in that matter.

- 14.2 Should the officers referred to in subclause 14.1 not be able to resolve the dispute within seven (7) days of it being referred to them, then they shall by agreement, appoint a third party to act as a mediator, and not as an arbitrator, to mediate in the resolution of the dispute. Should they not be able to agree on the mediator, then the mediator shall be selected by the Chairman for the time being of the Arbitration Foundation of Southern Africa ("AFSA").
- 14.3 Should the mediation referred to in subclause 14.2 fail to resolve the dispute within seven (7) days after the appointment of the mediator in terms of subclause 14.2, then either Party shall have the right to require that the dispute be referred to arbitration and that Party shall notify the other Party in writing identifying the disputes and setting out the relief required.
- 14.4 Any dispute referred to in subclause 14.3, shall be submitted to and determined by arbitration in accordance with AFSA Rules ("the Rules"). Such arbitration shall be held in Sandton unless otherwise agreed and shall be held in a summary manner with a view of it being completed as soon as possible.
- 14.5 There shall be one arbitrator, who shall be, if the question in issue is—
- 14.5.1 primarily an accounting matter, an independent chartered accountant of not less than ten (10) years standing; and
- 14.5.2 primarily a legal matter, a practicing Senior Counsel or Commercial attorney of not less than ten (10) years standing; and
- 14.5.3 any other matter, a suitably qualified person.
- 14.6 The appointment of the arbitrator shall be agreed upon between the Parties, but failing agreement between them within a period of fourteen (14) days notice in writing to the other in terms of subclause 14.3, either of the Parties shall be entitled to request the Chairman for the time being of AFSA to make the appointment of the arbitrator who, in making the appointment, shall have regard to the nature of the dispute, and shall have regard to the Parties' requirement of a speedy arbitration.
- 14.7 The arbitrator shall have powers conferred upon an arbitrator under the Rules.
- 14.8 The decision resulting from such arbitration shall be made by the arbitrator as an expert and not an arbitrator and shall be final and binding on the Parties, and may be made an order of any court of competent jurisdiction. Each of the Parties hereby submits itself to and consents to jurisdiction of the Division of the High Court of South Africa in the area in which the arbitration is held should the other Party wish to make the arbitrator's decision an order of that Court.
- 14.9 Proceedings are to be held in camera and are confidential.
- 14.10 The provisions of this clause 14 shall not preclude any other Party from access to an appropriate court of law for —
- 14.10.1 interim relief in the form of an interdict, mandamus or order for specific performance pending the outcome of an arbitration in terms hereof or in respect of such arbitration or expert determination, as the case may be;
- 14.10.2 any other form of relief on the basis of facts which are not disputed, provided that if a *bona fide* dispute arises in the courts of the proceedings they shall be stayed pending an arbitration or on the dispute in terms hereof; or
- 14.10.3 an order for the payment of liquidated damages money on the basis of facts which are not *bona fide* in dispute at the commencement of such proceedings.
- 14.11 The provisions of this clause 14 shall survive the invalidity and/or termination from whatever cause arising of any or all the terms of this Agreement.

15. ADDRESSES

- 15.1 Each Party chooses the address set out opposite its name below as its address at which all notices, legal processes and other communications must be delivered for the purposes of this Agreement.
- 15.1.1 As regards **ESKOM ENTERPRISES:**
- | | |
|-----------------------------|-----------------------|
| Physical Address | Postal Address |
| Forum 111, Braampark | PO Box 2504 |
| 33 Hoofd Street | Joubert Park |
| Braamfontein | 2044 |
| Gauteng Province | |
| Telefax No.: 27 11 359 2587 | |
| Attention: Jacob Rakgoathe | |
- 15.1.2 As regards **the Recipient:**
- | | |
|-------------------------|-----------------------|
| Physical Address | Postal Address |
| Telefax No.: | |
| Attention: | |

- 15.2 Any notice or communication required or permitted to be given in terms of this Agreement shall be valid and effective only if in writing but it shall be competent to give notice by telefax.
- 15.3 Any Party may by written notice to the other Party change its chosen address to another physical address, provided that the change shall become effective on the fourteenth (14th) day after the receipt of the notice by the addressee.
- 15.4 Any notice to a Party contained in a correctly addressed envelope; and
- 15.4.1 sent by prepaid registered post to it at its chosen address; or
- 15.4.2 delivered by hand to a responsible person during ordinary business hours at its chosen address; shall be deemed to have been received in the case of subclause 16.4.1, on the fourteenth (14th) business day after posting (unless the contrary is proved) and, in the case of subclause 16.4.2 on the day of delivery.
- 15.5 Any notice by telefax to a Party at its telefax number shall be deemed, unless the contrary is proved, to have been received within two (2) hours of transmission where it is transmitted during normal business hours or within twelve (12) hours of the first business day after it is transmitted where it is transmitted outside those business hours.

16. JURISDICTION

The Parties irrevocably and unconditionally consent to the non-exclusive jurisdiction of the Witwatersrand Local Division of the High Court of South Africa in regard to all matters arising from this Agreement.

17. SEVERABILITY

In the event of any one or more of the provisions of this Agreement being held for any reason to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any of the provisions of this Agreement, and this Agreement shall be construed as if such invalid, illegal or unenforceable provision was not a part of this Agreement, and the Agreement shall be carried out as nearly as possible in accordance with its original terms and intent.

18. GENERAL

- 18.1 This document constitutes the sole record of the Agreement between the Parties in regard to the subject matter thereof.
- 18.2 No Party shall be bound by any express or implied term, representation, warranty, promise or the like, not recorded herein.
- 18.3 No addition to, variation or consensual cancellation of this Agreement shall be of any force or effect unless in writing and signed by or on behalf of all the Parties.
- 18.4 No indulgence which one Party may grant to another Party shall constitute a waiver of any of the rights of the Parties, who shall not thereby be precluded from exercising any rights against the other Party which might have arisen in the past or which might arise in the future.

19. OWNERSHIP AND NO CONFLICT OF INTEREST

- 19.1 The Recipient and Recipient's shareholders or members warrants that it has no equity interest, stake or financial or economic value based interest at all in any company, corporation, joint venture or partnership whatsoever, or personal capacity (whether as a proprietor, partner, director, shareholder, employee, member, consultant, contractor, financier, agent, representative, assistant, trustee or beneficiary of a trust or otherwise and whether for reward or not, directly or indirectly) in a licensee in terms of the Telecommunications Act, 103 of 1996 as amended.
- 19.2 In the event that the Recipient has such interest, stake or value the Recipient agrees and undertakes to disclose same to ESKOM ENTERPRISES in Appendix B.
- 19.3 The Recipient warrants that its participation in the Due Diligence and the SNO will not constitute a conflict of interest. In the case that it does, it will indemnify ESKOM ENTERPRISES against any loss, claim, expenses, damages or action from any third party, however arising.
- 19.4 Should a conflict of interest arise after Confidential Information has been disclosed to the Recipient, ESKOM ENTERPRISES must be advised in writing when such conflict occurs and Confidential Information must be returned as contemplated in clause 9 of this Agreement.

20. INDEMNITY

The Recipient agrees to indemnify and hold ESKOM ENTERPRISES harmless against any loss, claim, damage, action, expenses, harm or damages, of whatever nature suffered or sustained by the ESKOM ENTERPRISES arising from breach, by the Recipient, its employees, agents, advisors and/or consultants, whether arising negligently or intentionally, of the provisions of this Agreement.

Thus done and signed aton this day of
..... 2002

AS WITNESSES:

1.
2.

for and on behalf of
ESKOM ENTERPRISES

Name:

Capacity:

Who warrants his authority hereto

Thus done and signed aton this day of
.....2002

AS WITNESSES:

1.
2.

Recipient/for and on behalf of the
RECIPIENT

Full Name:

Capacity if any:

Who warrants his authority hereto

APPENDIX A**DETAILS/PARTICULARS OF THE RECIPIENT AND/OR THEIR REPRESENTATIVES**

1. Full Names:
2. Identity Number:
3. Address:
4. Capacity:
5. Name of the entity you represent:
6. Your Company and Designation:
7. Your entity's Registration Number:
8. Please state your interest in the Due Diligence:

PLEASE NOTE THAT THIS APPENDIX MUST BE SIGNED OFF BY ALL THE REPRESENTATIVES, AGENTS, ADVISORS AND/OR CONSULTANTS OF THE RECIPIENT WHO WILL FORM PART OF THE DUE DILIGENCE TEAM

APPENDIX B**DECLARATION OF INTEREST**

I the Recipient hereby state that I represent myself/my company, corporation or partnership, being I/my company, corporation or partnership and related members thereof hold an interest, stake or value in a telecommunication company, registered in registration number to the value of or

I confirm that to the best of my knowledge that I/my company, corporation or partnership and related members thereof do not hold any interest, stake or value, except as stated above in any licensed telecommunications company ("Telecommunication company") in the Republic of South Africa.

In the event that the Recipient, holds a stake, shares or stock or any similar interest ("the Interest") in a Telecommunication Company, please submit the following—

1. the name and registration number of the Telecommunication Company;
2. the value of the Interest; and
3. The capacity in which the Interest is held.

APPENDIX C**STRICTLY PRIVATE AND CONFIDENTIAL**

Name of Recipient

Address

Dear Madam or Sir

ESKOM ENTERPRISES — DATA ROOM PROCEDURES

The following procedures will apply to you and your team when attending the data room prepared in relation to ESKOM ENTERPRISES, a division of Transnet Limited ("ESKOM ENTERPRISES") in connection with the award of the Second National Operator licence in South Africa (the "Project")

1. Overview

The data rooms are located at the offices of ESKOM ENTERPRISES, Forum III, Braampark, Braamfontein, Johannesburg, the Republic of South Africa. Further documents may be added, and documents may be removed from the data room during the course of the process by ESKOM ENTERPRISES. Should this happen, a revised or supplementary index may be distributed.

No warranty will be given as to the accuracy of these documents.

2. Access & Check-in to Data Room

Access to the data rooms is conditional upon compliance at all times with the terms of this letter and the terms of the Confidentiality and Non-Disclosure Agreement with ESKOM ENTERPRISES, signed by you (the "Confidentiality and Non-Disclosure Agreement").

The data rooms will be open at 08:00 and close at 19:00 from Monday to Friday. The data rooms accommodate a maximum of 12 people.

Appointments to visit the data rooms can be made by contacting Cecil Ramonotsi (+27 11 871-2943 or Cell +27 83 395 5150 or, in his absence, Fax Number +27 11 871-3674).

Before your visit, you should provide Cecil Ramonotsi with a list of those authorised to attend, their titles, identity numbers, passport numbers and, where appropriate, their respective employers or consultancy firms, in the form set out in Appendix A of the Confidentiality and Non-Disclosure Agreement and with any special dietary requirements, if applicable. Such list may be amended during the data room opening period by means of an amendment to be faxed to Cecil Ramonotsi, with a minimum twenty-four (24) hour period prior to the arrival of any new representative, in all instances subject to the provisions of the Confidentiality and Non-Disclosure Agreement.

Check-in for entry into the data rooms will be at the pre-arranged time. You should check-in with the receptionist and all members of your team will be required to sign in, supplying proof of identification. During your visit, you must comply with any security/safety regulations imposed by ESKOM ENTERPRISES. Members of your team will be allowed to bring in mobile telephones and lap top computers.

Members of your team will only be admitted to the data rooms on condition that ESKOM ENTERPRISES are satisfied that each member is covered by the terms of the Confidentiality and Non-Disclosure Agreement. The right to refuse entry to any member of your team, without assigning any reason for such exclusion, is expressly reserved.

3. Data Room Procedures

Tea, coffee, soft drinks, and lunch will be supplied. The data room is equipped with a telephone.

During your visit, questions of an administrative nature may be raised with the data room co-ordinators. Any matters which cannot be resolved will be noted in writing, and passed on to the appropriate party who will endeavour to deal with the matter raised as soon as is practical.

You are asked to co-operate in maintaining information in the data rooms in an orderly fashion. All information must be returned to its original location by 19:00 each day and you will be responsible for confirming to the data room co-ordinator prior to leaving the data rooms that all information has been so returned.

4. Copies of Data Room Information

Photocopies of any documents contained in the data rooms may be made available for copying.

UNDER NO CIRCUMSTANCES MAY ANY DOCUMENTS BE REMOVED FROM THE DATA ROOMS.

The documents are available in English and no translation will be provided.

5. Security

Appropriate measures will be effected to ensure the security of the data rooms. CCTV cameras will be installed and will not be recording voice.

6. Check-out

Visitors must sign out with the data room co-ordinators upon leaving the data rooms at the end of each day. Visitors return all documents when they sign out.

7. Confidentiality

You are reminded that the information contained in the data rooms is confidential and is to be used by you and your representatives solely for the purpose of evaluating the Project and should not be used in a manner which is directly or indirectly detrimental to ESKOM ENTERPRISES and ESKOM ENTERPRISES. The provisions of the Confidentiality and Non-Disclosure Agreement apply to the documents contained in the data rooms.

8. Declaration

All visitors to the data rooms will be required to complete a declaration confirming that you have had access to all the information relevant to you contained in the data room.