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GENERAL NOTICES • ALGEMENE KENNISGEWINGS

**INDEPENDENT COMMUNICATIONS AUTHORITY OF SOUTH AFRICA
NOTICE 534 OF 2020****COMPOSITE INVITATION TO APPLY FOR AN
INDIVIDUAL ELECTRONIC COMMUNICATIONS NETWORK
SERVICE LICENCE AND RADIO FREQUENCY SPECTRUM
LICENCE FOR THE WIRELESS OPEN ACCESS NETWORK**

The Authority hereby, in terms of section 9 (2) of the Electronic Communications Act, 2005 (Act No. 36 of 2005), as amended ("ECA") and regulation 7 of the Radio Frequency Spectrum Regulations of 2015¹, publishes a composite Invitation to Apply ("ITA") for an individual electronic communications network services (I-ECNS) and Radio Frequency Spectrum Licences for the purpose of operating a Wireless Open Access Network (WOAN). As part of its licensing process and for purposes of finalising the ITA the Authority considered:

- i. the applicable legislative and regulatory framework;
- ii. the Policy on High Demand Spectrum and Policy Direction on the Licensing of Wireless Open Access Network ("the Policy Direction") published in *Government Gazette* No. 42597 (Notice No. 1013 on 26 July 2019); and

- iii. the public comments received in response to the *Information Memorandum for International Mobile Telecommunications Spectrum assignment² on 1 November 2019 under Government Gazette No 42820* (“the Information Memorandum”).



DR. KEABETSWE MODIMOENG
CHAIRPERSON

² Published in Government Gazette No. 42820 (Notice 597 of 2019).

**BEFORE COMPLETING THE APPLICATION, APPLICANTS ARE REQUIRED TO
READ AND TAKE INTO ACCOUNT THE FOLLOWING:**

- a. The guidelines in Schedule B;
- b. The relevant provisions of the Independent Communications Authority of South Africa Act, 2000 (Act No. 13 of 2000) ("the ICASA Act") referred to in this ITA;
- c. The relevant provisions of the ECA referred to in this ITA;
- d. Individual Licensing Processes and Procedure Regulations for Individual Licences 2010 published in the Government Gazette No 33293 on 14 June 2010 as amended in 2016 ("The Process and Procedure Regulations"); and
- e. Radio Frequency Spectrum Regulations 2015 (as amended) published in Government Gazette No. 38641 (Notice 279 of 2015) ("RFSR 2015") as amended.

**NON-COMPLIANCE WITH THE PROVISIONS OF THE ACT, THE APPLICABLE
REGULATIONS AND/OR THIS ITA WILL RESULT IN THE
DISQUALIFICATION BY THE AUTHORITY OF SUCH NON-COMPLIANT
APPLICATION**

SCHEDULE A – PROPOSED LICENCE TERMS

The Spectrum to be assigned to the WOAN is: -

| Lot Category | Lot Size |
|---------------------|-----------------|
| 700 MHz | 2 x 10 MHz |
| 2600 MHz | 1 x 30 MHz |
| 3500 MHz | 1 x 30 MHz |

1. Licence duration

- 1.1. The I-ECNS and Radio Frequency Spectrum (RFS) licences are valid for a period of twenty (20) years from the date of issue, taking into consideration the residual analogue and digital television broadcasting service migration below 694 MHz band timescales in South Africa.
- 1.2. The RFS licence is renewable upon payment of the prescribed renewal licence fee in accordance with Regulation 10(2) of the Radio Frequency Spectrum Regulations, (RFSR) 2015.
- 1.3. Annual licence fees are payable by all Licensees in accordance with the "Spectrum Fees Regulations" published by the Authority.
- 1.4. The Licensee will be allowed to renew its I-ECNS licence upon expiry of its validity period in terms of the provisions of Section 11 of the ECA.
- 1.5. In the event that the successful applicant seeks to transfer the issued licences in line with the provisions of Section 13 of the ECA, all obligations contained in this ITA – including

obligations relating to equity shareholding by black persons, historically disadvantaged groups and South African Citizens – will be applicable to the transfer process.

2. Technologies

- 2.1. All licences will be issued on a technology-neutral basis in accordance with Section 2(b) of the ECA read with regulation 3.7 of the Radio Frequency Spectrum Assignment Plan, 2015, (“RFSAP”) as amended.³

3. Technical conditions

- 3.1. The conditions of use for the Spectrum licence must be in accordance with the rules for service as stipulated in the (“RFSAP”).

4. Obligations

The following obligations will form part of the licence conditions of the Radio Frequency Spectrum Licence to be issued: -

- 4.1. Uplink and throughput obligations
- 4.1.1. A minimum downlink single user throughput of 5Mbps at the edge of the cell for all national wholesalers who are awarded radio frequency spectrum licences on spectrum band IMT700 within five (5) years of licence issue. This obligation must be achieved with other bands (i.e. IMT3500, IMT2600) assigned through this licencing process.

³ Published in Government Gazette No. 38640 (Notice 270 to 278 of 2015).

4.2. Open access obligations

A licensee assigned spectrum through this process is required to provide access to wholesale services on open access principles to any other person licensed in terms of the ECA and persons providing services pursuant to a licence exemption.

4.3. Spectrum Assignment

4.3.1. The spectrum in this licensing process is to be assigned on a national basis exclusive to the licensee.

4.3.2. In cases that the spectrum is not fully utilised by the licensee within 7 years of issuance of the RFS Licence, the Authority will initiate the following process for the Licensee:

4.3.2.1. To share unused spectrum in all areas with ECNS licensees who may, *inter alia*, combine licensed spectrum in any innovative combinations in order to address local and rural connectivity in some municipalities including entrepreneurial SMMEs; and

4.3.2.2. To surrender the RFS licence or portion of the unused assigned spectrum in accordance with RFSR.

4.3.3. The successful Applicant will be required to commence operations within two (2) years of being issued a licence in accordance with the Regulations regarding Standard Terms and Conditions Regulations for Individual licences .⁴

⁴ Published in Government Gazette 33294 (Notice 523 of 2010), as amended.

4.4. 30% Offtake

- 4.4.1. A licensee that will be assigned spectrum through this process (WOAN) is required to make available a minimum of 30% national capacity⁵ to be procured by successful Applicants that will be assigned Radio Frequency spectrum through the **IMT auction licensing process**, as soon as the WOAN is operational, for a period of 7 years.
- 4.4.2. The obligation to procure a minimum of 30% national capacity from the WOAN by successful Applicants that are assigned Radio Frequency spectrum through the IMT auction licensing process, collectively shall be imposed on the IMT auction licensees as licence terms and conditions in accordance with regulations 7 (e) of the RFSR.
- 4.4.3. The WOAN will be provided details on which successful applicants assigned Radio Frequency Spectrum through the IMT auction licensing process will be obliged to procure 30% national capacity from the WOAN collectively after the IMT auction licence applicants have been assigned spectrum with a licence condition for the 30% uptake in accordance with regulation 7 (e) of the RFSR.

- 4.5. The Authority has the power to cancel the issued RFS licence in accordance with the provisions of the RFSR.

⁵Capacity means “average data traffic speed (measured in megabits per second (Mbps)) per cell/base station at any given time offered by the WOAN using the high demand spectrum assigned to the WOAN.” National Capacity means “total capacity offered nationally irrespective of technology used”.

SCHEDULE B – SUBMISSION OF APPLICATION

1. Applications must be made in writing.
2. An Applicant must answer all questions set out in this ITA in full. If any question is considered not applicable, mark it as "N/A" and provide further explanation as to why it is not applicable.
3. An Applicant must submit one (1) soft copy of its application via e-mail – clearly marked as such in the subject line, which must be received by the Authority by the closing date and time indicated in paragraph 16 below.
4. In terms of section 4D of the ICASA Act, an Applicant may request that any part of the application be treated as confidential. The request for confidentiality must be made in terms of section 4D of the ICASA Act. Requests for confidentiality will be considered in accordance with the provisions of section 4D of the ICASA Act. To this end, Applicants are also referred to the Authority's Guidelines for Confidentiality Request published in Government Notice No. 41839 (Notice No. 849 of 17 August 2018). Applicants are requested to complete Appendix "A": Request for Confidentiality Form attached to this Notice.
5. The Authority will make a determination on the request for confidentiality within fourteen (14) working days of receiving the request and will communicate its decision to the respective Applicant.
6. In the event that the request for confidentiality is refused, the Applicant may choose to withdraw the information in respect of which confidentiality is requested.
7. A soft copy of the confidential information should be clearly marked as such and submitted separately, but together with the original

application via e-mail.

8. All applications, save for confidential information referred to above, made pursuant to this ITA will be made available for inspection by interested persons and copies of the applications will be obtainable at the Authority's library upon payment of a fee as may be determined by the Authority from time to time.
9. An application must have a cover page indicating the title of the ITA, name of the Applicant and date of application.
10. The page(s) immediately following the cover must be the contents page(s), which shall detail each section of the application and corresponding page numbers.
11. An application, including the appendices and schedules, must be sequentially numbered starting with the page immediately following the contents page(s) as page 1 and ending with the very last page of the application.
12. In the event that the Applicant has to submit its application in more than one part or volume, each part or volume must have a cover page bearing all the details set out above. In this case the cover page must specify the number of the part or volume (i.e. Part One, Part Two or Volume One, Volume Two). Each volume or part must also have the full set of contents pages and be sequentially numbered as indicated above.
13. An application must be accompanied by proof of payment of the non-refundable application fee of one million five hundred rand **(R1 500 000,00)**. This application fee is in respect of both the I-ECNS and Radio Frequency Spectrum licences.

14. Payment of the application fee shall be made by way of an electronic funds transfer or a direct deposit into the following bank account of the Authority:

BANK: NEDBANK LIMITED

BRANCH: NEDBANK CORPORATE INVESTMENT BANKING

BRANCH CODE: 198765

ACCOUNT NO: 1080249044

SWIFT CODE: NEDSZAJJ

REFERENCE: Name of Applicant

15. An application must be addressed for the attention of the General Manager: Licensing and must be submitted electronically to the following e-mail address: woan.applications@icasa.org.za Notification will be provided confirming that the application has been successfully delivered.
16. The closing date for the submission of applications shall be 11:00am South African time, on **30 March 2021**.
17. **Any application received after the closing date and time will neither be accepted nor considered by the Authority.**
18. The licensing mechanism for the licensing of a Wireless Open Access Network will be undertaken in two phases:
- 18.1. Phase 1: Consideration of the applications for an I-ECNS licence. The applicant that is successful in its application for the I-ECNS licence will advance to Phase 2;
- 18.2. Phase 2: Assignment of high demand spectrum to the successful applicant.

19. The mandatory/minimum requirements for consideration for the I-ECNS and Spectrum licences are as follows:
- 19.1. At the time of submission of its application, an Applicant must be a consortium of persons;
 - 19.2. At the time of submission of its application, the Applicant must have a minimum 70% equity ownership held by South African citizens;
 - 19.3. The applicant must include the percentage of equity ownership to be held by persons from historically disadvantaged groups, which must not be less than 30% equity shareholding with an equivalent voting power in the Applicant;
 - 19.4. The Applicant must include the percentage of equity ownership to be held by black people as defined in section 1 of the B-BBEE Act, which must not be less than 50% equity shareholding with an equivalent voting power in the Applicant;
 - 19.5. The Applicant must be at least 20% black women owned;
 - 19.6. The Applicant must include diversity of ownership to ensure meaningful participation of all entities involved including SMMEs;
 - 19.7. The Applicant must include effective participation by targeted groups, including women, youth and persons with disabilities;
 - 19.8. The Applicant may include public entities as shareholders provided that the I-ECNS may not be a public entity, under the Public Financial Management Act 1 of 1999;

- 19.9. The Applicant must, at the time of application be registered under the laws of the Republic and must have principal place of business located within the Republic of South Africa in accordance with Section 5(8) of the ECA; and
- 19.10. If a member of the Applicant provides Electronic Communication Network Services (ECNS) and/or an Electronic Communication Service (ECS), functional separation between the member's licensed services is required. The Applicant must be operated as an independent operating business entity.
20. The Authority shall not consider an application should an Applicant not meet any of the mandatory/minimum requirements as set out in this ITA.
21. All Applicants shall carry their own costs in responding to this ITA.

22. INCENTIVES

- 22.1. The successful Applicant will have a 7-year payment holiday in respect of its Radio Spectrum Licence fees from the date of licence issuance; and
- 22.2. The general licence fees payable to the Authority in terms of the General Licence Fees Regulations 2013, will be waived for the successful Applicant for a period of 7 years from the date of licence issuance.
- 22.3. An obligation to procure a minimum of 30% national capacity from the WOAN by successful Applicants that are assigned Radio Frequency spectrum through the IMT auction licensing process, collectively shall be imposed on the IMT auction licensees as licence terms and conditions in accordance with regulations 7 (e) of the RFSR.

SCHEDULE C – DISQUALIFICATION CRITERIA

1. An Applicant will be disqualified from the application process where such Applicant has:
 - 1.1. submitted an application but is an affiliate of another Applicant, or possesses an ownership or financial interest in another Applicant within the same application process;
 - 1.2. submitted more than 1 (one) application to the Authority in response to this ITA;
 - 1.3. at any point during the application process, does not comply with paragraph 19.1 to 19.10 of this ITA;
 - 1.4. submitted an application which contains false or misleading information;
 - 1.5. colluded or attempted to collude with another Applicant;
 - 1.6. obtained or acquired confidential information relating to another Applicant without consent from the Authority and/or the owner of such confidential information; or
 - 1.7. has failed to comply with the terms and conditions of the ITA, the provisions of the ECA, ICASA Act, and/or any other relevant legislation or Regulations.

SCHEDULE D: SELECTION PROCESS: PHASE 1 - CONSIDERATION OF THE APPLICATIONS FOR AN I-ECNS LICENCE

| Item | Criteria Description | Yes/No |
|-------------------------|---|---------------|
| PREQUALIFICATION | | |
| | Compliance with the ITA's mandatory/minimum requirements. Failure to comply with any of the requirements of the ITA, the provisions of the ECA, ICASA Act and/or relevant regulations will render the application subject to disqualification. | |
| | Compliance with paragraph 19.1-19.10 of this ITA. | |
| FUNCTIONALITY | | |
| | Description | Weight |
| | Demand, Need and Support of the proposed service and impact of the proposed service on competition in the relevant markets | 20 |
| | Economic efficiency as defined in the RFSR 2015, viability of the business plan and financial means of the Applicant | 20 |
| | Capability, expertise and experience of the Applicant and its employees in business in general and in I-ECNS in particular | 15 |
| | Diversity of ownership in terms of paragraph 19.1 to 19.10 of this ITA | 10 |
| | Technical efficiency as defined in the RFSR 2015 | 15 |
| | Functional efficiency in terms of the extent to which the use of spectrum meets the user's needs as defined in the RFSR 2015 | 20 |
| | Total | 100 |

SCHEDULE E – LICENSING METHOD

The licensing method which has been selected by the Authority for the licensing of the I-ECNS and Radio Frequency Spectrum in terms of this ITA is the Beauty Contest licensing method. The applicant that meets all requirements and scores the highest on functionality will be awarded the licences.

SECTION 1: GENERAL

1. DETAILS OF THE APPLICANT

1.1. NAME OF APPLICANT

1.2. PRINCIPAL PLACE OF BUSINESS

1.3. POSTAL ADDRESS

1.4. COMPANY REGISTRATION

1.5. **TELEPHONE NUMBER**

| |
|--|
| |
|--|

1.6. **E-MAIL ADDRESS**

| |
|--|
| |
|--|

2. CONTACT PERSONS**2.1. MAIN CONTACT PERSON(S)**

Provide details of no more than two individuals designated to deal with any press, public and general enquiries.

| | |
|-------------------------|-------------------------|
| 1. NAME AND DESIGNATION | 1. NAME AND DESIGNATION |
| | |
| 2. TELEPHONE NUMBER/S | 2. TELEPHONE NUMBER/S |
| (W) | (W) |
| (H) | (H) |
| CELL | CELL |
| E-MAIL | E-MAIL |
| | |
| | |

| | |
|--------------------------------|--------------------------------|
| 3. FAX NUMBER/S | 3. FAX NUMBER/S |
| | |
| 4. PRINCIPAL PLACE OF BUSINESS | 4. PRINCIPAL PLACE OF BUSINESS |
| | |
| | |
| | |
| POSTAL CODE: | POSTAL CODE: |
| 5. POSTAL ADDRESS | 5. POSTAL ADDRESS |
| | |
| | |
| POSTAL CODE: | POSTAL CODE: |

SECTION 2: CORPORATE STATUS

- I. Applications will be assessed in terms of Applicants' corporate status as at the time of application.
- II. Applicants must be compliant with this ITA, the provisions of the ECA, and relevant regulations at the time of submission.
- III. Only changes made in terms of regulation 6 (1) and (2) of the Licensing Processes and Procedures Regulations 2010 (as amended) will be considered. The requested changes will be permitted and accepted by the Authority only if the such changes meet the requirements of regulation 6 according to the Authority.
- IV. All Applicants must meet the requirements set in paragraph 19.1 to 19.10 of schedule A.

3. **CORPORATE STATUS**

The Applicant must provide the following information:

Indicate the legal form of the Applicant (e.g. private company duly registered and incorporated in terms of the Companies Act) (The Applicant must not be registered as a public entity under the Public Finance Management Act, 1999, Act No.1 of 1999):

Indicate the Registration number of the Applicant:

Attach certified copies of the Applicant's signed certificate of incorporation as well as all the documents for all the members of the consortium such as memorandum of incorporation or other signed constitutive documents of the Applicant (e.g. association agreement, constitution, etc.) indicating the Applicant's compliance with the requirements of section 5(8) (b) of the ECA.

ATTACH AS APPENDIX 3.1

Provide a resolution authorising the signatory(ies) to this application to sign this application and/or to represent the Applicant at the Authority's hearings in respect of this application. The authorised person(s) must sign all official documents submitted to the Authority in terms of or in relation to this ITA.

ATTACH AS APPENDIX 3.2

Indicate all direct and indirect shareholders in the Applicant and their total number of shares and ownership percentages and indicate how the percentage of equity ownership held by persons from historically disadvantaged groups, which must not be less than 30% voting share capital in the Applicant, is calculated. The required documents, based on the type of entity, are detailed in the table below:

| HDI REQUIREMENTS | | | |
|-------------------------|--|--|---|
| Trust Shareholding | <ol style="list-style-type: none"> 1. South African Identification documents (stamped by commissioner of oaths) of trustees and beneficiaries; 2. certified copy of the letters of authority issued by the Master's Office; 3. certified copy of the Trust Deed; 4. where beneficiaries are not individuals or juristic persons; 5. certified copy of the constitution or other founding document of such beneficiary must be provided, accompanied | Detailed breakdown of how 30% HDI in the trust is formulated (including name(s)/organisation(s) indicating the percentage of ownership held by each entity/ person(s)) (Must be stamped by commissioner of oaths/notary public as well as affidavit sighting that the information provided is accurate and is a true representation of the entity's HDI levels) | In the case where a beneficiary is a juristic person e.g. a school, please indicate how persons within such entity are persons from historically disadvantaged groups and hold equity ownership amounting to 30% in the trust |

| | | | |
|-----------------------------|---|--|--|
| | by an affidavit of all leaders of such beneficiary confirming its existence and objectives. | | |
| Company / Close Corporation | <ol style="list-style-type: none"> 1. South African identification documents (stamped by commissioner of oaths) of directors (or members in respect of close corporations); 2. any shareholders' agreements (or association agreement in case of close corporations); 3. certified copies of share certificates; 4. close corporation's founding statement; | Detailed breakdown of how 30% HDI is formulated (including name(s)/organisation(s) indicating the percentage of ownership held by each entity/ person(s)) (Must be stamped by commissioner of oaths/notary public as well as affidavit stating that the information provided is accurate and is a true representation of the body's HDI levels) | |

| | | | |
|--|---|--|--|
| | <p>5. valid tax clearance certificate or proof of the applicant's tax affairs being compliant;</p> <p>6. B-BBEE verification report by an approved verification agency.</p> | | |
|--|---|--|--|

ATTACH AS APPENDIX 3.3

Indicate whether, pursuant to the memorandum of incorporation, shareholders' agreement or any other similar document, any person controls the company or close corporation as contemplated in section 2(2) of the Companies Act, 2008.

ATTACH AS APPENDIX 3.4

B-BBEE REQUIREMENTS

a)

b)

Each application must be accompanied by a B-BBEE verification certificate; (retain)

ATTACH AS APPENDIX 3.5

4. MANAGEMENT

- 4.1. Full details must be provided of each member of an Applicant's senior management team including all directors, members or trustees as the case may be. The information should be submitted in the format provided in Annexure A and should not exceed 3 pages per person.

ATTACH AS APPENDIX 4.1

- 4.2. Indicate whether each individual referred to in 4.1 above has confirmed his or her willingness to accept the post, if offered. Please submit signed confirmation from each proposed employee in this regard.

ATTACH AS APPENDIX 4.2

- 4.3. If any member of the senior management team holds shares in the Applicant, indicate the number and class of those shares. Please submit share certificates confirming this.

ATTACH AS APPENDIX 4.3

- 4.4. Indicate whether any of the persons referred to in paragraph 4.1 above will be in a position to control the Applicant's operations either in an individual capacity, or directly/indirectly in relation to management or corporate structure. If applicable, please submit the business record of any such persons.

ATTACH AS APPENDIX 4.4

- 4.5. Submit the Applicant's record and the record of those persons referred to in paragraph 4.1 above, in relation to situations requiring trust and candour on their part.

ATTACH AS APPENDIX 4.5

- 4.6. Provide a full and complete business record of the Applicant. In providing the business record referred to above, it must be stated, whether the senior management member(s) or Applicant (including all consortium members) concerned has any other interests. Full details must be given of all management positions held during the past five (5) years.

ATTACH AS APPENDIX 4.6

5. STAFFING

- 5.1. Provide an organisational chart showing all proposed management and staff posts and indicate clearly the planned reporting structure.

ATTACH AS APPENDIX 5.1

- 5.2. Indicate the proposed number of full-time and part-time staff per department as appropriate to the Applicant's proposal. Also provide the total number of staff that will be employed or are employed by the Applicant.

ATTACH AS APPENDIX 5.2

- 5.3. List any activities which will be sub-contracted or outsourced to agencies, consultants, etc. Please submit supporting documentation e.g. templates/samples of agreements to be entered into.

ATTACH AS APPENDIX 5.3

6. APPLICANT 'S GENERAL HISTORY AND DEVELOPMENT STRATEGY

- 6.1. Describe how, and when, the Applicant was formed, and how it has developed since then. Should the Applicant be a newly formed consortium then full details of the consortium need to be provided together with details of the members of the consortium. If the Applicant is, or includes, an existing licensee of the Authority, give details of its history and current operations.

ATTACH AS APPENDIX 6.1

- 6.2. Describe the principles upon which Applicant's future development strategy is based, and its general objectives in applying for this licence.

ATTACH AS APPENDIX 6.2

- 6.3. Provide full particulars of the Applicant's experience and the expertise of the Applicant, its partners, shareholders, suppliers and contractors in the business contemplated.

ATTACH AS APPENDIX 6.3

- 6.4. Kindly provide the roles of each personnel and the experience in the electronic communications sector.

ATTACH AS APPENDIX 6.4

7. EXTERNAL ASSISTANCE

- 7.1. Provide particulars of any individual or corporate entity, other than internal personnel (e.g. directors or executives) of the Applicant's juristic person, that is providing assistance to the Applicant (e.g. legal or financial advisers, research consultants, etc.) in respect of its

application pursuant to this ITA. State their roles in assisting the Applicant's application and/or operations.

ATTACH AS APPENDIX 7

8. OTHER INTERESTS

Provide details of the Applicant's and its participants' (including shareholders and senior management) interests and/or involvement in as well as the extent of the interest in any other activities (e.g. share certificates, agreements etc.).

ATTACH AS APPENDIX 8

SECTION 3: FINANCE

9. SUMMARY OF BUSINESS PLAN

9.1. Summarize the main assumptions underpinning the Applicant's business plan e.g., marketing policies, ownership and control patterns, and the Applicant's own business development strategy, including a PESTEL analysis.

9.2. **BUSINESS PLAN**

Should a Radio Frequency Spectrum Licence be issued, the information contained in the business plan may be incorporated as licence conditions.

| No. | Information Required |
|-----|---|
| 1 | Fundamental assumptions for the business plan with financial forecasts for a minimum period of ten years. |
| 2 | A market analysis of the services contemplated to be offered through the radio frequency spectrum licence applied for, including forecast demand. |
| 3 | Description of products and services to be offered through the radio frequency spectrum licence applied for. |
| 4 | Description of pricing strategy for products and services to be offered through the radio frequency spectrum licence applied for. |

ATTACH BUSINESS PLAN AS APPENDIX 9

10. PRO FORMA FINANCIAL STATEMENT

- 10.1. Financial Reporting and Presentation must be compliant with the International Financial Reporting Standards ("IFRS").
- 10.2. The financial statements must reflect the following financial ratios;
- i. Turnover/total assets;
 - ii. Contribution/turnover;
 - iii. Return on assets;
 - iv. Return on shareholder's funds;
 - v. External funds/cash flow;
 - vi. Income statement;
 - vii. Price break-even; and
 - viii. Volume Break-even.

10.3. Projected Cash Flow Statement

Provide cash flow projections, estimating financing and operating activities for the first 10 years of operation. Provide explanatory notes and a full listing of the underlying assumptions on which the financial projections are based.

ATTACH AS APPENDIX 10.3

10.4. Projected Income Statement

Submit projected Income Statements estimating annual Revenue and Expenditure for the first 10 years of operation.

ATTACH AS APPENDIX 10.4

10.5. Projected Annual Operating Expenses

Submit projected annual operating expenses, which estimate annual operating expenses for the first 10 years of operations. Provide

explanatory notes and a full listing of the underlying assumptions on which the financial projections are based.

ATTACH AS APPENDIX 10.5

10.6. **Balance sheet**

Submit projected balance sheet.

ATTACH AS APPENDIX 10.6

11. FINANCIAL REQUIREMENTS AND SOURCES

- 11.1. Submit details of the Applicant's total funding requirements, i.e. what are the total funds available to finance the proposed operating venture (including details of Equity and Debt) and the respective sources for these funds e.g. Bank loan(s), share capital, other loans, etc.
- 11.2. Submit letter/s of financial support from each of the funders, stipulating the amount of such funding as well as the terms and conditions thereof.
- 11.3. Submit signed copies of all funding agreements concluded with the prospective funders.

ATTACH AS APPENDIX 11

12. TECHNICAL EXPERIENCE DOCUMENTATION:

- 12.1. Full particulars of the Applicant's technical experience and the expertise of the Applicant, its contractors and suppliers in the business contemplated;
- 12.2. Kindly provide the roles of each personnel and the experience in the electronic communications sector.

ATTACHED AS APPENDIX 12**13. FIXED ASSETS**

- 13.1. Provide a summary of all tangible assets. Indicate the level of assets financed by leasing (or similar) arrangement within each category, and indicate any assets brought in at nil cost.

ATTACH AS APPENDIX 13**14. SHARE CAPITAL**

Classes of share capital:

| | Class | Number | Par value | Issue price |
|-----------------|-------|--------|-----------|-------------|
| Voting | | | | |
| Non-voting | | | | |
| Other (Specify) | | | | |
| | | | | |

ATTACH AS APPENDIX 14**15. PROPOSED INVESTORS**

- 15.1. Provide copies of legally binding shareholders' agreements as signed by all shareholders and the share certificates of each shareholder where available.

ATTACH AS APPENDIX 15.1

- 15.2. Set out details of all voting shares and holders of non-voting shares and loan stock, distinguishing clearly between these categories, and also showing details of beneficial owner(s) if not the same with the

registered holders of such shares. (Further pages may be added, or the layout altered, if necessary).

| Name of investor | Address | Investment (Rand Value) |
|------------------|---------|-------------------------|
| | | |
| | | |
| | | |

ATTACH AS APPENDIX 15.2

Note: The Authority would like assurance that reasonable evidence can be provided of bona fide investors, before granting a licence. Written confirmation of agreements in principle should be submitted from all proposed investors (as stated above) of more than 3% of the Applicant's total financing, covering in particular the amount to be invested, the percentage shareholding, and any pre-conditions to making such investment.

16. METHOD (S) OF RAISING CAPITAL

- 16.1. Briefly describe the manner in which the share/loan capital will be raised (e.g. whether a prospectus will be issued, and the timescale involved). Give details of any proposal to have share capital publicly quoted, if applicable.
- 16.2. Indicate whether any funds, credits or other financial assistance for the construction, purchase or operation of the consortium will be provided by foreigners, foreign entities, domestic entities controlled by foreigners, or their agents? If yes, please specify the amount and disclose the agreements or terms and conditions for providing such funds.

ATTACH AS APPENDIX 16

17. OTHER LOANS

17.1. Provide details of lender, interest rate and repayment terms.

ATTACH AS APPENDIX 17

18. BANK FACILITIES

18.1. Provide details of both existing and/or planned bank facilities or other credit arrangements, including evidence of confirmation from the lender(s) of:

18.1.1. Terms of borrowing (repayments, covenants, etc.);

18.1.2. Security or guarantees given and /or charges to the Applicant in respect thereof; and

18.1.3. The identity of the lenders.

ATTACH AS APPENDIX 18

19. GRANTS AND DONATIONS

If the Applicant plans to use alternative or additional sources of funding for its capital expenditure (i.e. other than share capital or loan stock) list these below. Indicate any pre-conditions relating to the purpose for which the funds will be used.

Note: Applicant's attention is drawn to guidelines on funding by public bodies.

| Source of funds | Type of funding agency (e.g. charitable trust) | Amount |
|-----------------|--|--------|
| | | |
| | | |
| | | |
| | | |

ATTACH AS APPENDIX 19

Note: Written confirmation from the proposed sources should be submitted for agreements for funding of more than 3% of the Applicant's total financing.

20. COMPETITION ANALYSIS REPORTS

20.1. Provide an independent competition analysis report detailing the impact of this application on the relevant market/s in the short and medium term. The report should be marked as **Appendix 20.1**.

20.2. Provide a detailed network architecture layout plan and roll-out plans indicating timeframes and roll-out targets clearly marked as **Appendix 20.2**.

20.3. Provide detailed proposed commercial agreements to be made available in terms of roaming, interconnection, facilities leasing clearly marked as **Appendix 20.3**.

| |
|-----------------------------|
| SECTION 4: TECHNICAL |
|-----------------------------|

21. INFORMATION RELATING TO SPECTRUM LICENCE ASSIGNMENT**(I) DESCRIPTION OF SERVICE**

| No. | Information Required |
|-----|---|
| 1 | Description of service to be provided. |
| 2 | Proposed annual coverage, rollout indicating the exact areas and location |

(II) CONSTRUCTION OF THE NETWORK (RADIO COMPONENT)

| No. | Information Required |
|-----|---|
| 1 | Availability and experience of planning and project management capabilities required for construction of the network. |
| 2 | Mechanisms used for the planning of any radio component of the network. |
| 3 | Plans to acquire resources such as access to sites, other property, technology, personnel and capital. |

(III) TECHNICAL INFORMATION (RADIO SYSTEM DESIGN)

| No. | Information Required | |
|-----|--|--|
| 1 | Full information of the technology to be implemented. | |
| 2 | Approach to network development and expansion. | |
| 3 | Description of all the relevant or important interfaces in the network. | |
| 4 | Requirements for interconnection to other telecommunication networks or services and transmission medium and links required. | |
| 5 | Upgrade of the network to accommodate new standards and technology developments. | |
| 6 | Compliance with recognised international standards and specifications. | |
| 7 | Details of radio planning including methods to reserve frequency. | |
| 7.1 | Site names | Name of place where equipment is located |

| | | |
|------|--|--|
| 7.2 | Site code | Code assigned to place |
| 7.3 | Site coordinates | Geographic coordinates to locate places on maps in degrees, minutes and seconds (ddmmss) |
| 7.4 | Frequency (Hz) | Airwaves through which the radio waves are transmitted |
| 7.5 | Bandwidth (MHz) | Amount of frequency occupied by the transmitted signal (RF bandwidth) |
| 7.6 | Modulation scheme | Method of transmitting radio signals |
| 7.7 | Bit rate (bits/s) | Speed of transmitting radio signals |
| 7.8 | Antenna site | Where antenna is situated |
| 7.9 | Antenna type | Type of antenna |
| 7.10 | Antenna diameter (m) | Diameter of antenna |
| 7.11 | Antenna gain (dB) | Gain of antenna in terms of decibels (dB) |
| 7.12 | Antenna polarisation (HIV) | Horizontally or vertically polarised |
| 7.13 | Transmit power (dbmW/W) | Transmitted power at the output of antenna |
| 7.14 | Receiver sensitivity threshold (dBmW) | Lowest value of signal detected by receiver |
| 7.15 | Fixed loss (dB): transmit and receive | Percentage of lost power |
| 7.16 | Type of service | Data service, voice, paging, telemetry etc. |

| | | |
|------|--|------------------------------|
| 7.17 | Area and direction of operation | Geographical area of service |
| 8 | Applicants must provide diagrams or sketches of proposed operations. | |
| 9 | Adherence to EMC specifications. | |
| 10 | Theoretical traffic volume forecasts and alternative routing and redundancy requirements. | |
| 11 | Numbering plan for the service. | |
| 12 | Quality systems deployed, and quality targets used. | |
| 13 | Details of fixed network planning. | |
| 14 | Presentation of network planning data in the form of schedules, diagrams, tables and maps for the initial phase and two subsequent phases. | |
| 15 | Network management, fault detection, service and maintenance mechanisms. | |
| 16 | Equipment specifications, type-approval certificates. | |
| 17 | Regulatory requirements (ITU and Act). | |
| 18 | Technical expertise. | |
| 19 | Service-monitoring capabilities. | |

| | |
|----|---|
| 20 | <p>(kindly refer to Section D)</p> <p>Critical Efficiency Factors:</p> <p>a. Technical (spectral efficiency) - defined in terms of maximum volume of traffic (voice/ data) within a given spectrum resource (erlangs/MHz/km² or Mbits/MHz/km²) for voice and data respectively. Technical efficiency indicators include the following:</p> <p>(i) Bandwidth efficiency (expressed in bits/ Hz) defined as the amount of information contained in a finite spectrum;</p> <p>(ii) Re-use which dictates to what extent the spectrum can be simultaneously used at multiple locations (re-use factor of 1 is the highest); and</p> <p>(iii) Time - since applications do not typically use information on a continuous basis and can share resources by time multiplexing.</p> <p>b. Functional efficiency defined in terms of the extent to which the use of spectrum meets the user's needs.</p> <p>c. Economic efficiency defines the monetary gain in terms of revenue, profit and value which the licensee derives from that portion of spectrum.</p> |
|----|---|

ATTACH AS APPENDIX 21

22. OTHER MATTERS

State briefly why the Authority should grant the Applicant the licence and give details of any other matters which the Applicant considers relevant for the Authority to be aware of in considering its application.

ATTACH AS APPENDIX 22**SCHEDULE D – APPLICATION AMENDMENT**

1. An applicant, who after submitting an application for an I-ECNS license before the Authority has made a decision thereon, wishes to effect changes to the Application with respect to information detailed in Schedule C, must notify the Authority and submit a written request to amend the application within fourteen (14) days of such change.
2. the Authority may grant the Applicant's request to amend its application where this will not:
 - 2.1. unfairly prejudice other interested parties;
 - 2.2. impede the expeditious and proper consideration of the application;
and
 - 2.3. materially change the application.

**SCHEDULE E – REQUEST OF SUBMISSION OF SUPPLEMENTARY
INFORMATION**

1. The Authority may require an Applicant to prepare and submit any supplementary information regarding any aspect of its application within the application process.
2. The Authority may direct an Applicant to submit any such supplementary information within seven (7) days after receiving a written request.

AFFIDAVIT

Applicants are required to conclude their submission with the following certificate: -

I acknowledge that the Authority is entitled to have any issued licence set aside should it be found that any material statement in this Application is false and has been made by the Applicant or any officer thereof knowing it to be false.

Signed on behalf of the **APPLICANT**

Full name: _____

Designation: _____

Duly authorised thereto

I certify that on the day of2020, in my presence atthe Deponent signed this declaration and declared that he/she:

1. knows and understands the contents hereof;
2. had no objection to taking the prescribed oath; and
3. considers the oath to be binding on his/her conscience.

COMMISSIONER OF OATHS

[Letterhead of the Applicant, including full postal address, telephone and fax numbers and e-mail address

ANNEXURE A – CURRICULUM VITAE

[State the name of the Applicant]

| | |
|--------------------|---------------------|
| Proposed Position: | |
| First Name: | Surname: |
| Date of Birth: | Nationality: |
| Gender: | ID/Passport Number: |

Summary of professional education and training:

| From (date) | To (date) | Qualification |
|-------------|-----------|---------------|
| | | |
| | | |
| | | |
| | | |

Summary of professional experience over the last 10 years, in reverse chronological order.

| From (date) | To (date) | Company/Project/Position/Relevant technical and management experience |
|-------------|-----------|---|
| | | |
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23. UNDERTAKING**WARRANTY UNDERTAKING**

I..... (duly authorised person) have prepared and/ or compiled, or directly supervised those who have prepared all or parts of this application and/or information constituting this application.

To the best of my knowledge, the application information contained herein, and any attachment thereto, is accurate and not misleading.

I further understand that should any information included herein be found to be false or misleading the entire application will be disqualified and the Applicant precluded from further consideration within the application process.

Name and title of the person authorised to sign this undertaking:

Authorised Signature: _____

Date: ____/____/ 2020

I certify that this declaration was signed and sworn to before me at on the day of 2020, by the deponent who acknowledges that he/she:

- i. knows and understands the contents hereof;
- ii. has no objection to taking the prescribed oath or affirmation; and
- iii. considers this oath or affirmation to be truthful and binding on his/her conscience.

COMMISSIONER OF OATHS

Name:

Address:

Capacity:



INDEPENDENT COMMUNICATIONS AUTHORITY OF SOUTH AFRICA

GUIDELINES FOR CONFIDENTIALITY REQUEST IN TERMS OF SECTION 4D of the ICASA Act

PREAMBLE

WHEREAS, the Independent Communications Authority of South Africa (ICASA/ Authority) is mandated in terms of section 192 of the Constitution to regulate broadcasting in the public interest;

WHEREAS, ICASA is further mandated in terms of section 2 of the ICASA Act (Act No. 13 of 2000), as amended, to regulate broadcasting, electronic communications services and postal matters in the public interest; and

WHEREAS, section 4D of the Independent Communications Authority of South Africa Act, 2000 (Act No. 13 of 2000), as amended ("ICASA Act") empowers ICASA to make determinations relating to confidentiality on information provided to ICASA by stakeholders.

WHEREAS, section 9(4)(c) of the Electronic Communications Act 36 of 2005, as amended ("ECA") permits the Authority to grant confidentiality on information submitted by an applicant at the request of an applicant.

1. Introduction

- 1.1 The guidelines on requests for confidentiality, are intended to provide a practical application of section 4D of the ICASA Act and section 9(4)(c) and (d) of the ECA. The guidelines will further explain the process to be followed by ICASA when dealing with confidentiality of information a licensee may submit to the Authority. A template for requesting confidentiality from ICASA is further provided in these guidelines, in Appendices A and B.
- 1.2 This document provides guidance to ICASA staff and informs the public of ICASA's policies and procedures. These guidelines are not regulations. They are not legally enforceable and do not create any legal rights or impose any legally binding requirements or obligations on ICASA or the public.
- 1.3 Section 4D provides as follows:
- "4D. Confidential information*
- (1)*
- (a) When a person submits information to the Authority, such person may request that specific information be treated as confidential information.*
- (b) The request for confidentiality must be accompanied by a written statement explaining why the specific information should be treated as confidential.*
- (2) Within 14 days of receiving a request for confidentiality, the Authority must make a determination whether or not confidentiality will be granted and provide the person contemplated in subsection (1) with written reasons for such determination.*
- (3) Should the Authority determine that a request for confidentiality cannot be acceded to, the party providing the information must be given an opportunity to withdraw the information that is the subject of the confidentiality request.*

- (4) *When considering a request contemplated in subsection (1), the Authority must treat the following information, as confidential information, namely-*
- (a) *trade secrets of such person;*
 - (b) *financial, commercial, scientific or technical information, other than trade secrets, the disclosure of which is likely to cause harm to the commercial or financial interests of such person;*
 - (c) *information of which the disclosure could reasonably be expected-*
 - (i) *to put the person at a disadvantage in contractual or other negotiations; or*
 - (ii) *to prejudice the person in commercial competition;*
 - (d) *the names of prospective employees; and*
 - (e) *business plans of a licensee.*
- (5) *A determination of confidentiality may not be made in respect of a document or information that is in the public domain or is required to be disclosed by operation of law or a court order."*

1.4 In addition, section 9(4) of the ECA further provides as follows:

"(4)

- (a) *Applications, representations, responses and other documents relating to an application which are submitted to the Authority are, subject to this subsection, open to public inspection during the normal office hours of the Authority.*
- (b) *The Authority must, at the request of any person and on payment of such fee as may be prescribed, furnish him or her with copies of documents requested by such person.*
 - (i) *The Authority may, at the request of an applicant or person who has submitted representations or responses, decide that*

-

- (aa) *any document or information that is commercially sensitive; or*
- (bb) *any other matter reasonably justifying confidentiality, is not open to public inspection, if such document or information can be separated from the application, representations or other documents in question.*
- (ii) *for the purposes of this subsection, commercially sensitive document, information or other matter reasonably justifying confidentiality, excludes documents or information that should, as a matter of law be generally available to the public.*
- (c) *If the Authority refuses a request referred to in paragraph (c)(i), the applicant or person concerned may withdraw the document or information in question.*

2. Information required to accompany a request for confidentiality

- 2.1 The provision in the ICASA Act cited above expressly states that “(t)he request for confidentiality must be accompanied by a written statement explaining why the specific information should be treated as confidential”.
- 2.2 This requires more than just stating a category of confidentiality under section 4D (4) of the ICASA Act.
- 2.3 When requesting confidentiality, the applicant is therefore required to:
- 2.3.1 identify the confidential information; and
 - 2.3.2 provide a written statement or explanation justifying why the Authority should treat the identified information as confidential.

3. Categories of information that the Authority is required to treat as confidential

3.1 Section 4D (4) of the ICASA Act identifies the following categories:

3.1.1 *Trade secrets of such person*

Any trade secret must be treated as confidential by the Authority if confidentiality is requested thereon. Unless it is apparent to the Authority, the onus is on the applicant to prove that the document is a trade secret.

Trade secrets includes formula, practice, process, design, instrument, pattern, commercial method, or compilation of information not generally known or reasonably ascertainable by others by which a business can obtain an economic advantage over competitors or customers.

3.1.2 *Financial, commercial, scientific or technical information, other than trade secrets, the disclosure of which is likely to cause harm to the commercial or financial interests of such person;*

In line with section 4D (1) (b) of the ICASA Act, this category requires the applicant, to substantiate and demonstrate that if certain financial, commercial, scientific or technical information were to be in the public domain, it is likely to suffer commercially or financially.

3.1.3 *Information of which the disclosure could reasonably be expected to put the person at a disadvantage in contractual or other negotiations; or to prejudice the person in commercial competition;*

This category is broad. In line with section 4D (1) (b) of the ICASA Act, this category requires the applicant to substantiate and demonstrate that the specific/concerned information will prejudice or disadvantage the applicant in commercial competition if it is not treated as confidential.

The information under this category may include the names of third parties with which the applicant has contracted, the value of such contractual agreements and selling prices.

3.1.4 ***The names of prospective employees***

This category refers to prospective employees of the applicant or licensee or any person who submits confidential information to the Authority. Names of prospective employees must be treated as confidential by the Authority if confidentiality is requested thereon.

Unless if apparent to the Authority, the onus is on the applicant to prove that the names, in relation to those confidentiality is requested, are those of prospective employees, not of those individuals already employed by the applicant.

3.1.5 ***Business plans of a licensee***

Any business plan must be treated as confidential by the Authority if confidentiality is requested thereon. Unless if apparent to the Authority, the onus is on the applicant to prove that the document is a business plan.

In each category above, the onus falls on the applicant to demonstrate and substantiate that such information would be fall within any of the above categories. The written statement that accompanies each information should provide such substantiation.

It is worth noting that all the categories mentioned above are subject to the information not being available in the public domain, the operation of law and an order of court.

It is also worth noting that an applicant can request confidentiality on any information not listed in section 4D (4) of the ICASA Act if the information is not in the public domain and the applicant provides reasons as to why specific information must be treated as confidential.

3.2 **Withdrawal of information by the applicant**

3.2.1 If the applicant's request for confidentiality is refused, the Authority is required to grant the applicant an opportunity to withdraw the information. Failure of the applicant to withdraw such information within a stipulated time will result in the Authority not treating the information as confidential.

3.2.2 Should the applicant withdraw the information, the Authority may continue with whatever process the information was required for, without reference to or relying on the withdrawn information.

3.3 **Reasons for refusal of confidentiality by the Authority**

3.3.1 Section 4D (4) prohibits the Authority from making a determination of confidentiality over any document that is in the public domain or required to be disclosed by law or court order.

3.3.2 The Authority must provide the applicant with reasons for making a determination to refuse confidentiality as contemplated in section 4D (2).

3.4 **Review of the Authority's decision on the request for confidentiality**

3.4.1 The Authority's decision concerning the request for confidentiality is final and binding on the Applicant. An applicant may, in terms of section 3(5) of the ICASA Act, take the Authority's decision on a request for confidentiality on review, to a court with competent jurisdiction.

Authority's process for dealing with confidentiality claims

STAGE 1

1. The applicant/party completes in full the confidentiality form.

2. The applicant must submit the confidentiality form along with the documents which are the subject of the confidentiality request.

STAGE 2

1. The Authority assesses the confidentiality application on its merits, considering the reasons put forward by the applicant.
2. The Authority must communicate its decision to the applicant in writing on the issue of confidentiality within 14 business days. The Authority will advise the applicant of its determination and the reasons thereto.

What happens when the Authority agrees on confidential information?

3. The Authority will proceed to disclose all the information that is not confidential and protect information granted confidentiality by keeping it from the public domain.

What happens when the Authority is not satisfied with the reasons provided by the applicant to treat information as confidential?

4. Where the Authority is not convinced of the reasons given by the applicant, it will inform the applicant of this decision in writing and afford the applicant an opportunity to withdraw the information.

**FORM TO REQUEST CONFIDENTIALITY IN TERMS OF SECTION 4D of the
ICASA Act**

NB.: When making the request for confidentiality, submit the FORM ONLY. Do NOT submit or attach the GUIDELINES. Only read those carefully to complete the FORM.

Appendix A

REQUEST FOR CONFIDENTIALITY FORM

Any applicant or other person submitting information to ICASA may request that such information be treated as confidential in terms of section 4D of the ICASA Act.

FORM INSTRUCTIONS: Please fill out all parts of this Form to the best of your knowledge and attach any relevant supporting documents.

ICASA will:

- 1. Decide whether the information is confidential.**
- 2. Take all reasonable steps to treat the confidential information as such.**
- 3. Notify the party when the information ceases to be confidential at any stage during the proceedings/processes for which the confidentiality was sought and granted.**

I. MATTER:

Application/Regulatory process:

Applicant/ Licensee name:

II. DOCUMENT(S) CONTAINING CONFIDENTIAL INFORMATION:

Please fill out the items bellow for each document containing confidential information:

1. Name and other details of the document containing confidential information:

2. Please list and mark "confidential" all pages, paragraphs and line numbers where confidential information appears (Page: Paragraph: Line):

3. Reasons why specific information in the document is considered confidential:

| Vol./Page No./Par./line No. | Specific Information | Reasons for Requesting Confidentiality |
|--|-----------------------------|---|
| | | |

| | | |
|--|--|--|
| | | |
| | | |
| | | |

4. Relevant category in section 4D (4) of the ICASA Act (where applicable):

- 5. If the applicant would like to list additional documents containing confidential information, the applicant may attach extra sheets (see appendix B), to this form and identify all the pages, paragraphs and line numbers where confidential information appears, reasons why the document/information is confidential and the relevant category in section 4D (4).**

III. CONFIDENTIALITY STATEMENT:

I, declare that the information supplied by me to ICASA in this Form is true and accurate to the best of my knowledge.

Print Name: _____

Designation: _____

Company: _____

Signature: _____

Date: _____

Office Use Only

Received By -

Print Name: _____

Signature: _____

Date Received: _____

Reference Number: _____

Division / Department/Unit: _____

Appendix B

| Vol./Page No./Par./line No. | Specific Information | Reasons for Requesting Confidentiality |
|--|-----------------------------|---|
| | | |

| Vol./Page No./Par./line No. | Specific Information | Reasons for Requesting Confidentiality |
|--|-----------------------------|---|
| | | |

END

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