

## ANNEXURE A

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### GENERAL NOTICE

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#### COMMUNICATIONS REGULATORY AUTHORITY OF NAMIBIA

No.

2020

**NOTICE OF AWARD OF  
CLASS ELECTRONIC COMMUNICATIONS AND/OR ELECTRONIC  
COMMUNICATIONS NETWORK SERVICES COMPREHENSIVE  
TELECOMMUNICATIONS SERVICE LICENCE (ECS & ECNS) TO THE MUNICIPAL  
COUNCIL OF THE MUNICIPALITY OF WINDHOEK**

The Communications Regulatory Authority of Namibia, in accordance with section 38(10) of the Communications Act (No 8 of 2009) ("the Act) hereby authorises the Municipal Council of the Municipality of Windhoek ("the Licensee") to

- (i) To provide electronic communications services to the public, sections of the public, or to subscribers to such service, which consists wholly or mainly of the conveyance of communications over an electronic communications network, but excludes broadcasting services;
- (ii) make available an electronic communications network, whether by

sale, lease or otherwise-

- a. For the person's own use for the provision of an electronic communications services;
- b. To another person for that person's use in the provision of an electronic communications service; or
- c. For resale in accordance with the Terms and Conditions set out in this Licence.

This licence and the Licensee are subject to the provisions of the Act including, but not limited to, licence modifications and enforcements.

## 1. Definitions

In this licence, any word or expression to which a meaning is assigned in the Act, shall have the same meaning and-

**“Act”** means the Communications Act, 2009 (Act No.8 of 2009)

**“Authority”** means the Communications Regulatory Authority of Namibia established in terms of section 4 of the Act

**“Licensee”** means a holder of a telecommunications or broadcasting service licence as awarded by the Authority.



## THE LICENCE CONDITIONS

### 1. **CONDITION 1: NOTIFICATION OF CHANGE IN SHAREHODLING**

- 1.1 The Licensee shall notify the Authority of any change in the proportion of the shares held directly in the Licensee by any person.
- 1.2 The Licensee shall notify the Authority prior to any entity acquiring ownership or control or all or a majority of the stock of the Licensees such that the Licensee shall stand as a subsidiary in relation to that entity.
- 1.3 The Licensee shall be obliged to apply for approval to the Authority of any acquisition of shares or change in the shareholding of the Licensee by any person only if by reason of that acquisition or change will result in :
- (i) The Licence being controlled by any person that is not a Namibian citizen or a Namibian company; and
  - (ii) More than 49% of the stock in the Licensee being owned by persons that are not Namibian citizens or Namibian companies that are not controlled by Namibian citizens.

### 2. **CONDITION 2: LICENCE TRANSFER**

The Licensee shall not assign, delegate or transfer the control of this licence to any person, without the prior, express and written consent of the Authority, which consent may be given if the Authority finds that the transfer or assignment would not be contradict the provisions of the Act.



### 3. CONDITION 3: LICENCE FEES

The Licensee shall pay to the Authority:

- 3.1 All fees in respect of the service licence awarded as set out in Government Gazette, and as amended from time to time.
- 3.2 The Licensee shall submit their annual financial statements to the Authority six (6) months from the date of their financial year end.

### 4. CONDITION 4: DURATION OF LICENCE

- 4.1 The licence is issued on 24 July 2020 (“**the issuance date**”).
- 4.2 The licence is granted for a period of fifteen (15) years (“**the licence period**”) from the date of issue unless it is revoked earlier in accordance with the Licence Conditions herein.
- 4.3 Subject to the provisions of clause 4.4 below, the licence will automatically lapse twelve (12) months after the date of issue in the event that no electronic communications and/or electronic communications network services are provided under this licence.
- 4.4 The Authority may, after receiving a written request from the Licensee, extend in writing, for such further period as may be determined by the Authority and if applicable, condone the Licensee's failure to commence providing electronic communications and/or electronic communications



network services timeously. In which event, the licence will lapse at the expiry date of such extended period.

## **5. CONDITION 5: LICENCE RENEWAL**

5.1 The Authority may renew this licence for an additional fifteen (15) years at the request of the Licensee, provided that the Authority has carried out a formal review to determine whether or not the Licence should be renewed, which review must be concluded at least twelve (12) months prior to the date of expiry of the licence<sup>1</sup>.

5.2 In the event that the Licensee fails to settle fees payable as set out clause 3 above, the Authority may declare the licence to be forfeited in terms of section 42(3) of the Act.

## **6. CONDITION 6: COVERAGE AREAS**

The Licensee is licenced to provide electronic communications and/or electronic communications network services within the borders of the municipal area of Windhoek only as determined by the Minister responsible for local authorities.

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<sup>1</sup> The renewal process is as set out in the Regulations Regarding Licensing Procedures for Telecommunications and Broadcasting Service Licences and Spectrum Use Licenses”, published in Government Gazette No. 4785, Notice Number 272, dated 29 August 2011, as may be amended from time to time.

## **7. CONDITION 7: HOURS OF OPERATION**

- 7.1 The Licensee must provide electronic communications and/or electronic communications network services under this licence for twenty four (24) hours, three hundred and sixty five (365) days per year.
- 7.2 In the event that the Licensee cannot provide the electronic communications and/or electronic communications network services set out in 7.1 due to circumstances beyond its control for a continuous period of twelve (12) hours or longer, the Licensee must notify all Licensees utilising such electronic communications and/or electronic communications network services and Authority in writing of such circumstances within twelve (12) hours.
- 7.3 The Licensee must also provide the Authority with a disaster recovery plan within ninety (90) days from issuance of this licence.

## **8. CONDITION 8: TECHNICAL CONDITIONS**

- 8.1 The Licensee must comply with the provisions of section 60 to 68 of the Act in providing electronic communications and/or electronic communications network services in addition to the conditions set out hereunder-
- (i) Provide conduit pipes or other facilities for the installation of underground telecommunications services from the point of connection on the street boundary to a building on those premises in any area where the electricity supply and telecommunications services must be provide by means of underground cables;

- (ii) Upon receipt of any notice given by a carrier in terms of section 61 of the Act complete its assessment of within 9 days from the date of the receipt stating-
  - a. the technical requirements necessary to ensure successful implementation of towers, masts, pipes, conduits or ducts;
  - b. whether the Licensee refuses the requested subject thereto that the Licensee give reason for such refusal, in accordance with section 50(7) of the Act.
- (iii) Upon receipt of a notice the Licensee must participate in good faith to ensure that the carrier can implement its network
- (iv) The following actions or practices are deemed to contravene the duty to negotiate in good faith-
  - a. Obstructing or delaying the carrier to construct its network, or failing to make reasonable efforts to resolve outstanding disputes;
  - b. Refusing to provide technical requirements to allow the carrier to proceed with implementation of towers, masts, poles, ducts, conduits or pipes as contemplated in these licence conditions;
  - c. Misleading or coercing a carrier into reaching an agreement on technical requirements it would not otherwise have made
  - d. Interfering in any way with the ability of the carrier to communicate with the Authority, including such carrier not to disclose information requested by the Authority;
  - e. Refusing to permit amendment of any notice contemplated by these licence conditions to take into account changes to technical requirements including changes to the Act and/or regulations.



## 9. CONDITION 9: FAIR COMPETITION

### 9.1 The Licensee –

- (i) must comply with all obligations imposed on such Licensee under regulation 4, 5, 7, 8, 9, 10 and 11 of the Infrastructure-sharing Regulations.
- (ii) must –
  - a. allow access to its poles, ducts and conduits to other Licensees;
  - b. provide to any requesting Licensee non-discriminatory access to network elements on an unbundled basis at any technically feasible point;
  - c. provide for physical co-location of equipment necessary for interconnection or access to unbundled network elements at the premises of the dominant Licensee;
  - d. must provide unbundled network elements in a manner that allows requesting Licensees to combine such elements in order to provide telecommunications services, in the manner contemplated in, and subject to, the provisions of section 48 of the Act and the provisions of the Infrastructure-sharing Regulations;
- (iii) must allow any other Licensee to interconnect its network for the purpose of the transport and termination of telecommunications and information in the manner contemplated in, and subject to, the provisions of section 49 of the Act;
- (iv) must lease any infrastructure to any other Licensee or must allow the latter Licensee to install telecommunications equipment on such infrastructure or to otherwise utilise such infrastructure in the manner contemplated in, and subject to, the provisions of section





50 of the Act.

9.2 Adhere to all regulations as set out in the Regulations to ensure fair competition in the Telecommunications Sector.

## **10. CONDITION 10: TARIFFS AND FEES**

As per section 53 of the Act, the Licensee must provide the Authority with all tariffs and fees pertaining to electronic communications services.

## **11. CONDITION 11: CONSUMER PROTECTION**

The Licensee shall comply with the provisions relating to consumer protection as prescribed in terms of section 79 as well as any specific minimum standards set in the quality of service regulations.

## **12. CONDITION 12: INTERCONNECTION**

The Licensee have the obligation to interconnect with other Licensees in compliance with section 49 of the Act within thirty (30) days from receiving a formal request from another Licensees subject to the provisions contained in section 49 of the Act.

## **13. CONDITION 13: QUALITY OF SERVICE**

The Licensee shall comply with quality of service standards as prescribed by the Authority in the quality of service regulations with regard to network quality, service quality, billing and customer service.



## **14. SAFETY MEASURES**

The Licensee shall, in respect of all apparatus, equipment and installations that it owns, leases or uses, take such measures as may be prescribed and in any event such reasonable and necessary safety measures to safeguard life or property, and limit exposure to electromagnetic emission and related risks as contained in section 80 of the Act.

## **15. CONDITION 15: UNIVERSAL ACCESS AND SERVICE OBLIGATIONS**

15.1 The Licensee shall be required to participate in the provision of Universal Services by providing electronic communications services and electronic communications network services in areas as may be specified by the Authority from time to time.

## **16. CONDITION 16: SEPARATION OF ACCOUNTS**

16.1 The Licensee has to submit separate accounts for the licenses services in terms of section 54 of the Act.

In the event where a Licensee's turnover is not accounted for separately and such Licensee provides other products or services or conducts other business not regulated under the Act, the Licensee must attach to the audited annual financial statements or annual financial statements, as the case may be, a separate statement which must -

- (i) indicate the Licensee's turnover;



- (ii) indicate the methodology used to extract and determine such turnover;
- (iii) contain such other information as the Authority may determine; and
- (iv) be signed and sworn to by the Licensee's auditor or accounting officer, as the case may be, to be a true and correct reflection of the Licensee's turnover to the best of the knowledge of such auditor or accountant.

## **17. REQUIREMENT TO PROVIDE INFORMATION**

- 17.1 The Authority may request any information, determined by it as relevant from the Licensees for the purposes of monitoring and ensuring compliance with the Act and the regulations prescribed by the Authority, to which request the Licensee shall comply in the manner set out by the Authority.
- 17.2 Subject to the clause 10.1 above, the Licensee is required to maintain such information as will enable the Authority to carry out its functions under the Act and Regulations in such manner and at such times as the Authority may request.
- 17.3 The Licensee is required to submit a compliance report in respect of its licence conditions to the Authority on a quarterly basis.



## 18. CONDITION 18: PENALTIES

18.1 Any Licensee who fails to comply with the requirements and obligations contained in these licence conditions or fails to submit documents and/or information as required to be submitted by these licence conditions shall be guilty of contravening these licence conditions.

18.2 Where a Licensee contravenes one or more of the licence conditions contained herein, the Authority may:

- (i) issue to the Licensee a written warning and final date for submitting outstanding documents and/or information where the Licensee is guilty of not submitting same as required by these licence conditions;
- (ii) impose a penalty of not more than N\$500 000.00 for:
  - a. every failure by a Licensee to comply with any requirement and/or obligation contained in these licence conditions; or
  - b. each submission of false or misleading information to the Authority; or
  - c. every failure to submit the documents and/or information as required pursuant to a written warning issued in terms of licence condition 10 above;
- (iii) take any other measure which the Authority regards as reasonable in the circumstances.

18.3 Any amount of penalty payable in terms of 12.2(b) above constitutes a debt due to the Authority by the Licensee concerned and may be



recovered by the Authority by means of legal proceedings instituted in any competent court.

- 18.4 Notwithstanding the provisions of 11.2 above, the Authority may waive the payment of or refund the whole or any part of a fine payable.
- 18.5 Before imposing any penalty as contemplated in 11.2 above, the Authority shall give the licensee an opportunity to be heard, where-after the Authority may:
- (i) decide not to impose any penalty; or
  - (ii) impose such penalty as the Authority deems fit.
- 18.6 The Authority shall prosecute regulatory offences and enforce the provisions of these licence conditions in terms of sections 114 to 127 of the Act where applicable.

## **19. CONDITION 19: REVOCATION OF LICENCE**

Notwithstanding any other condition in this licence, the Authority may at any time revoke this licence in writing in any of the following circumstances:

- 19.1 If the Licensee communicates to the Authority in writing on their intention to terminate the licence.
- 19.2 If the Licensee does not provide evidence of commencement of the provision of electronic communications and/or electronic communications network services twelve (12) months from the date of issue. The Licensee shall submit such evidence by completing



compliance reports as required by the relevant regulations applicable to this service licence category in order to satisfy the Authority that the Licensee has complied with these requirements;

- 19.3 If the Licensee fails to pay its annual licence fee or submit its annual audited (or signed and sworn) financial statements and fails to pay interest and the late payment penalty , within six (6) months after the due date, and fails to surrender its licence or licences to the Authority, the Authority shall, after following a due process specified in the Regulations Regarding Administrative Fees, declare the licence (and related spectrum use or other licences) forfeited and/or impose a fine not exceeding N\$5 000 000.00.
- 19.4 If the licence fees after consideration of the representations or if no such representations have been made, the Authority may determine whether to impose the interest rate penalty, late payment penalty or declare the forfeiture of the license of the Licensee.

## **20. CONDITION 20: AMENDMENT OF LICENCE CONDITIONS**

The Authority may amend these conditions from time to time.

