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## GENERAL NOTICES • ALGEMENE KENNISGEWINGS

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### INDEPENDENT COMMUNICATIONS AUTHORITY OF SOUTH AFRICA

#### NOTICE 885 OF 2022



#### **DRAFT REGULATIONS REGARDING STANDARD TERMS AND CONDITIONS FOR INDIVIDUAL LICENCES UNDER CHAPTER 3 OF THE ELECTRONIC COMMUNICATIONS ACT, 2005 (NO. 36 OF 2005)**

The Independent Communications Authority of South Africa hereby declares its intention to amend the Standard Terms and Conditions Regulations for Individual Licences, 2010 (Notice No. 523 of 2010) to the extent reflected in the schedule.

A copy of the Draft Amendment Regulations will be made available on the Authority's website at <http://www.icasa.org.za> and in the Authority's library situated at Eco Point Office Park, 350 Witch-Hazel Avenue, Centurion between 09h00 and 16h00, Monday to Friday.

Written representations must be submitted to the Authority by no later than 16h00 on **5 May 2022** by post, hand delivery or electronically and marked specifically for attention:

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

350 Witch-Hazel Avenue,  
Eco Point Office Park,  
Eco Park, Centurion,  
Gauteng, 0169.

**Attention:**

Mr. Pascalis Adams

E-mail: padams@icasa.org.za

When a person makes submissions to the Authority, such person may request that specific information be treated as confidential information in terms of section 4D of the Independent Communications Authority of South Africa Act, 2000 (Act No. 13 of 2000) ("ICASA Act"). **The request for confidentiality must be accompanied by a written statement explaining why the specific information should be treated as confidential in terms of section 4D (4)(a) to (e) of the ICASA Act.**

The Authority may determine that such representations or any portion thereof is to be treated as confidential. Where the request for confidentiality is refused, the person who made the request will be granted an opportunity to withdraw such representations or portion(s) thereof. Persons requesting confidentiality are thus urged to acquaint themselves with the ICASA Guidelines for Confidentiality Request published in Government Gazette No. 41839 (Notice No. 849 of 2018).

Persons submitting written representations are further invited to indicate, as part of their submissions, whether they require an opportunity to make oral presentations to the Authority.



**DR. KEABETSWE MODIMOENG**

**CHAIRPERSON**

**DATE: 15 / 03 / 2022**

## INDIVIDUAL BROADCASTING SERVICES

The Independent Communications Authority of South Africa has, under section 8 read with section 4 of the Electronic Communications Act, 2005 (Act No. 36 of 2005), and section 17E (2)(b) of the Independent Communications Authority of South Africa Act, 2000 (Act No. 13 of 2000), made the regulations in the Schedule.

### SCHEDULE 1

#### 1. Definitions

In these regulations "the Regulations" means the regulations published by Government Notice No. R.523 of 14 June 2010, as amended by Government Notices No. R.158 of 30 March 2016 and No. R. 699 of 26 October 2016.

#### 2. Amendment of regulation 1 of the Regulations

- 2.1. Regulation 1 of the Regulations is hereby amended by the insertion of the following definition after the definition of "BS":

"**days**" means as defined in the Act;"

- 2.2. Regulation 1 of the Regulations is hereby amended by the substitution for the definition of "Effective Date" with the following definition:

"**Effective Date**" means the date specified in the licence which may be a present or future date from the date of signature;"

- 2.3. Regulation 1 of the Regulations is hereby amended by the insertion of the following definition after the definition of "Licensee":

"**'News'** means programming that is not current affairs by a broadcaster in which it reports on news events of immediate social, political or economic relevance and on matters of international, national and local significance;"

- 2.4. Regulation 1 of the Regulations is hereby amended by the substitution for the definition of "Public Service Announcement" with the following definition:

"**'Public Service Announcement'** means an announcement broadcast by a broadcasting service licensee aimed at providing information concerning a disaster or immediate grave danger to the public or in the interests of public welfare;"

### **3. Substitution of regulation 2 of the Regulations**

- 3.1. The following regulation is hereby substituted for regulation 2 of the Regulations:

#### **"2. NOTIFICATION OF CHANGE IN LICENSEE DETAILS AND INFORMATION**

- (1) A Licensee must submit written notice to the Authority within fourteen (14) days of occurrence of the following changes:
- (a) the name and/or trading name of the Licensee;
  - (b) contact details including the contact persons (e.g. telephone, fax, cell number and email);

- (c) Principal place of business; and
  - (d) Postal address.
- (2) A notice submitted to the Authority in terms of sub-section (1), outside the prescribed 14 days, must be accompanied by a fee as may be determined by the Authority from time to time.
- (3) The name and/or trading name of the Licensee may not be changed to the extent that it may conflict or be confused with the name and/or trading name of another Licensee."

#### **4. Amendment of regulation 5 of the Regulations**

4.1. Regulation 5 of the Regulations is hereby amended by the insertion of the following sub-regulation after sub-regulation 5(3):

"(3A) Where a Licensee fails to commence with operations in line with sub-regulation (1) or the extended period in line with sub-regulations (2) and (3), this will constitute non-compliance and shall be referred to the Complaints and Compliance Committee ("CCC") to make a recommendation to the Authority for the cancellation of the licence."

#### **5. Amendment of regulation 6 of the Regulations**

5.1. Regulation 6 of the Regulations is hereby amended by the substitution for sub-regulation (2) of the following sub-regulation:

"(2) Where a Licensee cannot provide the licensed service due to circumstances beyond its control, for a continuous period of six (6) hours or longer, the Licensee must notify the Authority in writing of such circumstances within twenty-four (24) hours of being aware of such an occurrence."

5.2. Regulation 6 of the Regulations is hereby amended by the addition of the following sub-regulation:

“(3) Wherein the Licensee cannot provide licensed services for a continuous period of more than seven (7) days, a request for an exemption to comply with the licence terms and conditions and applicable regulations should be submitted to the Authority within forty-eight (48) hours of being aware of such an occurrence.”

## **6. Amendment of regulation 9 of the Regulations**

Regulation 9 of the Regulations is hereby amended by the substitution for sub-regulation (5) of the following sub-regulation:

“(5) In the event that the Licensee or its representative refuses or fails to provide the Authority with requested information in terms of sub-regulation (1), the Authority may, after three (3) attempts, refer the matter to the CCC.”

## **7. Amendment of regulation 11 of the Regulations**

Regulation 11 of the Regulations is hereby amended by the deletion of sub-regulation (2).

## **8. Amendment of regulation 14 of the Regulations**

8.1. Regulation 14 of Regulation is hereby amended by the substitution of sub-regulation 14(2) with the following sub-regulation:

“(2) Any person that contravenes any other regulation, not specified in sub regulation (1), except regulations 2 and 5, is liable to a fine not less than R10 000, 00 (Ten thousand Rand) but not exceeding R100 000, 00 (One hundred thousand Rand).”

- 8.2 Regulation 14 of the Regulations is hereby amended by the deletion of sub-regulation (4).

## **9. Short Title and Commencement**

These regulations are called the Third Amendment to the Standard Terms and Conditions for Individual Broadcasting Services, 2022, and will come into operation by publication in the Government Gazette.

## **10. Substitution of Annexure A the Regulations**

The following Annexure is hereby substituted for Annexure A of the Regulations:

**"ANNEXUREA**

**INDIVIDUAL BROADCASTING SERVICES LICENCES**



**INDIVIDUAL BROADCASTING SERVICE LICENCE**

**No. ....**

**GRANTED AND ISSUED**

**TO**

**.....**

**FOR THE PROVISION OF**

**.....**

**Effective from [Year:Month:Day]**

**SIGNED FOR AND ON BEHALF OF THE INDEPENDENT COMMUNICATIONS  
AUTHORITY OF SOUTH AFRICA**

**AT \_\_\_\_\_ ON THIS XX DAY OF MONTH 20XX**

\_\_\_\_\_  
**CHAIRPERSON**

## **PART 1**

### **1. LICENSEE**

The Licence is issued to:

1.1 Name of the Entity: .....

1.2 Shareholders: (where applicable): .....

1.3 Ownership held by persons from historically disadvantage groups:  
.....

### **2. LICENCE PERIOD**

2.1 The effective date of the licence is XX XXX 20XX.

2.2 The licence shall expire on XX XXX 20XX.

### **3. GENERAL LICENCE TERMS**

*(May vary, this is dependent on the Licence)*

## **PART 2**

### **4. TRADING NAME OF LICENSEE**

The Trading Name of the Licensee is: .....

### **5. CONTACT DETAILS**

5.1 The contact person for the Licensee shall be:

5.1.1 Name : .....

5.1.2 Tel : .....

5.1.3 Fax : .....

5.1.4 Cell : .....

5.1.5 Email : .....

### **6. NOTICES AND ADDRESSES**

6.1 The Licensee chooses the following as its principal addresses:

6.1.1 Principal place of business : .....

6.1.2 Postal address : ....."

## **SCHEDULE 2**

### **CLASS ELECTRONIC COMMUNICATIONS NETWORK SERVICES**

#### **1. Definitions**

In these regulations "the Regulations" means the regulations published by Government Notice No. R.523 of 14 June 2010, as amended by Government Notices No. R.158 of 30 March 2016 and No. R. 699 of 26 October 2016.

#### **2. Amendment of regulation 1 of the Regulations**

2.1. Regulation 1 of the Regulations is hereby amended by the insertion of the following definition after the definition of "Act":

"**'days'** means as defined in the Act;"

2.2. Regulation 1 of the Regulations is hereby amended with the substitution for the definition of "Effective Date" with the following definition:

"**'Effective date'** means the date specified in the licence which may be a present or future date from the date of signature;"

#### **3. Substitution of regulation 2 of the Regulations**

3.1. The following regulation is hereby substituted for regulation 2 of the Regulations:

##### **"2. NOTIFICATION OF CHANGE IN LICENSEE DETAILS AND INFORMATION**

(1) A Licensee must submit written notice to the Authority within fourteen (14) days of occurrence of the following changes:

(a) the name and/or trading name of the Licensee;

- (b) contact details including the contact persons (e.g. telephone, fax, cell number and email);
  - (c) Principal place of business; and
  - (d) Postal address.
- (2) A notice submitted to the Authority in terms of sub-section (1), outside the prescribed 14 days, must be accompanied by a fee as may be determined by the Authority from time to time.
- (3) The name and\or trading name of the Licensee may not be changed to the extent that it may conflict or be confused with the name and \or trading name of another licensee."

#### **4. Amendment of regulation 5 of the Regulations**

- 4.1. Regulation 5 of the Regulation is hereby amended by the substitution for sub-regulation (4) of the following sub-regulation:

"(4) Where a Licensee fails to commence with operations in line with sub-regulation (1), or the extended period in with sub-regulation (2) and (3) this will constitute non-compliance and will be referred to the CCC to make a recommendation to the Authority for the cancellation of the licence."

#### **5. Amendment of regulation 8 of the Regulations**

- 5.1. Regulation 8 of the Regulations is hereby amended by the substitution for sub-regulation (4) of the following sub-regulation:

- “(4) In the event that the Licensee or its representative refuses or fails to provide the Authority with requested information in terms of sub-regulation (1), the Authority may, after three (3) attempts, refer the matter to the CCC.”

## **6. Amendment of regulation 12 of the Regulations**

- 6.1. Regulation 12 of Regulation is hereby amended by the substitution of sub-regulation 12(2) with the following sub-regulation:

“(2) Any person that contravenes any other regulation, not specified in sub regulation (1), except regulations 2 and 5, is liable to a fine not less than R10 000, 00 (Ten thousand Rand) but not exceeding R100 000, 00 (One hundred thousand Rand).”

- 6.2. Regulation 12 of the Regulations is hereby amended with the deletion of sub-regulation (4).

## **7. Short Title and Commencement**

These regulations are called the Third Amendment to the Standard Terms and Conditions for Individual Electronic Communications Network Services, 2022, and will come into operation by publication in the Government Gazette.

## **8. Substitution of Annexure B the Regulations**

The following Annexure is hereby substituted for Annexure B of the Regulations:

**"ANNEXURE B**  
**INDIVIDUAL ELECTRONIC COMMUNICATIONS NETWORK SERVICES**  
**LICENCES**



**INDIVIDUAL ELECTRONIC COMMUNICATIONS NETWORK SERVICES**  
**LICENCE**

**No. ....**

**GRANTED AND ISSUED**

**TO**

.....

**FOR THE PROVISION OF**

.....

**Effective from [Year:Month:Day]**

**SIGNED FOR AND ON BEHALF OF THE INDEPENDENT COMMUNICATIONS**  
**AUTHORITY OF SOUTH AFRICA**

**AT \_\_\_\_\_ ON THIS XX DAY OF MONTH 20XX**

\_\_\_\_\_  
**CHAIRPERSON**

## **PART 1**

### **1. LICENSEE**

The Licence is issued to:

1.1 Name of the Entity: .....

1.2 Shareholders: (where applicable): .....

1.3 Ownership held by persons from historically disadvantage groups:  
.....

### **2. LICENCE PERIOD**

2.1 The effective date of the licence is XX XXX 20XX.

2.2 The licence shall expire on XX XXX 20XX.

### **3. GENERAL LICENCE TERMS**

*(May vary, this is dependent on the Licence)*

## **PART 2**

### **4. TRADING NAME OF LICENSEE**

The Trading Name of the Licensee is: .....

### **5. CONTACT DETAILS**

5.1 The contact person for the Licensee shall be:

5.1.1 Name : .....

5.1.2 Tel : .....

5.1.3 Fax : .....

5.1.4 Cell : .....

5.1.5 Email : .....

### **6. NOTICES AND ADDRESSES**

6.1 The Licensee chooses the following as its principal addresses:

6.1.1 Principal place of business : .....

6.1.2 Postal address : ....."

### **SCHEDULE 3**

#### **CLASS ELECTRONIC COMMUNICATIONS SERVICE LICENCES**

##### **1. Definitions**

In these regulations "the Regulations" means the regulations published by Government Notice No. R.523 of 14 June 2010, as amended by Government Notices No. R.158 of 30 March 2016 and No. R. 699 of 26 October 2016.

##### **2. Amendment of regulation 1 of the Regulations**

- 2.1. Regulation 1 of the Regulations is hereby amended by the insertion of the following definition after the definition of "Act":

"**days**" means as defined in the Act;"

- 2.2. Regulation 1 of the Regulations is hereby amended with the substitution for the definition of "Effective Date" with the following definition:

"**Effective date**" means the date specified in the licence which may be a present or future date from the date of signature;"

##### **3. Substitution of regulation 2 of the Regulations**

- 3.1. The following regulation is hereby substituted for regulation 2 of the Regulations:

##### **"2. NOTIFICATION OF CHANGE IN LICENSEE DETAILS AND INFORMATION**

- (1) A Licensee must submit written notice to the Authority within fourteen (14) days of occurrence of the following changes:
  - (e) the name and/or trading name of the Licensee;
  - (f) contact details including the contact persons (e.g. telephone, fax, cell number and email);
  - (g) Principal place of business; and
  - (h) Postal address.
- (2) A notice submitted to the Authority in terms of sub-section (1), outside the prescribed 14 days, must be accompanied by a fee as may be determined by the Authority from time to time.
- (3) The name and/or trading name of the Licensee may not be changed to the extent that it may conflict or be confused with the name and/or trading name of another licensee."

#### **4. Amendment of regulation 5 of the Regulations**

- 4.1. Regulation 5 of the Regulation is hereby amended by the substitution for sub-regulation (1) of the following sub-regulation:

"(1) A Licensee must commence operation of the service specified in the licence within twenty-four (24) months from the effective date, unless the Authority grants, on good cause shown, an extended commencement period on written application."

- 4.2. Regulation 5 of the Regulation is hereby amended by the substitution for sub-regulation (4) of the following sub-regulation:

"(4) Where a Licensee fails to commence with operations in line with sub-regulation (1) or the extended period in line with sub-regulations (2) and (3), this will constitute non-compliance and will be referred to

the CCC to make a recommendation to the Authority for the cancellation of the licence.”

## **5. Amendment of regulation 8 of the Regulations**

5.1. Regulation 8 of the Regulations is hereby amended by the substitution for sub-regulation (4) of the following sub-regulation:

“(4) In the event that the Licensee or its representative refuses or fails to provide the Authority with requested information in terms of sub-regulation (1), the Authority may, after three (3) attempts, refer the matter to the CCC.”

## **6. Amendment of regulation 9 of the Regulations**

6.1. Regulation 9 of the Regulations is hereby amended by the substitution for sub-regulation (1) of the following sub-regulation:

“(1) A Licensee may not provide any service for a charge, fee or other compensation unless the price(s) and terms and conditions, which must include all fees (non-recurring, recurring, OOB rates and billing increments):

(a) have been made known to the end-user by:

(i) making such prices and terms and conditions available for inspection at the Licensee’s principal place of business and website during business hours; and

(ii) providing such details to anyone who requests same at no charge;

(b) have been filed with the Authority at least five (5) days prior to the provision of the said service in a format prescribed by the Authority and must include, amongst others:

- (i) The name of the new product/service, amendment or termination being notified to the Authority;
- (ii) The objective and reason(s) of launching a new product/service, amendment or termination of a product/service;
- (iii) The effective date of the new product/service, amendment or termination of a product/service; and
- (iv) The price(s), and all other fees applicable to the product/service.

6.2. Regulation 9 of the Regulations is hereby amended by the insertion of the of the following sub-regulation after sub-regulation 1:

“(1A) A Licensee must notify the Authority of the termination of an existing service(s) at least five (5) days prior to the termination of the said service in a format prescribed by the Authority and must include, amongst others:

- (i) The name of the product/service being terminated;
- (ii) The objective and reason(s) of termination of a product/service; and
- (iii) The effective date of termination of a product/service.”

## **7. Amendment of regulation 12 of the Regulations**

7.1. Regulation 12 of Regulation is hereby amended by the substitution of sub-regulation 12(2) with the following sub-regulation:

“(2) Any person that contravenes any other regulation, not specified in sub regulation (1), except regulations 2 and 5, is liable to a fine not less than R10 000, 00 (Ten thousand Rand) but not exceeding R100 000, 00 (One hundred thousand Rand).”

7.2. Regulation 12 of the Regulations is amended with the repeal of sub-regulation (4).

## **8. Short Title and Commencement**

These regulations are called the Third Amendment to the Standard Terms and Conditions for Individual Electronic Communications Services, 2022, and will come into operation by publication in the Government Gazette.

## **9. Substitution of Annexure C the Regulations**

The following Annexure is hereby substituted for Annexure C of the Regulations:

**"ANNEXURE C**

**INDIVIDUAL ELECTRONIC COMMUNICATIONS SERVICES LICENCES**



**INDIVIDUAL ELECTRONIC COMMUNICATIONS SERVICES LICENCE**

**No. ....**

**GRANTED AND ISSUED**

**TO**

**.....**

**FOR THE PROVISION OF**

**.....**

**Effective from [Year:Month:Day]**

**SIGNED FOR AND ON BEHALF OF THE INDEPENDENT COMMUNICATIONS  
AUTHORITY OF SOUTH AFRICA**

**AT \_\_\_\_\_ ON THIS XX DAY OF MONTH 20XX**

\_\_\_\_\_  
**CHAIRPERSON**

## **PART 1**

### **1. LICENSEE**

The Licence is issued to:

1.1 Name of the Entity: .....

1.2 Shareholders: (where applicable): .....

1.3 Ownership held by persons from historically disadvantage groups:  
.....

### **2. LICENCE PERIOD**

2.1 The effective date of the licence is XX XXX 20XX.

2.2 The licence shall expire on XX XXX 20XX.

### **3. GENERAL LICENCE TERMS**

*(May vary, this is dependent on the Licence)*

## **PART 2**

### **4. TRADING NAME OF LICENSEE**

The Trading Name of the Licensee is: .....

### **5. CONTACT DETAILS**

5.1 The contact person for the Licensee shall be:

5.1.1 Name : .....

5.1.2 Tel : .....

5.1.3 Fax : .....

5.1.4 Cell : .....

5.1.5 Email : .....

### **6. NOTICES AND ADDRESSES**

6.1 The Licensee chooses the following as its principal addresses:

6.1.1 Principal place of business : .....

6.1.2 Postal address : ....."



**Independent Communications Authority of South Africa**

350 Witch-Hazel Avenue, Eco Point Office Park  
Eco Park, Centurion.

Private Bag X10, Highveld Park 0169  
Telephone number: (012) 568 3000/1

**EXPLANATORY MEMORANDUM ON THE AMENDMENT OF THE STANDARD  
TERMS AND CONDITIONS REGULATIONS FOR INDIVIDUAL LICENCES,  
2010 AS AMENDED**

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**1. BACKGROUND AND CURRENT REGULATORY FRAMEWORK**

1.1 The Independent Communications Authority of South Africa ("the Authority") has, under section 8 read with section 4 of the Electronic Communications Act, 2005 (Act No. 36 of 2005) ("the ECA"), and section 17E(2)(b) of the ICASA Act, 2000 (Act No. 13 of 2000) decided to amend the Regulations regarding Standard Terms and Conditions for Individual Licences ("the Regulations") under Chapter 3 of the Electronic Communications Act, 2005 (No. 36 of 2005).

1.2 The purpose of the amendment is to:

1.2.1 provide clarity on the Authority's standard terms with respect to the Broadcasting, Electronic Communications and Electronic Communications Network Services for Individual Licences;

1.2.2 enhance compliance and streamline the submission of documents to the Authority.

## **SUMMARY OF THE DRAFT AMENDMENT REGULATIONS**

### **2. SCHEDULE 1: INDIVIDUAL BROADCASTING SERVICE LICENCES**

#### **2.1 Amendment of regulation 1 of the Regulations: Definitions**

The Authority hereby amends the definitions contained in the Regulations as follows:

- 2.1.1 The definition of **"days"** is inserted to mean as defined in the Act. This proposed amendment of the definition will be aligned with the definition of days as found in the ECA. There has been some misinterpretation of the term days as included in the Regulations. Therefore, the inclusion of the definition of days will provide more certainty to stakeholders.
- 2.1.2 The definition of **"Effective Date"** is amended to mean the date specified in the licence which may be a present or future date from the date of signature. The rationale for the amendment is to create a distinction between the effective date and the date of issue in that the effective date can and may be independent of the date of issue.
- 2.1.3 The definition of **"News"** is included to mean programming that is not current affairs by a broadcaster in which it reports on news events of immediate social, political or economic relevance and on matters of international, national and local significance;". The inclusion of the definition is premised on the fact that there has been confusion as to what constitutes news programming against what constitutes current affairs programming. This definition provides clarity and certainty on the term contained in the regulations.
- 2.1.4 The definition of **"Public Service Announcement"** is amended by the deletion of the words "imparting knowledge or...". This is largely due to various interpretations of what "imparting knowledge" may mean. Imparting knowledge was a displaced phrase to use in this context, as the intention of the Authority is to limit the meaning of Public Service Announcement to the communication of information concerning disaster in case there is a disaster or grave danger.

## **2.2 Amendment of regulation 2 of the Regulations: Notification of change in Licensee details and information**

Regulation 2 of the Regulations is hereby amended as follows:

- 2.2.1 Increasing the number of days in which Licensees should notify the Authority from seven (7) to fourteen (14) days in terms of sub-regulation (1), due to most Licensees failing to meet the seven (7) days submission requirement, and often requesting condonation for late submission. The Authority is of the view that one hundred percent increase is reasonable to ensure compliance.
- 2.2.2 Substitution of sub regulation (1)(a) "name of licensee" with "name and\ or trading name of Licensee". This is in order to avoid instances where the change in the name of a Licensee conflicts with the trading name of another Licensee. The Authority has observed instances where Licensees have changed their trading name to a name similar to that of another Licensee. The Authority believes that such conduct is likely to confuse existing Licensees and listeners especially where such changes are in the same region.
- 2.2.3 Repeal of sub-regulation (1)(c). It has been noted that the notification process is susceptible to abuse or being incorrectly applied to the extent that it alters or changes ownership. Through a notification the Authority is unable to sufficiently monitor and manage the change in shareholding specifically to the extent that it changes ownership and control over time. Any shareholding changes have the effect of changing the shareholding structure of that entity, and such changes may conflict with the objectives and mandate of the Authority as found in the ECA. Thus, the process of any changes in shareholding, will be subject to an approval by the Authority and will be guided and prescribed in terms of the Process and Procedure Regulations for individual licenses.

- 2.2.4 Substitution of "physical address" in terms of sub-regulation 1(d) with "principal place of business". The proposed amendment will ensure that the Regulations are aligned with section 5(8)(b) of the ECA.
- 2.2.5 Insertion of "postal address". This is to ensure adequate contact details for the Licensee.
- 2.2.6 Repeal of "financial year end" in terms of sub-regulation 1(e). The financial year end can always be requested through the provisions of regulation 9 of the Regulations.
- 2.2.7 Repeal of sub-regulation 2(1A). The sub-regulation, which was intended to enforce the threshold of 30% shareholding by Historically Disadvantaged Groups, is adequately covered by the requirements of the Regulations in respect of the Limitations of Control and Equity Ownership by Historically Disadvantaged Groups (HDG) Government Gazette No. 44382 as published on 31 March 2021 ("the HDG Regulations"). Sub-regulation 3(4) of the HDG Regulations clearly prescribes that the shareholding by HDG must not be below the 30% threshold.
- 2.2.8 The insertion of sub-regulation 2 has introduced a fee that will be applicable to notifications that are filed outside the prescribed time period of 14 days. The aim of the introduction of the fee seeks to deter licensees from submitting late notifications and to promote the integrity of the Authority's database and records. In order to give effect to the introduction of sub regulation 2, the Authority will in due course publish the applicable fee.
- 2.2.9 The insertion of sub regulation 3 "The name and\or trading name of the Licensee may not be changed to the extent that it may conflict or be confused with the name and \or trading name of another Licensee." This insertion is to curb instances where a Licensee, through a name change, assumes the identity of another Licensee. The basis for the amendment on restrictions in the change of the Licensee's name and\or trading name is as detailed in par. 2.2.2.

## **2.3 Amendment of regulation 5 of the Regulations: Commencement of operations**

2.3.1 The Authority amends regulation 5 of the Regulations with the following insertion after sub regulation 5(3) "(3A Where a licensee fails to adhere to the extension or commence with operations in line with sub regulation (1), this will constitute non-compliance and will be referred to the CCC to make a recommendation to the Authority for cancellation of the licence in terms of section 14 of the Act and section 17 E of the ICASA Act." This amendment seeks to:

2.3.1.1 create legal certainty as to the consequences which will follow failure to adhere to extensions or to commence operations within the prescribed time period; and

2.3.1.2 promote usage of the license once issued.

## **2.4 Amendment of regulation 6 of the Regulations: Hours of operations**

Regulation 6 of the Regulations is hereby amended as follows:

2.4.1 Amendment of sub-regulation 6(2) is as follows: "Where a Licensee cannot provide the licensed service due to circumstances beyond its control, for a continuous period of six (6) hours or longer, the Licensee must notify the Authority in writing of such circumstances within twenty-four (24) hours. The amendment effectively decreases the hours of non-operation from twelve hours (12) or longer to a minimum of six hours (6). The proposed amendment will ensure that Licensees notify the Authority prior to losing fifty percent of broadcasting hours during the performance period.

2.4.2 Insertion of sub-regulation (3) to read: "Wherein the Licensee cannot provide licensed services for a continuous period of more than seven (7) days, a request for exemption to comply with the licence terms and condition and applicable regulations should be submitted to the Authority within forty-eight (48) hours of the Licensee being aware of such an occurrence." The proposed insertion is intended to complement the proposed substitution of sub-regulation (2). Wherein sub-regulation (2)

addresses a licensee's break in broadcast within a 24-hour cycle, sub-regulation (3) addresses the instance where the break in broadcast persists for a much longer period. This in turn may affect the said Licensee's fulfilment of its requirements in terms of the Compliance Manual Regulations. The proposed insertion thus provides leeway for Licensees to request an exemption in such instances.

## **2.5 Amendment of regulation 9 of the Regulations: Provision of information**

2.5.1 Regulation 9 of the Regulations is hereby amended with the substitution of sub-regulation (5) as follows: "(5) In the event that the Licensee or its representative refuses or fails to provide the Authority with requested information in terms of sub-regulation (1), the Authority may, after three (3) attempts, refer the matter to the Complaints and Compliance Committee." The three attempts before a referral to the CCC will occur over a period of time as determined by the Authority. The phrase "reasonable attempt" is open to interpretation and does not provide clarity nor certainty on the duration or number of attempts that could or should be made to solicit the requested information that could amount to "reasonable attempt". The amendment seeks to assist the process by providing clarity on what is considered as "reasonable" while requesting for information from Licensees.

## **2.6 Amendment of regulation 11 of the Regulations: General obligations of Licensees**

2.6.1 Regulation 11 is hereby amended with the repeal of sub-regulation 11(2). The requirements of sub-regulation 11(2) are sufficiently incorporated in the ICASA Compliance Procedure Manual Regulations Government Gazette No. 34863 published on 15 December 2011.

## **2.7 Amendment of Regulations 14 of the Regulations: Contraventions and penalties**

- 2.7.1 The Authority amends sub-regulation 14(2) of the Regulations by the exclusion of regulation 2 from the penalty clause. This is as a result of the earlier insertion of sub regulation 2(2) wherein a fee for submissions that fall outside the prescribed period of 14 days will now apply.
- 2.7.2 The Authority has earlier stipulated the rationale for the introduction of the fee in par 2.2.8 wherein it argues that the fee in question seeks to promote timeous submissions of notifications for change in information.
- 2.7.3 The Authority amends regulation 14 of the Regulations with the repeal of sub-regulation (4). The provisions for the cancellation of a license where a Licensee does not commence with operation are encompassed in the provisions of sub-regulation 5(4).

## **2.8 Substitution of Annexure A of the Regulations**

- 2.8.1 Annexure A of the Regulations is hereby substituted in its entirety. The substitution seeks to simplify the licence template by separating the licence into 2 distinct parts namely, Part 1 and Part 2. Part 1 deals with information that the applicant is required to submit during the application process where applicable for the Authority's approval. Further, Part 1 seeks to clarify the duration of the licence. Part 2 deals with information that the licensee is required to lodge to the Authority in the form of a notification to update the changes as provided for in Part 2 of Annexure A of the draft Regulation.

### **3 SCHEDULE 2: INDIVIDUAL ELECTRONIC COMMUNICATIONS NETWORK SERVICES LICENCES**

#### **3.1 Amendment of regulation 1 of the Regulations: Definitions**

The Authority amends regulation 1 as follows:

3.1.1 The definition of “**days**” is inserted to mean as defined in the Act. This proposed amendment of the definition will be aligned with the definition of days as found in the ECA. There has been some misinterpretation of the term days as included in the Regulations. Therefore, the inclusion of the definition of days will provides more certainty to stakeholders.

3.1.2 The definition of “**Effective Date**” is amended to mean the date specified in the licence which may be a past, present or future date from the date of signature. The rationale is to create a distinction between the effective date and the date of issue in that the effective date can and may be independent of the date of issue.

#### **3.2 Amendment of regulation 2: Notification of change in Licensee details and information**

Regulation 2 of the Regulations is hereby amended as follows:

3.2.1 Increasing the number of days in which Licensees should notify the Authority from seven (7) to fourteen (14) days in terms of sub-regulation (1), due to most Licensees failing to meet the seven (7) days submission requirement, and often request condonation for late submission. The Authority is of the view that one hundred percent increase is reasonable to ensure compliance.

3.2.2 Substitution of sub regulation (1)(a) “name of licensee” with “name and\ or trading name of licensee”. This is in order to avoid instances where the change in the name of a Licensee conflicts with the trading name of another Licensee. The Authority has observed instances where Licensees have changed their trading name to a name similar to that of another Licensee. The Authority believes that such conduct is likely to confuse existing

Licensees and listeners especially where such changes are in the same region.

- 3.2.3 Repeal of sub-regulation (1)(c). It has been noted that the notification process is susceptible to abuse or incorrectly applied to the extent that it alters or changes ownership. Through a notification the Authority, is unable to sufficiently monitor and manage the change in shareholding specifically to the extent that it changes ownership and control over time. Any shareholding changes have the effect of changing the shareholding structure of that entity and such changes may conflict with the objectives and mandate of the Authority as found in the ECA. Thus, the process of any changes in shareholding will be subject to approval by the Authority and will be guided and prescribed in terms of the Process and Procedure Regulations for individual licenses.
- 3.2.4 Substitution of "physical address" in sub regulation 1(d) with "principal place of business". The proposed amendment will ensure that the Regulations are in line with section 5(8)(b) of the ECA.
- 3.2.5 Insertion of "postal address". This is to ensure adequate contact details for the Licensee.
- 3.2.6 Repeal of "financial year end" in terms of sub-regulation 1(e). The financial year end can always be requested through the provisions of regulation 9 of the Regulations.
- 3.2.7 Repeal of sub-regulation 2(1A). The sub-regulation, which was intended to enforce the threshold of 30% shareholding by Historically Disadvantaged Groups, is adequately covered by the requirements of the Regulations in respect of the Limitations of Control and Equity Ownership by Historically Disadvantaged Groups (HDG) Government Gazette No. 44382 as published on 31 March 2021 ("the HDG Regulations"). Sub-regulation 3(4) of the HDG Regulations clearly prescribes that the shareholding by HDG must not be below the 30% threshold.
- 3.2.8 The insertion of sub-regulation 2 has introduced a fee that will be applicable to notifications that are filed outside the prescribed time period of 14 days.

The aim of the introduction of the fee seeks to deter licensees from submitting late notifications and to promote the integrity of the Authority's database and records. In order to give effect to the introduction of sub-regulation 2, the Authority will in due course publish the applicable fee.

3.2.9 The insertion of sub-regulation 3 "The name and\or trading name of the licensee may not be changed to the extent that it may conflict or be confused with the name and \or trading name of another licensee.". This insertion is to curb instances where a licensee, through a name change, assumes the identity of another licensee. The basis for the amendment on restrictions in the change of the licensee's name and\or trading name is as detailed in par. 3.2.2.

3.2.10 Repeal of sub-regulation 2 (2). The processing of any changes in shareholding, will be subject to an approval by the Authority and will be guided and prescribed in terms of the Process and Procedure Regulations.

### **3.3 Amendment of regulation 5: Commencement of Operations**

3.3.1 The Authority amends regulation 5 of the Regulations with the following substitution of sub-regulation (4) "(4) Where a Licensee fails to adhere to the extension or commence with operations in line with sub-regulation (1), this will constitute non-compliance and will be referred to the CCC to make a recommendation to the Authority for the cancellation of Licence in terms of section 14 of the Act and section 17 E of the ICASA Act.". This amendment seeks to:

3.3.1.1 create legal certainty as to the consequences which will follow failure to adhere to extensions or to commence operations within the prescribed time period; and

3.3.1.2 promote usage of the licence once issued.

### **3.4 Amendment of regulation 8 of the Regulations: Provision of information**

3.4.1 Regulation 8 of the Regulations is hereby amended with the substitution of sub-regulation (4) as follows: "(4) In the event that the Licensee or its representative refuses or fails to provide the Authority with requested information in terms of sub-regulation (1), the Authority may, after three (3) attempts, refer the matter to the Complaints and Compliance Committee." The three attempts before a referral to the Complaints and Compliance Committee will occur over a period of time as determined by the Authority. The phrase "reasonable attempt" is open to interpretation and does not provide clarity nor certainty on the duration or number of attempts that could or should be made to solicit the requested information that could amount to "reasonable attempt". The amendment seeks to assist the process by providing clarity on what is considered as "reasonable" while requesting for information from Licensees.

### **3.5 Amendment of regulation 12: Contraventions and penalties**

- 3.5.1 The Authority amends sub-regulation 12(2) of the Regulations by the exclusion of regulation 2 from the penalty clause. This is as a result of the earlier insertion of sub regulation 2(2) wherein a fee for submissions that fall outside the prescribed period of 14 days will now apply.
- 3.5.2 The Authority has earlier stipulated the rationale for the introduction of the fee in par 3.2.8 wherein it argues that the fee in question seeks to promote timeous submissions of notifications for change in information.
- 3.5.3 The Authority amends regulation 12 of the Regulations with the repeal of sub-regulation (4). The provisions for the cancellation of a licence where a Licensee does not commence with operation are encompassed in the provisions of sub-regulation 5(4).

### **3.6 Substitution of Annexure B of the Regulations**

3.6.1 Annexure B of the Regulations is hereby substituted in its entirety. The substitution seeks to simplify the licence template by separating the licence into 2 distinct parts namely, Part 1 and Part 2. Part 1 deals with information that the applicant is required to submit during the application process where applicable for the Authority's approval. Further, Part 1 seeks to clarify the duration of the licence. Part 2 deals with information that the licensee is required to lodge to the Authority in the form of a notification to update the changes as provided for in Part 2 of Annexure B of the draft Regulation.

## **4 SCHEDULE 3: INDIVIDUAL ELECTRONIC COMMUNICATIONS SERVICE LICENCES**

### **4.1 Amendment of regulation 1 of the Regulations: Definitions**

The Authority amends regulation 1 as follows:

4.1.1 The definition of "**days**" is inserted to mean as defined in the Act. This proposed amendment of the definition will be aligned with the definition of days as found in the ECA. There has been some misinterpretation of the term days as included in the Regulations. Therefore, the inclusion of the definition of days will provides more certainty to stakeholders.

4.1.2 The definition of "**Effective Date**" is amended to mean the date specified in the licence which may be a past, present or future date from the date of signature. The rationale is to create a distinction between the effective date and the date of issue in that the effective date can and may be independent of the date of issue.

### **4.2 Amendment of regulation 2: Notification of change in Licensee details and information**

Regulation 2 of the Regulations is hereby amended as follows:

4.2.1 Increasing the number of days in which Licensees should notify the Authority from seven to fourteen days in terms of sub-regulation (1), due to most Licensees failing to meet the seven days submission requirement, and often request condonation for late submission. The Authority is of the view that one hundred percent increase is reasonable to ensure compliance.

4.2.2 Substitution of sub-regulation (1)(a) "name of licensee" with "name and\ or \ trading name of licensee". This in order to avoid instances where the change in the name of a licensee conflicts with the trading name of another licensee. The Authority has observed instances where licensees have changed their trading name to a name similar to that of another licensee. The Authority believes that such conduct is likely

to confuse existing licensees and listeners especially where such changes are in the same region.

- 4.2.3 Repeal of sub-regulation (1)(c). It has been noted that the notification process is susceptible to abuse or incorrectly applied to the extent that it alters or changes ownership. Through a notification, the Authority is unable to sufficiently monitor and manage the change in shareholding specifically to the extent that it changes ownership and control over time. Any shareholding changes have the effect of changing the shareholding structure of that entity, and such changes may conflict with the objectives and mandate of the Authority as prescribed in the ECA. Thus, the process of any changes in shareholding will be subject to an approval by the Authority and will be guided and prescribed in terms of the Process and Procedure Regulations for individual licenses.
- 4.2.4 Substitution of "physical address" in sub-regulation 1(d) with "principal place of business". The proposed amendment will ensure that the Regulations are in line with section 5(8)(b) of the ECA.
- 4.2.5 Insertion of "postal address". This is to ensure adequate contact details for the Licensee.
- 4.2.6 Repeal of "financial year end" in terms of sub-regulation 1(e). The financial year end can always be requested through the provisions of regulation 9 of the Regulations.
- 4.2.7 Repeal of sub-regulation 2(1A). The sub-regulation, which was intended to enforce the threshold of 30% shareholding by Historically Disadvantaged Groups, is adequately covered by the requirements of the Regulations in respect of the Limitations of Control and Equity Ownership by Historically Disadvantaged Groups (HDG) Government Gazette No. 44382 as published on 31 March 2021 ("the HDG Regulations"). Sub-regulation 3(4) of the HDG Regulations clearly prescribes that the shareholding by HDG must not be below the 30% threshold.
- 4.2.8 The insertion of sub-regulation 2 has introduced a fee that will be applicable to notifications that are filed outside the prescribed time period of fourteen

(14) days. The aim of the introduction of the fee seeks to deter licensees from submitting late notifications and to promote the integrity of the Authority's database and records. In order to give effect to the introduction of sub regulation 2, the Authority will in due course publish the applicable fee.

4.2.9 The insertion of sub-regulation 3 "The name and/or trading name of the licensee may not be changed to the extent that it may conflict or be confused with the name and/or trading name of another licensee." This insertion is to curb instances where a licensee, through a name change, assumes the identity of another licensee. The basis for the amendment on restrictions in the change of the licensee's name and/or trading name is as detailed in par. 4.2.2.

4.2.10 Repeal of sub-regulation 2 (2). The processing of any changes in shareholding, will be subject to an approval by the Authority and will be guided and prescribed in terms of the Process and Procedure Regulations

### **4.3 Amendment of regulation 5: Commencement of Operations**

4.3.1 The Authority amends regulation 5 of the Regulations with the substitution of sub-regulation (1) "(1) Licensee must commence operation of the service specified in the Licence within twenty-four (24) months from the effective date, unless the Authority grants, on good cause shown, an extended commencement period on written application. The amendment seeks to align the commencement period of an individual ECS licence with that of the commencement period of an individual ECNS licence, as per schedule 2 (regulation 5), considering that in most instances the two licences are interdependent. Furthermore, in terms of sub-regulation 5(3), an extension may only be granted once for a period not exceeding the initial period of 24 months.

4.3.2 The Authority amends regulation 5 of the Regulations with the substitution of sub-regulation (4) "(4) Where a Licensee fails to adhere to the extension or commence with operations in line with sub-regulation (1), this will constitute non-compliance and will be referred to the CCC to make a recommendation to the Authority for cancellation of the licence in terms of

section 14 of the Act and section 17 E of the ICASA Act.". This amendment seeks to:

- 4.3.2.1 create legal certainty in regard to the consequences which will follow failure to adhere to extensions or to commence operations within the prescribed period; and
- 4.3.2.2 promote usage of the licence once issued.

#### **4.4 Amendment of regulation 8 of the Regulations: Provision of information**

4.4.1 Regulation 8 of the Regulations is hereby amended with the substitution of sub-regulation (4) as follows: "(4) In the event that the Licensee or its representative refuses or fails to provide the Authority with requested information in terms of sub-regulation (1), the Authority may, after three (3) attempts, refer the matter to the Complaints and Compliance Committee.". The three attempts before a referral to the Complaints and Compliance Committee will occur over a period of time as determined by the Authority. The phrase "reasonable attempt" is open to interpretation and does not provide clarity nor certainty on the duration or number of attempts that could or should be made to solicit the requested information that could amount to "reasonable attempt". The amendment seeks to assist the process by providing clarity on what is considered as "reasonable" while requesting for information from Licensees.

#### **4.5 Amendment of regulation 9 of the Regulations: Publication of tariffs and fees**

4.5.1 Regulation 9 of the Regulations is amended by substitution of sub-regulation (1) wherein the following amendments have been made:

- 4.5.1.1 the inclusion of "website" as a platform wherein the prices and terms and conditions must be available for end users. This is because it has become easier for consumers to access such information through the Internet rather than visiting the

physical premises of the business only during business hours. The Authority has also noted with concern that Licensees often do not update the prices and terms and conditions of new or amended services on their websites. By incorporating this aspect, it is intended that Licensees will be mandated to update such information on their websites.

4.5.1.2 the reduction of the filing timeline from seven (7) days to five (5) days. Stakeholders have in the past argued for the reduction of the number of days due to the appetite of operators to launch products much sooner than seven (7) days. A modest timeline of five (5) days is thus proposed in the Regulations. The proposed five (5) days is in response to the industry requirements and needs whilst also still allowing time and space for the Authority to exercise its due diligence.

4.5.1.3 expanding on the format for filing submissions by detailing the minimum information that must be contained in the filings made by Licensees. Such information is already in some respects included in the filings; this amendment seeks to standardize the minimum information for filing.

4.5.2 Regulation 9 of the Regulations is amended with the insertion of sub-regulation 9(1A). The amendment addresses the termination of existing products\services. This additional filing will assist with eliminating information asymmetries and further, ensure that the Authority's records/database is updated accordingly.

#### **4.6 Amendment of regulation 12: Contraventions and penalties**

4.6.1 The Authority amends sub regulation 12(2) of the Regulations by the exclusion of regulation 2 from the penalty clause. This is as a result of the earlier insertion of sub regulation 2(2) wherein a fee for submissions that fall outside the prescribed period of fourteen (14) days will now apply.

4.6.2 The Authority has earlier stipulated the rationale for the introduction of the fee in par 4.2.8 wherein it argues that the fee in question seeks to promote timeous submissions of notifications for change in information.

4.6.3 The Authority amends regulation 12 of the Regulations with the repeal of sub regulation (4). The provisions for the cancellation of a license where a Licensee does not commence with operation are encompassed in the provisions of sub regulation 5(4).

#### **4.7 Substitution of Annexure C of the Regulations**

4.7.1 Annexure C of the Regulations is hereby substituted in its entirety. The substitution seeks to simplify the licence template by separating the licence into 2 distinct parts namely, Part 1 and Part 2. Part 1 deals with information that the applicant is required to submit during the application process where applicable for the Authority's approval. Further, Part 1 seeks to clarify the duration of the licence. Part 2 deals with information that the licensee is required to lodge to the Authority in the form of a notification to update the changes as provided for in Part 2 of Annexure C of the draft Regulation.