



**communications  
& digital technologies**

**Department:  
Communications & Digital Technologies  
REPUBLIC OF SOUTH AFRICA**

## **MEMORANDUM OF UNDERSTANDING (“MOU”)**

**ENQUIRIES:**

**NAME & SURNAME: ADV SYBIL LYONS-GROOTBOOM**

**TITLE: ADDG: ADMINISTRATION**

**EXTENSION:**



**communications  
& digital technologies**

Department:  
Communications & Digital Technologies  
REPUBLIC OF SOUTH AFRICA

## **MEMORANDUM OF UNDERSTANDING ("MOU")**

Entered into between

**THE MINISTRY AND DEPARTMENT OF COMMUNICATIONS AND  
DIGITAL TECHNOLOGIES**

**("CDT ")**

herein duly represented by **Ms Stella Tembisa Ndabeni-Abrahams**, in her  
capacity as **Minister of Communications and Digital Technologies**

and

**THE MINISTRY OF COOPERATIVE GOVERNANCE AND TRADITIONAL  
AFFAIRS**

**("COGTA")**

herein duly represented by **Dr Nkosazana Dlamini-Zuma**,

in her capacity as **Minister of Cooperative Governance and Traditional Affairs**

**PREAMBLE**

**WHEREAS** the Minister of Cooperative Governance and Traditional Affairs, designated under Section 3 of the Disaster Management Act, 2002 (the Act), declared a national state of disaster, published in Government Gazette No. 43096 on 15 March 2020, in terms of Section 27(2) of the Act, after consulting the relevant Cabinet members, and made Regulations regarding the steps necessary to prevent an escalation of the disaster or to alleviate, contain and minimise the effects of the disaster;

**AND WHEREAS** the Minister of Communications and Digital Technologies issued Directions under regulation 10(8) read with regulation 11B(7) of the Regulations made under the Disaster Management Act, 2002 (Act No. 57 of 2002) (Government Notice No. 318 published in Government Gazette No. 43107 of 18 March 2020), the Electronic Communications, Postal and Broadcasting Directions published in the Government Gazette on 26 March 2020 (Government Gazette 43164, Government Notice No. 417), which Directions were amended by the Electronic Communications, Postal and Broadcasting Amendment Directions published in the Government Gazette on 6 April 2020 (Government Gazette 43209, Government Notice No. 451);

**AND WHEREAS** the Directions provide for measures to enable the rapid deployment of electronic communications networks and facilities in identified areas and for the purpose of easing network upgrades related to the COVID-19 disaster.

**NOW THEREFORE** the Parties agree as follows:

## 1. INTERPRETATION

In this MoU –

“**DCOG**” means the Department of Cooperative Governance;

“**DCDT**” means the Department of Communications and Digital Technologies;

“**Directions**” means directions issued by the Minister of Communications and Digital Technologies under regulation 10(8) read with regulation 11B (7) of the Regulations made under the Act;

“**MoU**” means the Memorandum of Understanding;

“**Parties**” means COGTA and the DCDT respectively and “**Party**” shall have a corresponding meaning; and

“**rapid deployment of electronic communications facilities**” means the expedited process of granting approval to gain access to and using property for the deployment of electronic communications networks and facilities.

## **2. INTRODUCTION**

- 2.1** The Directions were issued pursuant to regulation 10(8) of the Regulations issued under the Regulations to provide for measures necessary to manage COVID-19, and are valid for the duration of the declared national state of disaster. The Directions seek to provide for the availability and use of technologies to combat COVID-19 including communications infrastructure.
- 2.2** The purpose of the Directions is to facilitate the availability and use of digital technologies to combat the spread of COVID-19 in South Africa, through amongst other things -
  - 2.2.1** ensuring the smooth operation of the electronic communications industry (telecommunications infrastructure and services) as essential services during the disaster period;
  - 2.2.2** enabling electronic communications service licensees and other service providers to rapidly deploy networks and facilities as contemplated in the Electronic Communications Act, thus increasing the demand and usage of electronic communications services; and
  - 2.2.3** removing obstacles associated with the rapid deployment of electronic communications services.
- 2.3** The Directions, in paragraphs 6.2 to 6.8 thereof set out the obligations on electronic communications network service providers as follows:
  - 2.3.1** Service Provider of electronic communications networks or services must, when requested to do so, rapidly deploy temporary electronic communications networks and services in areas identified after consulting with the relevant Ministers;
  - 2.3.2** For the purposes of easing network upgrades related to the COVID-19 disaster, a licensed entity may seek approval to deploy infrastructure without delay, in which case the Minister will engage with the affected Ministers to secure concurrence to allow industry to deploy without delay;
  - 2.3.3** Ministerial interventions in this regard may include temporary deferment of wayleaves and the payment of fees following agreement between relevant parties;

- 2.3.4 No access fee may be charged by property owners to electronic communications network service licensees for deploying electronic communications networks or facilities in cases where the electronic communications networks or facilities are not intrusive, such as buried or overhead cabling, and does not constitute a cost to the property owner, or deprive the property owner of its own use of the land;
- 2.3.5 Reasonable access fees may be charged in cases where more intrusive electronic communications networks or facilities, such as masts, are erected on property. In such cases any access fee must be reasonable in proportion to the disadvantage suffered and must not enrich the property owner or exploit the electronic communications network service licensee;
- 2.3.6 All licensees will be required to submit reports during the period of the disaster of new infrastructure and network facilities to be installed in response to the COVID-19 disaster to the Authority; and
- 2.3.7 The Authority must keep a register of all infrastructure and network facilities.
- 2.4 The Directions further include a role for state-owned entities such as Broadband Infraco, Sentech, Transnet, Eskom, Prasa and Sanral and provide that all fibre owning state owned companies must make their excess capacities available for the connection of key government installations including essential services in local government and SMMEs to ensure business continuity during COVID19 disaster. SITA must ensure that government departments are able to function remotely.

### **3. PURPOSE**

The purpose of the MOU is to facilitate the temporary rapid deployment of electronic communications networks and facilities through:

- 3.1 the promotion of harmonised standards relating to processes, timeframes and costs applicable to approvals during the period of the national disaster, subject to negotiations between the affected role-players and the subsequent approval of the executive authority or delegated body of the respective municipalities; and
- 3.2 a coordinated effort to remove obstacles impeding the rapid deployment.

#### **4. COMPETENT AUTHORITY**

The competent authorities responsible for the implementation of this MoU are—

- 4.1 for the Ministry of Cooperative Governance and Traditional Affairs, the Director-General of the Department of Cooperative Governance; and
- 4.2 for the Ministry of Communications and Digital Technologies, the Director-General of the Department Communications and Digital Technologies.

#### **5. COMMENCEMENT AND DURATION**

The MoU commence on date of last signature thereof and will remain in force for the period of national disaster, including a period of 30 days thereafter for the purpose of rehabilitating damaged infrastructure only.

#### **6. OBLIGATIONS OF PARTIES**

##### **6.1 Obligations of DCDT**

- 6.1.1 The Director-General of the DCDT must, before requesting an electronic communications network service licensee to rapidly deploy temporary electronic communications networks or facilities and provide services in areas identified as contemplated in paragraph 6.2 of the Directions, inform the Director-General: DCOG of the requirement for rapid deployment.
- 6.1.2 The Director-General of the DCDT must, when requested by an electronic communications network service licensee to rapidly deploy temporary electronic communications networks or facilities and provide services as contemplated in paragraph 6.3 of the Directions, inform the Director-General: DCOG of the requirement for rapid deployment.
- 6.1.3 The request to the Director-General: DCOG, must indicate whether the electronic communications network or facility is temporary for the disaster period, and will be removed thereafter, or whether the electronic communications network or facility will be used during and after the disaster period.
- 6.1.4 Where an electronic communications network service licensee indicates that the electronic communications network or facility must continue to be

used after the disaster period, negotiations with the relevant municipality must be entered into with regards to fees payable, which may include

payment in kind such as the provision of fibre capacity for the consumption of the relevant municipality.

- 6.1.5 DCOG must be provided with the relevant area, particulars of the required network or facility deployment and purpose of deployment that must be for alleviating, containing and minimising the effects of the national disaster.

## **6.2 Obligations of DCOG**

- 6.2.1 Upon receipt of a request for rapid deployment of temporary electronic communications network or facilities, the Director-General: DCOG will consult relevant municipalities affected by the request.

- 6.2.2 DCOG undertakes to seek agreement from municipalities for the rapid deployment request as follows:

- 6.2.2.1 DCOG must request the relevant municipality to consider deferment of wayleave requirements and fees until after the disaster period

- 6.2.3 DCOG must, for the duration of the national disaster, facilitate discussion between municipalities, the DCDT and the relevant electronic communications network service licensee if necessary, to reach agreement between relevant parties as contemplated in the Directions.

## **7. FINANCIAL ARRANGEMENTS**

- 7.1 There are no financial or resource commitments created by this MOU.
- 7.2 Each Party shall be responsible for its own administrative costs incurred in the execution of its duties in terms of this MOU.

## **8. DISPUTE RESOLUTION**

- 8.1 Any dispute between the Parties arising out of the interpretation, application or implementation of the provisions of this MoU shall be settled amicably through consultation and negotiations between the Parties.

- 8.2 If the dispute is not capable of being settled through negotiation between the Parties, such dispute shall be referred to the Directors-General of DCDT and DCOG, the relevant Municipal Manager and the Chief Executive Officer of the electronic communications network service licensee, for mediation.
- 8.3 It is agreed that should the dispute, despite having been referred for mediation, remain unresolved for a period of 30 (thirty) days after being so referred, that same shall be resolved in terms of the Intergovernmental Framework Act, 2005 (Act No.13 of 2005).

## 9. DOMICILIUM CITANDI ET EXECUTANDI

- 9.1 The Parties hereby choose as their *domicilia citandi et executandi* for all purposes under this Memorandum of Understanding, notices or any other documents or communications of whatever nature the addresses as set out below:

### 9.2 The DCDT:

iParioli Office Park  
1166 Park Street Hatfield, Pretoria  
Contact Person: Mr T Ngobeni  
Telephone number: 012 427 858  
Email: [tnogbeni@dtps.gov.za](mailto:tnogbeni@dtps.gov.za)

### 9.3 The DCOG:

87 Hamilton Street,  
Arcadia, Pretoria  
Contact Person: Dan Metlana Mashitisho  
Telephone number:  
Email:

## 10. GOVERNING LAW

- 10.1 This Memorandum of Understanding shall be governed by South African Law.
- 10.2 The Parties shall use all reasonable efforts to resolve any dispute that may arise under this Memorandum of Understanding through good faith negotiations.
- 10.3 In the event that the dispute remains unresolved, the matter shall be dealt with in accordance with intergovernmental dispute resolution mechanism.



**11. GENERAL PROVISIONS**

- 11.1 This Memorandum of Understanding constitutes the entire Agreement and understanding between the Parties, who acknowledge that they have entered into this MoU not relying on any representations, statements, warranties or guarantees not recorded in this Memorandum of Understanding.
- 11.2 No amendments of, or additions to or variation or cancellation of this MoU shall be of any force or effect unless reduced to writing and signed by both Parties hereto.
- 11.3 No provision of this MoU will give rise to a right on the part of any person, entity or organ of state other than the Parties, directly or indirectly, to obtain any information or to challenge the execution of a request for information under this MoU.

**12. IN WITNESS WHEREOF** the undersigned Parties approve the terms and conditions of this Memorandum of Understanding.

Signed at ..... on the ..... day of ..... 2020.

On behalf of **Ministry of CDT**

Name: **Ms Stella Tembisa Ndabeni-Abrahams**

Title: **Minister of Communications and Digital Technologies**

Signature:  \_\_\_\_\_

Witnesses

1:  \_\_\_\_\_

2: \_\_\_\_\_

Signed at ..... on the ..... day of ..... 2020.

On behalf of Ministry of **COGTA**

Name: **Dr Nkosazana Dlamini-Zuma,**

Title: **Minister of Cooperative Governance and Traditional Affairs**

Signature:                     *NC Zuma*                    

Witnesses

1:                     *[Signature]*                      
2:                     *[Signature]*                    

On behalf of the Department of Communication and Digital Technologies

Name: **Mr Omega Shelembe**

Title: **Acting Director-General**

Signature:                     *[Signature]*                    

Witnesses

1:                     *[Signature]*                      
2:                     *[Signature]*                    

On behalf of the Department of Cooperative Governance

Name: **Ms Avril Williamson**

Title: **Director-General**

Signature:                     *[Signature]*

