TERMS OF REFERENCE FOR THE ESTABLISHMENT OF THE INFORMATION AND COMMUNICATIONS TECHNOLOGY B-BBEE SECTOR CHARTER COUNCIL

1. PREAMBLE

Recognizing the Constitution of the Republic of South Africa Act 108 of 1996 inter alia, section 9 on equality and unfair discrimination in the Bill of Rights states the imperative of redressing historical and social inequalities;

Further recognizing that the Broad Based Black Economic Empowerment (B-BBEE) Amendment Act of 2014 seeks to promote the achievement of the right to equality, increase broad based and effective participation of Black people in the economy and promote equal opportunity and equal access to government services; and the accompanying amended B-BBEE Generic Code of Good Practice including necessary score card and the empowerment elements contained therein;

Also considering the Electronic Communications Amendment Act No. 1 of 2014, seeks to promote the empowerment of Black people, with particular reference to women, youth and people with disabilities; and to promote SMMEs in the ICT sector.

In order to address certain inequalities in the Information Communication Technology (ICT) sector as identified by government in terms of the Codes of Good Practice as being of national strategic importance. Stakeholders made up of the industry associations, NEDLAC Community constituency and the DTPS signed and adopted the ICT Sector Code.

Furthermore, taking into account that the B-BBEE Amendment Act No. 53 of 2003 states that enterprises that operate in sectors where there is a sector code of good practice may only be measured in accordance with that code and in addition report annually to the sector council established for that sector.

Now, therefore there is a need to monitor the signed and adopted B-BBEE ICT Sector Code for effective and efficient implementation.

2. THE PURPOSE OF THE ESTABLISHMENT OF THE ICT SECTOR CHARTER COUNCIL

2.1. An ICT Sector Charter Council guided by the legislations and policy instruments stated in the preamble, shall be established to perform the following: including, but not exclusively the following functions:

2.1.1. oversee the implementation of the ICT B-BBEE Sector Code by the ICT sector;

2.1.2. and monitor compliance with the ICT Sector Code;

2.1.3. Maintain a database of recorded details of members of applicant membership registered with the council.

2.1.4. provision of guidance on matters relating to black economic empowerment in the ICT sector;

2.1.5. compilation of reports on the status of black economic empowerment in the ICT sector;

2.1.6. sharing of information with approved accreditation agencies conducting black economic empowerment ratings in the ICT sector;

2.1.7. as and when in its opinion the circumstances so require, appoint a committee of experts, with a view to assist the Council in the exercise and performance of its functions and duties;

2.1.8. engage and advise, the sector Ministers, ICASA and other relevant regulatory entities regarding the ICT Sector Code;

2.1.9. developing mechanisms and strategies to monitor compliance with the ICT Sector Code;

2.1.10. developing a strategy for consultation with provincial and local stakeholders;

2.1.11. formulating guidelines for the allocation of procurement opportunities for Provincial and local B-BBEE companies in the various regions;

2.1.12. developing a practical manual, with examples, as well as implementing an interactive portal to communicate the basic methods of applying the B-BBEE score card;

2.1.13. Develop baseline indicators for all the different elements of B-BBEE;

2.1.14. conducting or commissioning research for the purposes of ensuring the effective implementation of the ICT Sector Code;

2.1.15. reporting to Government and the B-BBEE Advisory Council on the implementation of the ICT Sector Code for the ICT sector;

2.1.16. shall have the final word in consultation with the Minister of Telecommunications and Postal Services regarding all membership applications, suspensions and terminations;

2.1.17. advising on the amendments of the ICT Sector Code

3. NAME OF THE COUNCIL

The name of the Council shall be called the ICT Sector Charter Council.

4. THE COMPOSITION OF THE COUNCIL

4.1. The size of the ICT Sector Charter Council shall consist of no less than fourteen (14) members and no more than sixteen (16) members.

4.2. Upon appointment the members of the Council shall adopt a constitution informed by the B-BBEE Act No. 53 of 2003 and the ICT Sector and the Generic Codes of Good Practice.

4.3. The members shall be appointed by the Minister of Telecommunications and Postal Services who has jurisdiction over the ICT sector. The Council has an obligation in terms of section 5.4.3 of the Codes of Good Practice to report to the Minister.

4.4. The appointed Council shall in consultation with the Minister of Telecommunications and Postal Services determine the model that will ensure execution of the administrative function of the Council, as well as the model for funding such functions.

4.5. The composition of the ICT Charter Council shall consist of the following proposed members:

4.5.1. 2 members each from the four ICT sub-sectors namely, the Broadcasting, Electronics, Information Technology and Telecommunications;
4.5.2. 2 members from relevant Government Departments that interface with the ICT sector;
4.5.3. 2 members from organized Labour Federation or Trade Unions
4.5.4. 1 member from NEDLAC Community constituency;
4.5.5. 1 member from ICASA;
4.5.6. 2 members from women and/or youth and the persons with disability participating in the ICT sector.

4.6. For the members to be appointed he/she must possess suitable qualifications, expertise and knowledge of the principles of B-BBEE and of the ICT Sector.

4.7. The term of office of the Councilors shall be four (4) years with an option of renewal.

5. DISQUALIFICATION OF COUNCILORS

5.1 A person may not be appointed or continue as a council member if such person:

5.1.1 Is not a citizen of the Republic;
5.1.2 Is not a permanent resident in the Republic;
5.1.3 Is an un-rehabilitated insolvent person; or
5.1.4 Has been declared by a court to be mentally unfit; or

5.1.5 Has at anytime been convicted, of a crime by court of justice within the jurisdiction of the Republic of South Africa;

5.1.6 A person who is subject to a disqualification contemplated in clause 5.1.2 to 5.1.4 may be nominated for appointment as a council member, however may only be appointed if at the time of such an Appointment he or she is no longer subject to the disqualification criteria.

6. GOVERNING PRINCIPLES

6.1 The Council shall be guided by the following basic principles:

6.1.1 Transparency- the Council must operate in a way that enables stakeholders to be well informed about the key decisions and actions of the Council.

6.1.2 Fairness- providing service impartially, fairly, equitably and without bias.

6.1.3 Good Corporate Governance- in regard to laying solid foundations for management and oversight, ensuring a Council that adds value, promotes ethical and responsible decision-making, safeguard integrity in financial reporting, makes timely and balanced disclosure, respects the rights of stakeholders, recognize and manage risks, and remunerates fairly and responsibly

6.1.4 Consultation and Inclusivity- to ensure that stakeholders are consulted and are given opportunity to participate on key decisions of the Council.

7. ANNUAL REPORTS

7.1 The Council shall submit annual reports through its Executive Officer to the Ministry of Telecommunications & Postal Services and **the dti** to the B-BBEE Advisory Council.

7.2 Before the Executive Officer submits annual reports of the Council to the Ministry of Telecommunications & Postal Services, **the dti** and B-BBEE Advisory Council,

such report must be tabled by the Chief Executive Officer before the Council and thereafter tabled before the Annual General Meeting which shall consist of the recognized members.

7.3 Membership fees increment shall be recommended by the Council and subject to the approval of the Annual General Meeting.

7.4 The Minister shall table a copy of such annual report in Parliament for noting.

7.5 The annual report of the Council shall include, but not excluding the following:

7.5.1 Report on the work of the Council including its meetings held in terms of its Constitution.

7.5.2 Programmes and activities as determined and adopted by the Council.

7.5.3 Report on the initiatives undertaken by enterprises within the sector;

7.5.4 Provide any relevant information which would be useful in assessing the state of B-BBEE in the ICT Sector; and

7.5.5 Audited financial report by the independent qualified and admitted auditor.

8. CONFLICT OF INTEREST

8.1 Should a member of the Council have a personal or financial interests in any proposed or discussed matter or meeting by the Council, such Councilor shall immediately disclose fully the nature of his or her interest, disclose such interest and withdraw his or her participation in such meeting in order to ensure that the decisions of the Council are taken in fair, unbiased and proper manner.

8.2 If the Councilor fails to declare his or her interest in the matter or decision taken by the Council, such decision of the Council will be null and void and such Councilor must be subjected to disciplinary actions.

9. THE CONSTITUTION OF THE COUNCIL, CODE OF ETHICS AND CODE OF CONDUCT

9.1 The Council shall draft and adopt its Constitution, Code of Ethics and Code of Conduct.

9.2 Members shall have to subscribe to the Constitution of the Council, Code of Ethics and Code of Conduct.

9.3 The Council shall enforce the rules and procedures of the Constitution of the Council, Code of Ethics and Code of Conduct on all members and officials of the Council and to institute disciplinary actions in all cases where the legal provisions of these instruments are breached.

9.4 The Constitution of the Council, Code of Ethics and Code of Conduct shall include operational rules and procedures for decision making, selection procedures and criteria for members, member's commitments and obligations, procedures of terminating, suspending members etc.

10. MEETINGS OF COUNCIL

10.1 The meetings of the Council shall be called by the Chairperson of the Council.

10. 2 All the Councilors shall have the right to vote in meetings.

10.3 The majority decision of the Council shall be by two thirds of the Councilors.

10.4 The Council shall conduct an annual general meeting once every year and invitation should be extended to its members.

11. FUNDING OF THE COUNCIL

11.1 The Department of Telecommunications and Postal Services shall fund the initial costs of setting up the Council for a period not longer than two years

following its establishment. The Departmental funding as indicated in paragraph 11.1 shall be discontinued when the Council's constitution takes effect.

11.2 The financial year of the Council shall be the period commencing on the 1st of April each year and ending on the 31st of March or such other period the Council may determine.

11.3 The Council may generate revenue through transfers from government, donations, and membership fees.

11.4 The Council will maintain an account and keep the books on the use of its resources such as assets, funds, and electronic systems.

12. RECRUITMENT AND REMUNERATION OF THE COUNCIL

12.1 The Council shall establish the secretariat of the Council headed by the Chief Executive Officer (CEO) and shall include staff.

12.2 The Secretariat of the Council shall report to the Council via the Chairperson.

12.3 The Secretariat performs strategic and secretariat support functions to the Council including keeping the minutes of meetings of the council and all committees of the Council.

12.4 The CEO shall ensure that copies of the resolution of the council shall be sent to all members of the Council as soon as those decisions have been recorded and approved.

12.5 The recruitment process to establish the Council's secretariat shall be developed by the Council and adopted as policy in terms of the Constitution.

12.6 The Council may pay to the persons it employs such remuneration and allowances and provide them with such pension and other employment benefits as are consistent with those paid in the public sector.

12.7 The Councilors shall be remunerated in accordance to Treasury Regulations.