

THE BILATERAL AGREEMENT

BETWEEN

**SOUTHERN AFRICAN DEVELOPMENT COMMUNITY
VSAT NETWORK (“SADC VSAT”) STATES ON THE
ONE HAND**

AND

**AIR TRAFFIC AND NAVIGATION SERVICES OF
SOUTH AFRICA STATE OWNED COMPANY LIMITED
(ATNS)**

AND

**INTERNATIONAL AIR TRANSPORT ASSOCIATION
 (“IATA”) ON THE OTHER**

CONCERNING

THE PROVISION OF THE SADC VSAT NETWORK

TABLE OF CONTENT

1	PARTIES	3
2	INTERPRETATION	3
3	AGREEMENT DOCUMENTS	6
4	SCOPE OF AGREEMENT.....	7
5	REGULATORY CONDITIONS	7
6	LIFE EXTENSION OF NETWORK.....	8
7	SERVICES TO BE PROVIDED	8
8	TRAINING PROGRAMME	9
9	MAINTENANCE MODEL	10
10	RESPONSIBILITIES.....	10
11	IMPLEMENTATION, MIGRATION AND ACCEPTANCE TESTS	16
12	COST RECOVERY MECHANISM.....	19
13	NOMINATION OF NEW OR ADDITIONAL REMOTE SITES.....	20
14	TERMS OF AGREEMENT	21
15	NETWORK CHANGES	21
16	FAULT REPORTING CENTRE	22
17	SERVICE PERFORMANCE	22
18	SUSPENSION/DISCONNECTION	22
19	LIFESPAN OF NETWORK.....	23
20	SECURITY.....	23
21	FORCE MAJEURE.....	23
22	PATENT AND COPYRIGHT INDEMNITY	24
23	LIMITATION OF LIABILITY.....	25
24	ARBITRATION	26
25	ASSIGNMENT	27
26	INDEPENDENT CONTRACTOR OR SUB-CONTRACTOR	28
27	CONFIDENTIALITY.....	28
28	NOTICES AND DOMICILIA.....	29
29	WHOLE AGREEMENT.....	30
30	VARIATION	30
31	RELAXATION.....	30

AGREEMENT

1 PARTIES

- 1.1 The parties to this agreement are -
- 1.1.1 Air Traffic and Navigation Services Company (SOC) Limited; and
 - 1.1.2 International Air Transport Association (IATA); and
 - 1.1.3 Southern African Development Community (SADC VSAT) States
- 1.2 The parties agree as set out below.

2 INTERPRETATION

- 2.1 In this agreement, unless inconsistent with or otherwise indicated by the context-
- 2.1.1 "the/this agreement" means this document and all appendices thereto; it being recorded that as at the date of signature, the appendices have not been finalised by the parties. The parties shall be entitled to substitute any appendix with further appendices, provided that such appendices are signed by duly authorised representatives of the respective parties;
 - 2.1.2 Aircraft operators means IATA and non-IATA members;
 - 2.1.3 "Air Traffic Services Unit" means a generic term meaning variously air traffic control unit, flight information centre, air traffic control centre or air traffic service reporting office;
 - 2.1.4 "AFTN" means Aeronautical Fixed Telecommunication Network Services;
 - 2.1.5 "ATN" means Aeronautical Telecommunication Network Services;
 - 2.1.6 "Area Control Centre" means a unit established to provide air traffic control services to controlled flights in control areas under its jurisdiction;

- 2.1.7 "ATNS" means Air Traffic and Navigation Services State Owned Company Limited, registration number 1993/04150/06 a public company incorporated in terms of the laws of the Republic of South Africa and herein represented by the Chief Executive Officer;
- 2.1.8 "ATS/DS" means Air Traffic Services/Direct Speech Services;
- 2.1.9 "Client" means the National Air Navigation Services Company in the Operational Zone,
- 2.1.10 "date of signature" means dates of signature of this agreement by the parties signing last in time;
- 2.1.11 "Flight Information Region" means an air space of defined dimensions within which flight information service and alerting service are provided;
- 2.1.12 "FRC" means ATNS' Fault Reporting Centre at the FAOR Operational Complex;
- 2.1.13 "FAOR" means OR Tambo International Airport, Johannesburg;
- 2.1.14 "key site" means the main Area Control Centres in the relevant Flight Information Region;
- 2.1.15 "landing rights" means permission from the regulatory authority in a country or state in the nominated operational zone to downlink and/or uplink from and to a VSAT terminal in such country;
- 2.1.16 "Network Service Provider" means ATNS as provider of the VSAT network services in the SADC VSAT II operational zone;
- 2.1.17 "network life extension and modernisation solution" means all ATNS owned and supplied equipment which include the equipment required for the network life extension and modernisation, the Master Control Station, Network Management & Control and Space Segment including the remote equipment and terminals in the operational zones supplied by ATNS;

- 2.1.18 "non pre-emptible satellite capacity" means space segment provided by INTELSAT on a non pre-emptible basis;
- 2.1.19 "the operating criteria" means contracted system availability and contracted grade of service as set out in Appendix "C";
- 2.1.20 "Operational zone" means Angola, Botswana, Burundi, Democratic Republic of the Congo, Eswatini, Lesotho, Madagascar, Malawi, Mauritius, Mozambique, Namibia, Rwanda, South Africa, United Republic of Tanzania, Zambia and Zimbabwe.
- 2.1.21 "parties" means ATNS and the
- 2.1.22 "remote sites" means each of the key sites in terms of this agreement, for the life extension and modernisation of the terminals;
- 2.1.23 "services" means concurrent data and voice communication between area control centres nominated by the client in the operational zones;
- 2.1.24 "SLA" means the Service Level Agreement;
- 2.1.25 "space segment" means the non pre-emptible satellite capacity on C-Band required for the operation of the network. Space segment is pre-determined and fixed according to the network design.
- 2.1.26 "terminal" means the outdoor unit, (antenna and RF gear), inter-facility link and indoor unit;
- 2.1.27 "Life extension and modernisation" means upgrading of the terminal to ensure continuation of services in compliance with the operating criteria, for the duration of this agreement;
- 2.1.28 "VSAT" means a Very Small Aperture Terminal that enables satellite operation with small antennas;
- 2.1.29 any reference to the singular includes the plural and vice versa;
- 2.1.30 any reference to natural persons includes legal persons and vice versa;

- 2.1.31 any reference to a gender includes the other genders.
- 2.2 The clause headings in this agreement have been inserted for convenience only and shall not be taken into account in its interpretation.
- 2.3 Words and expressions defined in any sub-clause shall, for the purposes of the clause of which that sub-clause forms part, bear the meaning assigned to such words and expressions in that sub-clause.
- 2.4 If any provision in a definition is a substantive provision conferring rights or imposing obligations on any party, effect shall be given to it as if it were a substantive clause in the body of the agreement, notwithstanding that it is only contained in the interpretation clause.
- 2.5 If any period is referred to in this agreement by way of reference to a number of days, the days shall be reckoned exclusively of the first and inclusively of the last day unless the last day falls on a day, which is not a business day, in which case the last day shall be the next succeeding business day.

3 AGREEMENT DOCUMENTS

- 3.1 The following appendices form part of this agreement and shall be read and interpreted together with this document, as an integrated and indivisible whole.
- 3.1.1 Appendix A – SADC User Requirements for Life extension and modernisation – to be finalised when tender is awarded
- 3.1.2 Appendix B – SADC VSAT II Log Support Plan – to be finalised when tender is awarded
- 3.1.3 Appendix C – SADC VSAT II Service Level Agreement – to be finalised when tender is awarded
- 3.1.4 Appendix D – SADC VSAT II Site Environmental Conditions – to be finalised when tender is awarded
- 3.1.5 Appendix E – SADC VSAT II End User Landing Rights – to be finalised when tender is awarded
- 3.1.6 Appendix F – SADC VSAT II Network Acceptance Plan – to be finalised when tender is awarded

- 3.1.7 Appendix G – SADC VSAT II Fault Reporting Procedures – to be finalised when tender is awarded
- 3.2 In the event of any conflict between the provisions of this document and the appendices, the provisions of this document shall prevail.

4 SCOPE OF AGREEMENT

- 4.1 ATNS shall continue to provide the client with the SADC VSAT II terminal as specified in Appendix “A” and “B”.
- 4.2 The SADC VSAT II network life extension and modernisation solution which ATNS provides to the client will be implemented in accordance with Appendix “A” and “C”, subject to the terms and conditions contained in this agreement.

5 REGULATORY CONDITIONS

- 5.1 ATNS will not render any service to site, unless the client has obtained landing rights and operating licences for the continued use of the VSAT terminals and services for the duration of this agreement.
- 5.2 The client shall pay any licence fee that any regulator or telecommunication licence authority in any country in which a site is located may levy for the use of the terminal within that country and any other legal requirement of the regulator or telecommunication licence authority of such country. The client acknowledges that ATNS may suspend any services to a remote site if the client fails to pay any licence fee or to conform to any legal requirements of the regulator or telecommunication licence authority if on account thereof, their regulator, or telecommunication licence authority requires ATNS to suspend the services to a remote site.

6 LIFE EXTENSION AND MODERNISATION OF NETWORK

In this period, network infrastructure management will be rolled out in two-phases:

- 6.1 Phase I: Network life-extension - **2022-2024**
- 6.2 Phase II: Long-term Modernisation - **2025-2029**
- 6.3 ATNS shall, without additional charge, act as shipping agent for the client to deliver the life extension and modernisation equipment, if any, for the VSAT terminal to the client at the sites in the operational zones, agreed upon by the client and ATNS, suitably packaged and ready for installation.
- 6.4 ATNS shall offer and provide the client a schedule of activities, where applicable, describing the actions to be taken and dates to be agreed upon between ATNS and the client when the life extension and modernisation of the VSAT terminals is to take place at the sites in the operational zones.
- 6.5 On completion of the life extension and modernisation of the VSAT terminal, ATNS and the client shall conduct acceptance tests. Final SADC VSAT II network acceptance testing will only be conducted after completion of the life extension and modernisation of all the VSAT terminals in the operational zone. Network acceptance testing will be conducted in accordance with the conditions as stated in Appendix "G".
- 6.6 The client shall be responsible for any site preparation required, as set out in the site survey. If required by the client, ATNS will assist the client with the required site preparation at a cost to be agreed upon in writing. As stated in clause 10.2.9, ATNS is responsible for conducting the site survey.

7 SERVICES TO BE PROVIDED

- 7.1 The services to be provided in terms of this agreement will be subject to the obtaining of continued landing rights by the client for the VSAT terminal in the operational zones. ATNS will provide the following services as part of the agreement:

- 7.1.1 service provision and operations, network configuration, network supervision and control, fault reporting, fault isolation, fault resolution, replenishment of spares and repair of spares as more fully described in Appendix “A”, “B” and “C”, subject to any restrictions that may be imposed by any regulatory authority or telecommunication licence authority within any country;
- 7.1.2 the life extension and modernisation of the existing VSAT terminals in the operational zones by ATNS, including planning and scheduling;
- 7.1.3 space segment, on a non pre-emptible basis, required to support the SADC/2 network in the operational zones;
- 7.1.4 fault reporting, problem isolation and resolution as set out in Appendix “H”;
- 7.1.5 reports and other information listing data on network performance and service outages in accordance with Appendix “C”;
- 7.1.6 network planning and life extension and modernisation of the network and service; and
- 7.1.7 project management of the service and network life extension and modernisation.

8 TRAINING PROGRAMME

8.1 Pre-Installation Training

The client will make available two (2) technical persons to attend a detailed training course on the VSAT life extension and modernisation technology, where applicable, life extension and modernisation, configuration, maintenance and operation for a period of 14 days in Johannesburg. The course shall be presented before the scheduled start of the life extension and modernisations and is offered to the client at no additional cost.

8.2 “On-Site” Training

The client shall make available technical and operational personnel to attend a VSAT terminal operation and maintenance familiarisation and training programme, where applicable, during the life extension and modernisation of the VSAT terminal. If the personnel are not available for the familiarisation programme during the life extension and modernisation and the client had thirty (30) days prior notice of life extension and modernisation, the client will be responsible for any additional costs if the programme has to be repeated.

9 MAINTENANCE MODEL

9.1 The maintenance model is specified in Appendix “C”.

10 RESPONSIBILITIES

10.1 ATNS will fund, life extension and modernisation, manage, operate and maintain the VSAT terminal on a cost recovery basis. The obligation to observe ICAO policies and practices in terms of the services provided will remain the responsibility of each SADC VSAT II member state.

10.2 Responsibility of ATNS

10.2.1 ATNS will be responsible to provide the life extension and modernisation VSAT service and network as per Appendix “A” and “B”.

10.2.2 ATNS will be responsible to meet its obligations in terms of the network service level attached hereto as Appendix “C”.

10.2.3 Life extension and modernisation planning and scheduling

10.2.3.1.1 Upgrading of the VSAT terminals will be performed by ATNS. In order to allow necessary time for life extension and modernisation installation planning, the Client shall ensure that the necessary landlord approvals, operating licences, and landing rights for the terminal have been secured before the life extension and modernisation of the VSAT terminal. ATNS

and the Client will agree on the date of the life extension and modernisation of the VSAT terminal

10.2.3.2 ATNS shall start with the life extension and modernisation, after completion of the site survey within a mutually agreed period of such notification depending on the life extension and modernisation requirements, whether special installation materials are required and confirmation of the VSAT life extension and modernisation equipment delivery to the site. The parties agree, however, that additional time may be required if ATNS encounters delays in obtaining any necessary permits or variances, or if non-standard work (as defined herein) are required.

10.2.3.3 The ATNS life extension and modernisation management team shall develop an installation schedule to be agreed upon with the client. Installation work is normally scheduled for completion during normal working hours.

10.2.3.4 The client will arrange and provide normal access to the site and they may occasionally be requested to keep the site open after normal business hours to allow timely completion of the installation.

10.2.4 Standard Life extension and modernisation

Standard Life extension and modernisation applies in those locations where all site preparation requirements will be met and no additional work or abnormal or specialised installation gear will be required as referred to in Appendix "E".

10.2.4.1 Standard Outdoor Life extension and modernisation

1. Checking the condition of the existing VSAT antenna and RF equipment and carry out any repair or refurbishing, where required;
2. Supply and installation of new duplicate RF transmitters power amplifiers in accordance with the life extension and modernisation design;

3. checking and refurbishing of the existing earth network at the antenna site, where required;
4. checking and reconnecting of the lightning spike of the antenna to the earth, where required;
5. checking and reconnecting of the antenna earth to the existing building earth, where required;
6. Checking and refurbishing of 70 meters of IFL and control cables, where required;
7. cleaning of the site after installation.

10.2.4.2 Standard Indoor Life extension and modernisation

1. Supply and installation of additional indoor cabinet(s);
2. connection of the new indoor cabinet(s) to existing building earth;
3. Life extension and modernisation or refurbishing of the UPS, where required. If UPS power can be provided by the client it is proposed that the new indoor cabinet is connected to that supply;
4. connection of the UPS supplied to the client mains distribution board
The client will provide a circuit breaker (32 amps, curve C) on their mains distribution board of the equipment room,
5. connection of VSAT cabinet(s) to the UPS power);
6. Supply and installation of the new indoor equipment in accordance with the network life extension and modernisation design;
7. Manufacture of parallel interface cabling for connection from new VSAT cabinet to client equipment (AFTN, ATS/DS) and ready for changeover of operation from the existing to the new indoor equipment;
8. supply and installation of any indoor cable trays if not available on site,
9. cables marking,
10. cleaning of the site after installation.

10.2.5 Non-standard life extension and modernisation

At those locations where additional work is required by the client, over and above the standard life extension and modernisation, ATNS will determine the price of the non-standard terminal life extension and modernisation during the site survey and quote the client accordingly.

10.2.6 Re-survey

In the event that ATNS performed a site survey for a given site and a resurvey is required by the client, the client will pay ATNS the actual site survey costs for such site. A certificate signed by a manager of ATNS will be *prima facie* proof of such costs.

10.2.7 Corrective and Preventative Maintenance

10.2.7.1 ATNS is responsible for the provision of corrective and preventative maintenance services on behalf of the client in the operational zone in accordance with the network service levels as stipulated in Appendix "C".

10.2.8 Space Segment

10.2.8.1 It is recorded that the space segment is pre-determined and fixed according to the network requirements for ATS/DS, AFTN and ATN services as detailed in Appendix "A". Space segment is provided by a satellite operator to ATNS and it is recorded that it can be interrupted by the satellite operator on their terms and conditions as referred to in Appendix "C".

10.2.9 Site Survey

ATNS has identified that all sites in the operational zone require a site survey. ATNS will conduct the site survey at no cost to the client. ATNS will make a site survey schedule available to the clients.

10.3 Responsibility of the client

10.3.1 Site preparation

The client shall provide stable and uninterruptible AC mains power with an earth system and grounding in accordance with SABS Specification or any equivalent local authority or standard.

AC mains shall be Single-phase, 220-230 V AC $\pm 15\%$, 50 Hz $\pm 10\%$ supply

If UPS power can be provided by the client it is proposed that the new indoor cabinet is connected to that supply.

The client shall provide suitable access for cables as indicated on the site survey report. If at the client's request, ATNS assists in the electrical installation it will be at a cost to be agreed upon. Electrical installation shall not include any connection to the main supply.

10.3.2 Permits and approvals

The client will obtain all the necessary permits and approvals for both site survey and life extension and modernisations in accordance with the site survey and maintenance requirements. After all permits and approvals have been obtained, the client will authorise ATNS to schedule and perform the site survey and life extension and modernisation of the terminal.

10.3.3

The client undertakes to obtain for ATNS and/or ATNS' authorised representatives access, subject to the client's reasonable security restrictions, to equipment and related locations and areas of the client's and its end-user's facilities and premises, and will arrange permitted access to areas of third party facilities and premises for the purpose of ATNS performing the work required under this agreement. ATNS will comply with the client's reasonable rules and regulations for site access, a copy of which will be furnished to ATNS by the client promptly after entering into this agreement.

10.3.4 The client's personnel shall co-operate with the ATNS service representative, as required, for life extension and modernisation, troubleshooting and fault isolation. The client's Area Control Centres shall be adequately staffed during life extension and modernisation and service coverage hours to assist with the life extension and modernisation, acceptance, troubleshooting as well as fault isolation of remote terminal sites.

10.3.5 It is required that the client will maintain minimum site-environment conditions as specified in the documentation for the terminal as set out in Appendix "E".

10.3.6 Maintenance

10.3.6.1 The client will isolate faults in the services on their supplied equipment, in accordance with the diagnostic 1st line maintenance guide, before reporting a service outage to ATNS as more fully described in Appendix "B", and "H".

10.3.6.2 ATNS will conduct a minimum of one preventative maintenance visit per year at remote sites.

10.3.6.3 ATNS will conduct corrective maintenance at the remote sites where failures have been reported.

10.3.6.4 ATNS will retain all spares and test equipment in an equipment store at FAOR in Johannesburg to be used for the purposes of corrective maintenance.

10.3.6.5 Faulty spares will be repaired and replenished by ATNS.

10.4 Joint responsibilities

Each party will designate a project manager who shall represent the party in all aspects of the provision of equipment and services for the life extension and modernisation period.

11 IMPLEMENTATION, MIGRATION AND ACCEPTANCE TESTS (WHERE APPLICABLE)

- 11.1 ATNS will submit documents regarding the life extension and modernisation implementation, migration and acceptance tests at least 30 days before commencement of thereof. To finalise the documents and finalise the life extension and modernisation requirements a site survey will be conducted by ATNS, as mentioned in paragraph 10.4.9. In summary the life extension and modernisation will involve work on the outdoor and indoor equipment.
- 11.1.1 The Installation of outdoor equipment as described in paragraph 10.2 for a standard life extension and modernisation and any additional non-standard work as agreed during the site survey;
- 11.1.2 The outdoor installation will be tested and implemented while operation will continue on IDU7000SERIES/NETPERFORMER indoor equipment using the existing satellite space segment allocation;
- 11.1.3 This will be followed by the installation of new Indoor equipment as described in paragraph 10.2 for a standard life extension and modernisation and any additional non-standard work as agreed during the site survey;
- 11.1.4 Setting-up and testing of new the Indoor equipment utilising additional available satellite space segment, while operation will continue on the IDU7000SERIES/NETPERFORMER indoor equipment;
- 11.1.5 Manufacturing of parallel interface cabling ready for changeover from the existing indoor equipment to the new indoor equipment;
- 11.1.6 Operation of MCPC Interconnections between SADC/2 and AFISNET terminals will remain on the existing IDU7000SERIES/NETPERFORMER indoor equipment (circuits between AFISNET and Luanda and Kinshasa have reference);

- 11.1.7 Migration, where applicable, of any network ATS/DS and AFTN services to the new indoor equipment will take place on a pre-arranged date and time;
- 11.2 After migration of the ATS/DS and AFTN services to the new equipment operational personnel will continue to utilise the network in a life operational environment. It is intended to conduct acceptance tests during operational use of the network for a period of ten (10) days to prove that the network life extension and modernisation solution is functioning according to the operating criteria.
- 11.3 After the life extension and modernisation of the VSAT terminals, there will be an acceptance period, where applicable, not exceeding ten (10) days, in which period ATNS and the client will perform acceptance tests as set out in Appendix "F". The purpose of the acceptance test period is to prove that the network life extension and modernisation solution is functioning according to the operating criteria, as set out in the network service levels, Appendix "C".
- 11.4 ATNS and the client shall conduct comprehensive tests in terms of Appendix "G", for all terminals of the network life extension and modernisation solution.
- 11.5 The purpose of the tests described in clauses 11.4 will be to demonstrate that each portion of the network life extension and modernisation solution has been completed and is capable of execution of the required functions in accordance with the operating criteria.
- 11.6 The test described in clauses 11.2 to 11.4 shall be conducted at the life extension and modernisation sites and ATNS shall give the client reasonable advance notice of the commencement of the test, to allow the client to ensure that sufficient trained persons are available to operate the life extension and modernisation network solution.

- 11.7 The tests to be conducted in terms of clauses 11.2 to 11.4 shall only commence when all terminals of the network life extension and modernisation solution have been delivered to and installed by ATNS, at the appropriate life extension and modernisation sites. The test to be conducted in terms of clauses 11.2 to 11.4 shall not be completed until all terminals of the network life extension and modernisation solution have been delivered to and installed by ATNS, at the appropriate life extension and modernisation sites and until all terminals of the network life extension and modernisation solution have been submitted to the tests contemplated in this clause, provided that if, for any reason beyond the control of any of the parties, the network life extension and modernisation solution is not fully installed at the beginning of the ten (10) day period for testing, an acceptance test will be performed only on the installed VSAT terminals.
- 11.8 Should ATNS fail to deliver and install the entire network life extension and modernisation solution by the final date of installation of the life extension and modernisation solution recorded in Appendix "A", the client shall, in its discretion, be entitled to give written notice to ATNS requiring non-performance to be remedied within sixty (60) days of receipt of the notice by ATNS, and should ATNS fail to deliver and install the entire network life extension and modernisation solution within that period, the client shall, in its discretion, be entitled to cancel this agreement subject to the terms and conditions set out in this agreement. The client shall, however, not be entitled to cancel this agreement if the non-performance is beyond the control of any of the parties.
- 11.9 Should the network life extension and modernisation solution not perform according to the standards contemplated in Appendix "C" during the testing contemplated in this clause, the client shall promptly notify ATNS, specifying the deficiencies encountered and, thereupon, ATNS shall forthwith take such steps in consultation with the client, as are necessary to rectify the fault, without any charge to the client. ATNS shall, similarly take all steps necessary to rectify any other faults which come to its notice. Should any

such fault be caused by factors which are the responsibility of the client, ATNS shall notify the client of such responsibility, specifying the manner in which such responsibility arose and, thereupon, the client, in consultation with ATNS, shall rectify such fault without delay and without any charge to ATNS. Thereafter, acceptance testing shall be resumed.

- 11.10 Once the tests have been completed, demonstrating performance of the network life extension and modernisation solution within the parameters prescribed in clauses 11.2 to 11.4, the client shall notify its agreement or disagreement of the fact, by written notice, to ATNS, and if the client does not notify ATNS within fourteen (14) days of completion of the acceptance test, it will be deemed that the client has accepted that the network life extension and modernisation solution is performing according to the parameters as set out in clauses 11.2 to 11.4.
- 11.11 The tests contemplated in this clause shall be deemed passed if and when the client has utilised the network life extension and modernisation solution in the life operating environment for not more than ten (10) consecutive days, in accordance with the operating criteria.

12 COST RECOVERY MECHANISM

- 12.1 The client will be responsible for any charges levied by the national telecommunications authority for the operation of a VSAT.
- 12.2 The full acquisition and operating costs, including any statutory duties and taxes levied by the State, for the in country VSAT will be recovered by ATNS via IATA directly from the aircraft operator.
- 12.3 The cost recovery mechanism requires that ATNS continues to retain ownership of the in-country VSAT terminal for the initial operational contract period of 84months. On conclusion of the initial contract period, ownership of the in-country VSAT is transferred to the specified entity.

- 12.4 The agreement between ATNS and the client will authorise ATNS to make use of the IATA Billing and Collection Agency (or another agent or ATNS itself), to recover a SADC VSAT II user charge directly from aircraft operators operating into, out of and over flying the State. This specific user charge is a charge over and above any other user charges that the client may currently levy. It will be collected by IATA directly from the users and paid over to ATNS to offset the VSAT acquisition and operating costs.
- 12.5 ATNS will in terms of an agreement with IATA review the SADC/2 user charge annually, or from time to time as agreed to, to ensure that any under or over recovery of acquisition and operating cost is reflected in the VSAT user charge for the subsequent period.

The SADC/2 user charge will be presented for approval to the SADC/2 Supervisory Board.

13 NOMINATION OF NEW OR ADDITIONAL REMOTE SITES

- 13.1 The client may from time to time nominate additional or new locations within the operational zone for the installation of VSAT terminals.
- 13.2 ATNS shall be entitled to require the client to provide proof to the satisfaction of ATNS at the time of nomination, that the installation in question will not contravene the provisions of any applicable law or regulation or technical specification in any country within the operational zones, failing which ATNS shall be entitled to reject the nomination in question.
- 13.3 The client acknowledges that from nomination of a remote site, external factors such as site surveys, regulatory requirements of foreign countries in the operational zones, landlord approvals, operating licences, registration with INTELSAT and landing rights may influence the installation of a VSAT terminal.

14 TERMS OF AGREEMENT

This agreement will come into force and effect only after signature by both parties to this agreement and will endure for a minimum period of seven (7) years. Thereafter this agreement may be renewed for further periods by mutual written agreement between the parties. The parties will meet 6 (six) months prior to the expiration of the seven (7) year period, to negotiate on what terms and conditions and pricing this agreement will be renewed. If the parties do not reach agreement on the renewal, this agreement will terminate after the initial seven (7) year period.

15 NETWORK CHANGES

- 15.1 At any time during the course of the agreement, the client may request changes to the agreement, by submitting a written request to that effect in writing to ATNS. Within a reasonable time, but in any event by not later than 30 (thirty) days after receiving written notice of the client's request for a change, ATNS will advise the client whether the change can be made and the effect the change will have on the terms and conditions of this agreement. Within a period of 30 (thirty) days after receiving ATNS' proposal to the client's request for a change, the client will notify ATNS whether it authorises the implementation of the change under revised terms and conditions or rejects the proposed change. Pending authorisation to implement changes ATNS shall proceed in accordance with the latest authorised terms and conditions of the agreement.
- 15.2 ATNS will notify the client of any possible reduction in function or complexity, or any possible improvement that could be applied to the services.
- 15.3 ATNS and the client will agree in writing upon the change to the Network, delivery, date, cost and any increase or decrease in the duration of the agreement which may result from any change to the services prior to commencing work on that change.

16 FAULT REPORTING CENTRE

ATNS will continue to make available, as part of the network life extension and modernisation solution, a Fault Reporting Centre. This Fault Reporting Centre will be operational 24 (twenty four) hours a day, 7 (seven) days a week. Faults or problems will be telephonically submitted followed by a fax or electronic mail confirmation and in accordance with procedures as stipulated in Appendix "H".

17 SERVICE PERFORMANCE

The Network Service Level Agreement, which is attached hereto as Appendix "C", specifies the agreed service performance standards and levels and measurement criteria.

18 SUSPENSION/DISCONNECTION

ATNS may suspend the service or any part thereof in any of the following circumstances:-

- 18.1 If ATNS is officially requested by the satellite operator or any telecommunication licensing authority or regulator to suspend the service to any terminal within the jurisdiction of the said authority or regulator, ATNS will immediately upon such request, notify the client of such request, to enable the client to deal directly with the telecommunication licensing authority or regulator to attempt to resolve the matter.
- 18.2 During any preventative maintenance work, modification or software life extension and modernisations of the ATNS equipment provided that ATNS will notify the client 48 (forty eight) hours in advance of such suspension and the preventative maintenance work, modification or software life extension and modernisations will be done in the pre-arranged window. ATNS shall ensure that the disruption is kept to a minimum.

19 LIFESPAN OF NETWORK

The lifespan of the network will be at least equal to the duration of this agreement. The lifespan could be extended beyond this duration, depending on factors such as the reliability of the network, at the end of this agreement for a further period as mutually agreed between ATNS and the client.

20 SECURITY

ATNS shall comply with and shall ensure that its employees and agents or contractors on the remote sites shall comply with safety and security regulations and policy standards and procedures of the client. The client shall ensure those copies of the applicable regulations and policies are made available to ATNS.

21 FORCE MAJEURE

21.1 If either party is prevented or restricted directly or indirectly from carrying out all or any of its obligations under the agreement from any cause beyond the reasonable control of that party, including without limitations, acts of God, civil commotion, riots, strikes, insurrection, lock-outs, acts of government, fire, theft, explosion, the elements, epidemics, governmental embargoes or like causes, the party so affected shall be relieved of its obligations hereunder during the period of such events and its consequences, but only to the extent so prevented and shall not be liable for any delay or failure in the performance of any obligations hereunder or loss or damage either general, special or consequential which the other party may suffer due to or resulting from such delay or failure provided always that written notice shall within 24 (twenty four) hours of the occurrence constituting such an event (*vis major*) be given of any such inability to perform by the affected party and provided further that the obligation to give such notice shall be suspended to the extent necessitated by such *vis major*. The party wishing to rely on force majeure shall prove to the other party that he acted responsibly in exercising his obligations in terms of the agreement.

21.2 The parties hereby agree that should vis major last more than 6 (six) weeks, the party who has not invoked vis major to excuse any non-performance of its obligations may terminate the agreement by giving 10 (ten) days written notice to the other.

22 PATENT AND COPYRIGHT INDEMNITY

22.1 ATNS agrees to resist or defend at its own expense any request for royalty payments or any claim for equitable relief or damages against the client based on an allegation that the manufacture of any equipment or the use, lease, or sale thereof or that any documentation infringes any patent or copyright, and to pay any royalties and other costs related to the settlement of such request and to pay the costs and damages, including attorney's fees, finally awarded as the result of any suit based on such claim, provided that ATNS is given prompt written notice of such request or claim by the client and given authority and such reasonable assistance and information as ATNS in writing and as it is available to the client for resisting such request or for the defence of such claim.

22.2 In the event that, as a result of any such suit:

22.2.1 prior to delivery, the manufacture of any item supplied by ATNS hereunder is enjoined; or

22.2.2 after delivery, the use, lease, or sale thereof is enjoined, ATNS shall, at its option and expense, either:

22.2.2.1 negotiate a licence or other agreement with the plaintiff so that such item is no longer infringing;

22.2.2.2 modify such item suitably or substitute a suitable item therefore, which modified or substituted item is not subject to such injunction, and extend the provisions of this paragraph thereto.

22.3 Notwithstanding the above, ATNS shall not be liable for any damage or costs resulting from claims:-

- 22.3.1 that arose from ATNS compliance with the client design, specifications, or instructions on which ATNS had given the client advance notice;
- 22.3.2 that use of any item provided by ATNS in combination with product not supplied by ATNS; or
- 22.3.3 that a manufacturing or other process carried out by or through the client and utilising any item provided by ATNS constitutes either direct or contributory infringement of any patent (such as claims being collectively referred to herein as other claims). The client shall indemnify ATNS from any and all damages and costs (including settlement costs) finally awarded or agreed upon for infringement of any patent or copyright in any suit resulting from other claims, and from reasonable expenses incurred by ATNS in defence of such suit if the client does not undertake the defence thereof.
- 22.4 In no event shall ATNS be liable for any damages hereunder or for the consequential damages or costs. This indemnity is in lieu of any other indemnity or warranty, express or implied, with respect to patents and copyrights.

23 LIMITATION OF LIABILITY

- 23.1 Neither ATNS nor its subcontractors shall be liable for-
- 23.1.1 defamation or infringement of copyright from or in connection with the transmission of communications hereunder;
- 23.1.2 any claim arising out of any act or omission of the client or any other entity furnishing services or equipment for use in conjunction with the equipment and service provided hereunder;
- 23.1.3 any unlawful or unauthorised use of the equipment or services provided hereunder by the client, its employees, agents, or invitees; or
- 23.1.4 any claim arising out of a breach in the privacy or security of communications transmitted over the facilities or other property of ATNS.

- 23.2 Notwithstanding anything to the contrary contained in this agreement, in no event shall ATNS or its subcontractors be liable to the client or anyone else for direct, special, collateral, exemplary, punitive, indirect, incidental or consequential damages (including without limitation, loss of goodwill, loss of profits or revenues, loss of savings, loss of use, interruptions of business, and claims of the client), whether such damages occur prior or subsequent to, or are alleged as a result of, delict or breach of any of the provisions of the agreement, even if ATNS has been advised of the possibility of such damages. All warranties that may be deemed applicable to the equipment or service, including but not limited to implied warranties or merchantability or fitness for a particular purpose, are expressly disclaimed.
- 23.3 The limitation of liability contained in clauses 23.1 and 23.2 will *mutatis mutandis* apply to the client.

24 ARBITRATION

- 24.1 Should any dispute between the Parties arise out of or in connection with this Agreement, including but not limited to any dispute in relation to the provision of the Service, ancillary services, payment of costs, obligations the Parties or any other stipulation in terms of this Agreement, the Chief Executive Officer of ATNS and the or their duly authorised representatives shall, as soon as reasonably possible, meet to endeavour to resolve the dispute and, failing which the parties will refer the matter to arbitration in accordance with the rules and procedures of the International Chamber of Commerce (ICC) in Geneva. The arbitrator's award will be final and binding upon the Parties.
- 24.2 Any party to this agreement may demand that a dispute be determined in terms of this clause by written notice given to the other parties.
- 24.3 This clause shall not preclude any party from obtaining interim relief on an urgent basis from a court of competent jurisdiction pending the decision of the arbitrator.

- 24.4 The arbitration shall be held in -
- 24.4.1;
- 24.4.2 with only the legal and other representatives of the parties to the dispute present thereat;
- 24.4.3 it being the intention that the arbitration shall be held and completed as soon as possible.
- 24.5 The decision of the arbitrator shall be final and binding on the parties to the dispute.
- 24.6 The parties agree to keep the arbitration including the subject-matter of the arbitration and the evidence heard during the arbitration confidential and not to disclose it to anyone.
- 24.7 The provisions of this clause -
- 24.7.1 constitute an irrevocable consent by the parties to any proceedings in terms hereof and no party shall be entitled to withdraw there from or claim at any such proceedings that it is not bound by such provisions;
- 24.7.2 are severable from the rest of this agreement and shall remain in effect despite the termination of or invalidity for any reason of this agreement.

25 ASSIGNMENT

Neither party hereto may assign, cede or transfer this agreement or any portion thereof without the prior consent of the other. Any assignment agreed to by the other party hereto will not relieve the assigning party of any obligations with respect to any covenant, condition, or obligation required to be performed by the assigning party under the proposed agreement.

26 INDEPENDENT CONTRACTOR OR SUB-CONTRACTOR

- 26.1 The relationship between ATNS and the client under this agreement shall be that of an independent contractor, ATNS shall exercise its own discretion on the method and manner of performing its obligation hereunder.
- 26.2 The client agrees that ATNS may, at its sole discretion, subcontract the whole or any part of its obligations under the agreement and ATNS agrees that it shall retain full responsibility for such obligations despite such subcontract.

27 CONFIDENTIALITY

- 27.1 The parties acknowledge that any information supplied in connection with this agreement or in connection with each other's business affairs which has or may in any way whatsoever be transferred or come into the possession or knowledge of any other of them ("the receiving party") may consist of confidential or proprietary data, which is not available in the public domain.
- 27.2 The receiving party therefore agrees to hold such material and information in the strictest confidence, to prevent any copying thereof by whatever means and not to make use thereof other than for the purposes of this agreement and to release it only to such properly authorised directors, employees or third parties requiring such information for the purposes of this agreement and agree not to release or disclose it to any other party who has not signed an agreement expressly binding himself not to use or disclose it other than for the purposes of this agreement. The undertaking and obligations contained in this clause 27 do not apply to information which is publicly available at the date of disclosure or thereafter becomes publicly available from sources other than the parties.
- 27.3 The parties shall take such precautions as may be necessary to maintain the secrecy and confidentiality of such material and information in respect of its directors, employees, agents, and/or directors or employees or agents of any assignee, sub-contractor or distributor or any other person to whom any such confidential or proprietary data may have been or will be disclosed.

28 NOTICES AND DOMICILIA

- 28.1 The parties choose as their domicilia citandi et executandi their respective addresses set out in this clause for all purposes arising out of or in connection with this agreement at which addresses all processes and notices arising out of or in connection with this agreement, its breach or termination may validly be served upon or delivered to the parties.
- 28.2 For purposes of this agreement the parties' respective addresses shall be -
- 28.2.1 ATNS at Eastgate Office Park, Block C, South Boulevard Road, Bruma, 2198, Gauteng, Republic of South Africa.
- 28.2.2 Civil Aviation Authority at
- or at such other address of which the party concerned may notify the other/s in writing provided that no street address mentioned in this sub-clause shall be changed to a post office box or poste restante.
- 28.3 Any notice given in terms of this agreement shall be in writing and shall -
- 28.3.1 if delivered by hand be deemed to have been duly received by the addressee on the date of delivery;
- 28.3.2 if posted by prepaid registered post be deemed to have been received by the addressee on the 8th (eighth) day following the date of such posting;
- 28.3.3 if transmitted by facsimile be deemed to have been received by the addressee on the day following the date of despatch,
- 28.3.4 unless the contrary is proved.
- 28.4 Notwithstanding anything to the contrary contained or implied in this agreement, a written notice or communication actually received by one of the parties from another including by way of facsimile transmission shall be adequate written notice or communication to such party.

29 WHOLE AGREEMENT

This agreement constitutes the whole agreement between the parties as to the subject matter hereof and no agreements, representations or warranties between the parties regarding the subject matter hereof other than those set out herein are binding on the parties.

30 VARIATION

No addition to or variation, consensual cancellation or novation of this agreement and no waiver of any right arising from this agreement or its breach or termination shall be of any force or effect unless reduced to writing and signed by all the parties or their duly authorised representatives.

31 RELAXATION

No latitude, extension of time or other indulgence which may be given or allowed by any/either party to the any/other party/ies in respect of the performance of any obligation hereunder, and no delay or forbearance in the enforcement of any right of any/either party arising from this agreement, and no single or partial exercise of any right by any/either party under this agreement, shall in any circumstances be construed to be an implied consent or election by such party or operate as a waiver or a novation of or otherwise affect any of the party's rights in terms of or arising from this agreement or estop or preclude any such party from enforcing at any time and without notice, strict and punctual compliance with each and every provision or term hereof.

Bilateral Agreement for the SADC VSAT II Network

SIGNED at _____ on _____

For: AIR TRAFFIC AND
NAVIGATION SERVICES
COMPANY LIMITED

AS WITNESS:

Duly Authorised

(Names of witness in block letters)

SIGNED at _____ on _____

For:

AS WITNESS:

Duly Authorised

(Names of witness in block letters)