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NEPAD Planning and
Coordinating Agency (NPCA)

Draft Protocol

on

Policy and Regulatory Framework for NEPAD

ICT Broadband Infrastructure Network

For Africa

(Under Revision)



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PROTOCOL ON POLICY AND REGULATORY FRAMEWORK FOR NEPAD ICT BROADBAND INFRASTRUCTURE NETWORK FOR AFRICA

PREAMBLE

We, the African Ministers responsible for Information and Communication Technologies (ICT) and/or Telecommunications and herein representing our respective countries;

ENJOINED as Member States of the African Union;

CONSIDERING the principles and objectives stated in the Constitutive Act of the African Union;

INSPIRED by the New Partnership for Africa's Development (NEPAD)'s recognition that;

- (a) new ICT platforms have opened up new windows of opportunity for African countries as tools that can accelerate their economic growth and development;
- (b) the goals for a common market within the African Union can benefit immensely from the revolution in technology;
- (c) the use of ICT can bring unprecedented competitive advantages to the African continent; and
- (d) that the need for the promotion and involvement of the private sector in meeting African's development challenges is imperative;

RECALLING the decision of the NEPAD Heads of State and Government Implementation Committee of March 2003 in Abuja, Nigeria, to prioritize, *inter alia*, the NEPAD ICT Broadband Infrastructure Network;

NOTING positive efforts that the various African countries in their respective territories, regional trade blocs to which such countries are members and NEPAD through the e-Africa Commission and other international development organisations such as the United Nations, African Telecommunications Union, the International Telecommunication Union, the African Development Bank, the World Bank and the Commonwealth Telecommunication Organization have taken and are taking to improve connectivity in Africa and to develop appropriate ICT policy and regulatory frameworks;

NOTING FURTHER positive efforts made by African and non-African telecommunications companies to facilitate the implementation of broadband network infrastructure in Africa;



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RECOGNIZING the need to build on the momentum already generated by the various stakeholders to fast-track the realization of broadband ICT infrastructure in order to boost broadband connectivity in Africa and to reduce international connectivity costs;

RECOGNIZING FURTHER that lack of adequate submarine and terrestrial broadband infrastructure to support high-speed, high-quality, reliable and affordable electronic communications in Africa is one of the major obstacles to economic and social development;

DETERMINED to alleviate poverty through greater use of ICT which is of high-speed, high-quality and reliability through an approach based on a competitive provision of services anchored on broadband infrastructure operating on open access principles;

CONVINCED of the need to mobilize our own and international resources and to ensure the involvement of the private sector in the implementation of inter-state, and/or regional policies, programmes and projects with a view to addressing the acute shortage of broadband capacity in Africa and to tackle legal, policy and regulatory obstacles to cross-border provision of infrastructure and services;

APPRECIATING the critical importance and relevance of Article 63 of the Treaty establishing the African Economic Community mandating Member States to develop, modernise, coordinate and standardize their national telecommunications networks in order to provide reliable interconnection among Member States; establish a Pan-African Telecommunications Network and ensure its utilization and maintenance;

INTENDING to facilitate the formation of one or more Special Purpose Vehicle or Vehicles ("SPV/s") to participate in the construction, ownership, operation and maintenance of a NEPAD ICT Broadband Infrastructure Network in Africa comprising submarine and terrestrial networks;

INTENDING FURTHER that the SPV/s formed in terms of this Protocol operates in accordance with the NEPAD Objectives and Principles set forth in Annex 1 of this Protocol and that it should conduct its business in accordance with Open Access Principle as set forth in Article 11;

IN FURTHERANCE of the principles of the African Union stated in Article 4 of the Constitutive Act of the African Union being in particular the promotion of self-reliance within the framework of the African Union and the promotion of social justice to ensure balanced economic development;



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IN PURSUANCE of Article 3 of the Constitutive Act of the African Union which mandates Member States to coordinate and harmonize policies between existing and future Regional Economic Communities;

BEARING IN MIND that this Protocol is an instrument to facilitate the coordination and harmonization of the ICT policies and regulatory frameworks of African countries;

BEARING IN MIND FURTHER the principles of international law governing relations between States; and

WISHING to contribute to the harmonious, balanced, equitable and sustainable development of the High Contracting Parties' territories and African countries by facilitating a speedy establishment of the NEPAD ICT Broadband Infrastructure Network on Open Access Principles and harmonization of policies and regulatory frameworks of the High Contracting Parties to achieve these objectives.

HEREBY AGREE AS FOLLOWS:



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CHAPTER I

Definitions

Article 1

For the purposes of this Protocol unless the context otherwise requires;

“Affordable Price” means the price determined in accordance with the principles set out in this Protocol for the wholesale charges for using the NEPAD ICT Broadband Infrastructure Network which, whilst recognising relevant costs for investing in and operating the SPV shall be set as low as possible for all Authorised Service Providers making use of the network in order to maximise the usage and benefits of the network and also minimise the cost of usage to End-Users.

“Authorised Service Provider” means any service provider including but not limited to international gateway operators, Internet Service Providers (ISPs), and national and/or international academic and research networks which is either licensed, or exempted or allowed by law, regulation, contract and/or in any lawful manner by a High Contracting Party, to make use of the NEPAD ICT Broadband Infrastructure Network to provide national, regional and/or international Electronic Communication Services to End Users.

“Electronic Communication Services” means services which consist wholly or mainly of the transmission and routing of signals on communication networks, including telecommunications services and transmission services in networks used for broadcasting.

“End Users” means the consumers of the Electronic Communication Services provided by Authorised Service Providers who make use of the NEPAD ICT Broadband Infrastructure Network.

“Harmonisation” means the dynamic process of establishing mutually complimentary policies, legislation, rules, standards, practices or systems between High Contracting Parties on the basis of agreed minimum requirements for purposes of facilitating the realisation of the objectives of this Protocol.

“High Contracting Party” means a State which has (a) signed and ratified or (b) acceded to this Protocol in accordance with its national legislative framework.

“ICT” means Information and Communication Technologies.

“IGA” means the Inter-Governmental Assembly established in terms of Article 18.



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“Interconnection” means the physical and logical linking of networks with each other which allows users of one network to communicate with users of the same or other networks.

“Landlocked State” means a State which has no direct access to the sea coast.

“NEPAD ICT Broadband Infrastructure Network” means the high capacity and high speed ICT network in Africa which will link and/or connect the High Contracting Parties with each other and/or with the rest of the world comprising terrestrial and submarine networks, or any part thereof and established in terms of this Protocol.

“Open Access” means the principle that any Authorised Service Provider shall have access to any facility and/or service of the NEPAD ICT Broadband Infrastructure Network on terms and conditions that are non-discriminatory, transparent and Affordable to any Authorised Service Provider, whether it is an owner, operator, or lessee of the network, taking into account policy development and harmonisation objectives for participating countries.

“Policy and Regulatory Issues” includes those policy, legal and regulatory aspects affecting or relating to participation by the Special Purpose Vehicles in the NEPAD ICT Broadband Infrastructure Network which are of primary interest to the High Contracting Parties as Sovereign States and have implications on the attainment of the objectives of this Protocol.

“Protocol” means this protocol including any appendices, schedules, annexes, and any amendments thereto.

“Regulated Return on Investment” means the determined measure of the profitability of the NEPAD ICT Broadband Infrastructure Network expressed as a periodic percentage return and calculated as Income divided by Investment.

“Retail Services” means the Electronic Communication Services offered by Authorised Service Providers to End Users.

“Shareholders Agreement” means an agreement drawn up at the inception or during the existence of a business enterprise, and which defines, among others, the relationships amongst the shareholders, and how the business is to be managed.

“Special Purpose Vehicle(s)” or “SPV” means a registered body corporate or entity, company and/or organisation which shall be formed in terms of this Protocol, to participate, among others, in the development, construction, ownership, maintenance and/or operation of the NEPAD ICT Broadband Infrastructure Network for Africa and/or any section thereof and/or any other broadband networks.



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CHAPTER II

Objectives of the Protocol and General Undertaking

Article 2

Objectives

1. The objectives of this Protocol are:
 - a. To promote and facilitate the provision of ICT broadband infrastructure to support high-quality, high-speed and reliable Electronic Communication services in Africa and with the rest of the world at Affordable Price for End Users based on Non-Discriminatory Open Access Principles;
 - b. To secure the rollout of the NEPAD ICT Broadband Infrastructure Network with the involvement of the private sector.
 - c. To facilitate the incorporation of existing national and/or regional networks, subject to agreement by concerned parties, where applicable, and/or practicable and/or feasible, into the NEPAD ICT Broadband Infrastructure Network.
 - d. To address Policy and Regulatory issues in relation to the provision of cross-border infrastructure and services in Africa by encouraging and promoting Open Access principles and Harmonisation of ICT Policies and Regulatory Issues.
 - e. To encourage the use of the infrastructure developed in terms of this Protocol to support a dynamic, competitive provision of Electronic Communication services at Affordable Prices and to develop increased volumes amongst African countries and with the rest of the world.
 - f. To ensure that the infrastructure constructed pursuant to this Protocol is designed to contribute to the development and promotion of the economic, social and cultural integration of the African continent as envisaged in the African Union Constitutive Act.
 - g. To facilitate access for Authorised Service Providers, in territories of High Contracting Parties, to international fibre optic cables at Affordable Prices.



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Article 3

General Undertaking

1. All High Contracting Parties undertake and commit to creating favourable conditions for the construction, operation and maintenance of the NEPAD ICT Broadband Infrastructure Network for purposes of facilitating cross-border infrastructure development, ensuring the availability of affordable high-speed, high-quality and reliable Electronic Communication Services in their respective countries, throughout Africa and generally improving domestic, regional and international connectivity.
2. The High Contracting Parties shall refrain from any unilateral and/or collective action or actions that may hinder the attainment of the objectives of this Protocol.
3. Each High Contracting Party undertakes, in accordance with its own laws, to ensure that the establishment, ownership, funding, management and general operation of the Special Purpose Vehicle is in accordance with the provisions of this Protocol.
4. The Parties undertake to take the necessary steps to harmonise their Policy and Regulatory Issues for purposes of achieving the objectives of this Protocol.
5. Subject to the provisions of this Protocol, the Special Purpose Vehicle shall in each High Contracting Party's territory be subject to and operate in terms of the laws of the concerned High Contracting Party.
6. Each High Contracting Party shall, acting in accordance with its own constitutional procedures, take all necessary steps to ensure the enactment and dissemination of such legislation and policies as may be necessary for the implementation of this Protocol.



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CHAPTER III

Establishment, Objectives, Ownership and Governance of the Special Purpose Vehicle

Article 4

Establishment of the NEPAD ICT Broadband Infrastructure Network

1. With full regard to the objectives set forth in the Preamble and Article 2 of this Protocol, the High Contracting Parties hereby agree and undertake to individually within their territories and collectively within African to facilitate the construction of the NEPAD ICT Broadband Infrastructure Network to carry electronic communications services within the territory of each High Contracting Party and across Africa and the rest of the world.

Article 5

Formation of the Special Purpose Vehicle

1. The High Contracting Parties, with full regard to the principles set forth in the Preamble to this Protocol, hereby agree to facilitate the formation of the Special Purpose Vehicle, in accordance with the provisions of this Protocol.
2. It is hereby agreed, for the avoidance of doubt, that Article 5.1 shall not exclude the formation of a number of entities for purposes of the construction, ownership, maintenance and/or operation of the NEPAD ICT Broadband Infrastructure Network and/or any section thereof and generally for purposes of giving effect to the provisions of this Protocol.
3. Notwithstanding Article 5.2. above, it is hereby agreed that the terrestrial section of the NEPAD ICT Broadband Infrastructure Network shall be managed and/or owned by an entity formed for that purpose.

Article 6

Juridical Personality



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1. The Special Purpose Vehicle and any entity established pursuant to Article 5 shall, within the territory of each High Contracting Party:
 - a. Have legal personality with the capacity and power to enter into contracts, acquire, own or dispose of movable and/or immovable property and to sue and be sued.
 - b. Have such legal capacity as is necessary for the proper exercise of its powers and performance of its functions.
2. All the High Contracting Parties undertake, within their territories, and subject to their own laws, to take such steps as are necessary for purposes of giving effect to the provisions of this Protocol.

Article 7

Objectives of the Special Purpose Vehicle

1. The objectives of the SPV shall include:
 - a. The promotion of Affordable Electronic Communication Services for the African Continent on an Open Access basis.
 - b. The facilitation of economic and social integration of the African Continent through the provision of broadband networks.
 - c. The embodiment and promotion of cooperation amongst African countries.
 - d. The promotion of equitable ownership and participation by entities and Governments of Africa in the Special Purpose Vehicle.
 - e. The economic promotion and encouragement of technology transfer and skills development amongst African countries.
 - f. The empowerment of locally-owned, small to medium enterprises through the provision of goods and services to the Special Purpose Vehicle while being consistent with cost efficiency principles.



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Article 8

Ownership Principles of the Special Purpose Vehicle

1. The ownership structure of the Special Purpose Vehicle shall be such that, [to the extent practicable]:
 - a. It ensures an equitable participation by private entities and/or public entities and/or Governments in all African countries.
 - b. At all times, the majority shares in the Special Purpose Vehicle shall be held by African-owned private or public entities and/or Governments.
 - c. It reflects collaboration between the private and public sector within Africa.
 - d. The ownership of the Special Purpose Vehicles is distinct and separate from capacity allocation and leasing.
 - e. It ensures affordability of equity by prospective shareholders.
2. There shall be the following three categories of shareholders – namely:
 - a. Operators licensed to provide Electronic Communication Services nationally [within the territories of High Contracting Parties] and/or internationally [across the African continent and in various parts of the world].
 - b. Non-operator entities [who conduct business within the territories of] High Contracting Parties [who express an interest to participate in any of the Special Purpose Vehicles], subject to IGA's approval.
 - c. The Governments of the High Contracting Parties, represented by the IGA or its nominee.
3. Shareholding in the SPV shall be allocated on a fair and equitable basis.
4. [Notwithstanding anything provided for in this Article 8, IGA may in its sole and absolute discretion consent to participation in the Special Purpose Vehicles by any party or entity upon request by such party or entity, on such terms and conditions as IGA may deem appropriate, provided that IGA is satisfied that such party or entity



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shall observe and undertake to be bound generally by the principles and objects of this Protocol]

Article 9

Governance of the Special Purpose Vehicle

1. Subject to the provisions of this Protocol, the Special Purpose Vehicle shall be run on generally accepted commercial principles and in accordance with such Shareholders' Agreement as the shareholders may conclude.
2. The Shareholders Agreement concluded in terms of this Article shall inter alia:
 - a. Incorporate and accept Open Access Principles as set forth in Article 11.
 - b. Create such classes of shares with such rights as the shareholders may determine, provided that there shall be a Golden Share, to be held by a representative of the IGA or its nominee and such Golden Share shall entitle IGA's representative to be a member of the Board of Directors of the Special Purpose Vehicle and to exercise the power of veto over issues specified in Article 18(4)(c) below.
 - c. Notwithstanding Article 9.2.b above, the shareholders of the Special Purpose Vehicle shall be entitled to give the IGA's representative in the Board of Directors such additional rights and privileges as they may deem appropriate.
 - d. Incorporate and recognise the policy and regulatory oversight role of the IGA as provided for in Article 18.
 - e. Incorporate and give effect to the principle of Regulated Return on Investment and undertake to give due regard to the IGA's directives, taking into account cost efficiency, including the cost of capital.
 - f. Recognise and provide for the appointment of the Board of Directors by the shareholders and the appointment of one director by the IGA or its nominee.
 - g. Take into account the need to ensure geographical and gender representation in the appointment of the board of directors of the Special Purpose Vehicle.



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- h. Have a general provision entrenching an undertaking by the shareholders to ensure that the Special Purpose Vehicle shall be managed in accordance with the principles, objectives and purposes of this Protocol and the applicable law.
- i. Provide for such other issues and matters that are generally provided for in the Shareholders' Agreement and/or which the shareholders may deem appropriate or necessary for inclusion.



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CHAPTER IV

Rights, Obligations and Operating Principles of the Special Purpose Vehicle

Article 10

Rights and Obligations

1. The Special Purpose Vehicle shall, within the territory of each High Contracting Party and across Africa:
 - a. Provide a regional backbone infrastructure to support cross-border broadband based Electronic Communication Services on an Open Access basis, and at Affordable Prices to countries in Africa and to the rest of the world.
 - b. Facilitate and/or participate in the construction of the NEPAD ICT Broadband Infrastructure Networks, and subject to the provisions of this Protocol, ensure access thereto for all Authorised Service Providers from the High Contracting Parties on an Open Access basis.
 - c. Negotiate, where applicable and commercially desirable, bulk capacity requirements for all Authorised Service Providers connected to the NEPAD ICT Broadband Infrastructure Network and purchase the same in bulk from other international operators to meet the requirements of all Authorised Service Providers connected to the NEPAD ICT Broadband Infrastructure Network provided that any individual Authorised Service Provider whether or not connected to the Special Purpose Vehicle who wishes to negotiate for and purchase their own capacity from other regional and international operators and purchase the same would be free to do so without reference to the Special Purpose Vehicle.
2. Article 10.1.c above shall not in any way affect the validity of existing contracts which Authorised Service Providers within the High Contracting Parties' territories may currently have with any entity and/or entities for the carrying of international traffic.
3. The Special Purpose Vehicle shall, within High Contracting Parties' territories and subject to provisions of this Protocol be entitled to:
 - a. Lease any type of infrastructure or capacity it might need for its operations from any entity, including but not limited to infrastructure and capacity available from power, water, railway, oil, gas and similar utility companies and/or corporations.



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- b. Lease any of its infrastructure, including dark fibre, to Authorised Service Providers in High Contracting Parties' territories that may want to lease it.
 - c. Be a regional and international gateway operator for leased capacity and switched regional and international wholesale traffic.
 - d. Provide national leased capacity at any bandwidth to Authorised Service Providers.
 - e. Provide any wholesale national, regional and international Electronic Communications Services as might be necessary for the advancement of the objectives of this Protocol.
4. The Special Purpose Vehicle shall, independent of ownership and management structure, conduct business in accordance with the principles and guidelines provided for in this Protocol.
 5. Notwithstanding anything provided for in this Protocol, the Special Purpose Vehicle shall be subject to the respective national laws and regulations of the High Contracting Parties and shall conduct its business in a manner consistent with international standards.

Article 11

Operating Principles for the Special Purpose Vehicle

1. The High Contracting Parties undertake to ensure that the Special Purpose Vehicle shall be operated and run in their respective countries and across Africa in accordance with the Open Access principles - namely:
 - a. All Authorised Service Providers shall be offered services by the SPV on an Open Access basis.
 - b. Authorised Service Providers shall be offered access to the NEPAD ICT Broadband Infrastructure Network at different capacities depending on their requirements.
 - c. End Users shall be free to choose any local Authorised Service Provider connected to the NEPAD ICT Broadband Infrastructure Network.



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- d. The Special Purpose Vehicle shall not compete with Authorised Service Providers (its customers) by offering Electronic Communication Services directly to End Users.
 - e. The Special Purpose Vehicle shall be formed, owned and operated in such a way as to facilitate competition and to foster innovation at a retail level, and where practical at all levels, with a view to maximise usage of the network and benefits to the End Users.
2. Each High Contracting Party shall take such action as is necessary, within its jurisdiction, for the purposes of making effective, in terms of its own laws, the provisions of this Article.



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CHAPTER V

Policy, Regulatory and Licensing Principles

Article 12

Policy and Regulatory Principles

- 1 To facilitate the establishment of the NEPAD ICT Broadband Infrastructure Network in accordance with this Protocol, the High Contracting Parties undertake that they shall collectively and individually, within such time as they may agree upon:
 - a. Where necessary, amend their existing policy and regulatory frameworks and/or promulgate new policy and regulatory frameworks to ensure that their policy and regulatory systems are harmonized and are aligned to the requirements for the establishment, ownership, maintenance and operation of the NEPAD ICT Broadband Infrastructure Network in terms of this Protocol; and
 - b. Harmonise their policy and regulatory frameworks with the objective of promoting the Open Access Principle as stated in Article 11 of this Protocol and the NEPAD Objectives and Principles as set forth in Annex 1 of this Protocol.
- 2 The time frame within which the High Contracting Parties undertake to have harmonised their policy and regulatory frameworks in terms of Article 12.1 above shall be set by agreement between the High Contracting Parties with due regard to the legal processes and procedures of each High Contracting Party, and once agreed such time frame shall form an Annex to this Protocol.

Article 13

Legal and Licensing Principles

1. In order to facilitate the establishment of the NEPAD ICT Broadband Infrastructure Network in accordance with this Protocol, the High Contracting Parties undertake that they shall collectively and individually within their respective countries, within the period agreed to in terms of Article 12 of this Protocol:
 - a. Where necessary, amend their existing licensing frameworks and/or introduce new licensing frameworks that recognize different types of licences at different layers of the network and/or where practical exempt the Special Purpose Vehicle



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from licensing requirements that could inhibit its operations in terms of the Open Access principles.

- b. Where necessary amend their existing law and/or introduce new legislation to allow for the licensing of the Special Purpose Vehicle so as to enable it to provide Electronic Communication Services as outlined in this Protocol.
 - c. In those jurisdictions where infrastructure for national, regional and/or international telecommunications services is owned by one network service provider in terms of national law, amend and/or introduce new legislative changes to facilitate the licensing of the Special Purpose Vehicle as a provider of wholesale Electronic Communication Services or equivalent.
2. The High Contracting Parties undertake to facilitate that the Special Purpose Vehicle is licensed, permitted and/or otherwise authorized to operate in their territory regardless of whether the Government of the concerned country or any service provider from the country invests in the network or not.
 3. In the event that any High Contracting Party has not effected the necessary legal, policy and regulatory changes to facilitate the operation of the Special Purpose Vehicle in its territory as outlined in this Protocol within such time as the High Contracting Parties may have agreed to in pursuance to Article 12, the High Contracting Parties hereby undertake to take all reasonable endeavours as are necessary to exempt the Special Purpose Vehicle from the provisions and/or application of their laws and policies to the extent that the same are inconsistent with the provisions of this Protocol.
 4. Recognising the objectives of the Special Purpose Vehicle, in particular its objective of minimising costs to End-Users and the need to address Africa's developmental objectives, the High Contracting Parties agree that subject to the national laws of each High Contracting Party:
 - a. Licence fees for the Special Purpose Vehicle shall be principally to cover administration costs incurred by each regulator and shall not in any event be higher than an amount agreed to by the IGA.
 - b. The Special Purpose Vehicle shall be exempted from all annual, including turnover related licence fees in all the High Contracting Parties' countries,
 - c. The initial term for the licence to be issued to the Special Purpose Vehicle shall be at least 15 (fifteen) years with an option to renew.



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5. In pursuance of the objectives of harmonization, the High Contracting Parties undertake to promote coordination amongst their respective regulatory bodies so as to ensure that the Special Purpose Vehicle is subjected to agreed and standardised terms and conditions of licence across Africa.
6. In view of the provision of Article 13.5. above, the High Contracting Parties agree that model standardised policy frameworks, regulatory instruments, and/or licences, shall be developed in line with the provisions of this Protocol from time to time, and that they shall endeavour that their regulatory practices comply with such model standardised regulatory instruments.



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CHAPTER VI

Financial and Tariff Principles for the Special Purpose Vehicle

Article 14

Financial Principles

1. Subject to the provisions of this Protocol, the Special Purpose Vehicle shall be operated in accordance with generally accepted and sound financial principles.
2. The capital structure of the Special Purpose Vehicle shall be optimised by using equity, debt and/or quasi-equity financing to ensure affordable Communications Services for End Users.
3. The Special Purpose Vehicle shall be structured in such a way as to ensure affordability of equity by prospective shareholders.
4. Bearing in mind the need to ensure Affordable Access to reliable, efficient and affordable Electronic Communication Services in Africa, the business of the Special Purpose Vehicle shall be conducted and managed in a manner that will achieve fair and reasonable return on investment.

Article 15

Principles for Determination of Wholesale Charges

1. Access charges, interconnection charges, usage charges and any other wholesale tariffs and/or charges that the Special Purpose Vehicle may levy shall be established in accordance with Article 11 of this Protocol, and in addition be in conformity with the following:
 - a. Tariffs and charges for all wholesale bandwidth and switched services in the reference offer shall, in all applicable cases, be independent of distance and be based on capacity provided in order to ensure equitable access to all participating countries and Authorised Service Providers in Africa.
 - b. Tariffs and charges shall be determined at an Affordable Price and be denominated in one international currency.
 - c. There shall be no internal settlement or transit charges for regional cross-border traffic, as long as the traffic is carried by the Special Purpose Vehicle.



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2. Notwithstanding the provisions of Article 15.1.c above, Authorised Service Providers that are connected to the Special Purpose Vehicle may be entitled to compensation for traffic that terminates into their respective networks, regardless of the origin of the traffic. The framework for charging and compensation model between the Special Purpose Vehicle and the Authorised Service Providers connected to the NEPAD ICT Broadband Infrastructure Network shall be developed following consultations and negotiations with the concerned stakeholders provided, however, that such a model shall be in accordance with this Protocol.

CHAPTER VII

Article 16

Access to NEPAD ICT Broadband Infrastructure Network

A Access to the Submarine Segment of the NEPAD ICT Broadband Infrastructure Network

1. The High Contracting Parties, recognizing the exceptional position of countries with existing or planned international fibre optic cable systems and the special needs of Landlocked States, agree that countries that have landing points for existing, planned or future international and regional fibre optic cable systems shall issue a licence(s) to and/or authorise the Special Purpose Vehicle in their countries in accordance with the provisions of this Protocol to ensure that the Special Purpose Vehicle has direct access to such cables.
2. The terms and conditions, including charges, for access to landing points imposed on the Special Purpose Vehicle shall, where the fibre optic cable is part of the NEPAD ICT Broadband Infrastructure Network, be set in terms of the provisions of this Protocol.
3. In the event landing points are not part of the NEPAD ICT Broadband Infrastructure Network, the coastal High Contracting Parties undertake to use their best endeavour to ensure that the terms and conditions, including charges, imposed on the Special Purpose Vehicle are affordable, and set in a transparent and fair manner.
4. The obligation created by this Article shall exist and be binding on all the High Contracting Parties notwithstanding the fact that neither a specific High Contracting Party nor any entity from within its territory participates in the Special Purpose Vehicle as an investor and/or in any capacity, if they choose not to.



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B Access to the Terrestrial Segment of the NEPAD ICT Broadband Infrastructure Network

1. The High Contracting Parties, recognizing the natural physical interconnectedness of their respective territories, agree to facilitate access to sectors of their electronic networks that shall be identified to be part of the terrestrial network.
2. Where new sections of the network need to be constructed, the High Contracting Parties agree to facilitate that the Special Purpose Vehicle either alone or in collaboration with others constructs such networks.
3. The High Contracting Parties, recognising the importance of this network to overall socio-economic development of Africa, agree to facilitate and encourage the use of this NEPAD ICT Broadband Infrastructure Network.
4. The obligation created by this Article shall exist and be binding on all the High Contracting Parties notwithstanding the fact that neither a specific High Contracting Party nor any entity from within its territory participates in the Special Purpose Vehicle as an investor and/or in any capacity, if they choose not to.

CHAPTER VIII

Article 17

Resolution of Disputes

1. If any dispute of any kind shall arise between the High Contracting Parties or between the Special Purpose Vehicle and any High Contracting Party in connection with or arising out of the Protocol, the parties shall make best efforts to resolve amicably such dispute by mutual consultation within sixty (60) days of request in writing by the other party for the resolution of the dispute.
2. If, the parties have failed to resolve their dispute within the time stated in paragraph 1 above, either party may within thirty (30) days thereafter give written notice to the other party of its intention to commence arbitration in accordance with the rules determined by the African Union from time to time for resolution of disputes between member states.



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3. Notwithstanding any reference to arbitration herein, the parties shall continue to perform their respective obligations under the Protocol or any agreement or contract arising there from, unless otherwise agreed.
4. Disputes between the Special Purpose Vehicle and any Authorised Service Provider(s) within territories of the High Contracting Parties shall be settled in accordance with the legal and regulatory framework of the High Contracting Party in which the dispute arose.



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CHAPTER IX

The Inter-Governmental Assembly and the Implementing Agency

Article 18

Establishment of the Inter-Governmental Assembly

1. To facilitate the realisation of the objectives of this Protocol, the High Contracting Parties hereby establish the Inter-Governmental Assembly (IGA) which shall be composed of representatives from all High Contracting Parties.
2. The IGA shall give consideration to those aspects of the Special Purpose Vehicle which are of primary interest to the High Contracting Parties as sovereign states and which have implications on the attainment of the objectives of this Protocol. The IGA shall have the power to give consideration to general policy, regulatory and long term objectives of the Special Purpose Vehicle consistent with the principles, purposes, scope and activities of the Special Purpose Vehicle as provided for in this Protocol.
3. Each High Contracting Party shall have one vote in the IGA.
4. The IGA shall have the following functions:
 - a. Facilitate and assist in promoting the NEPAD ICT Broadband Infrastructure Network.
 - b. Be the holder of the Golden Share in the Special Purpose Vehicle.
 - c. Appoint a director to the boards of directors of the Special Purpose Vehicle, who shall have the power of veto upon deliberation of the board of directors on any Policy and Regulatory Issues affecting the Special Purpose Vehicle.
 - d. Perform an oversight role in respect of Policy and Regulatory issues.
 - e. Approve non-telecommunication entities wishing to join and/or invest in the Special Purpose Vehicle in accordance with Article 8(2).
 - f. Ensure the highest level of African ownership and leadership in the Special Purpose Vehicle .



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- g. Promote and ensure domestic buy-in and encourage stakeholders to participate in the Special Purpose Vehicle.
 - h. Ensure that the Special Purpose Vehicle uphold the Open Access principles, the NEPAD principles as well as Policies and Regulatory issues and the objectives as spelt out in terms of this Protocol.
 - i. Determine and enforce the Special Purpose Vehicle' Regulated Return on Investment.
 - j. Undertake any other activities aimed at facilitating and promoting the establishment of the NEPAD ICT Broadband Infrastructure Network, including but not limited to the establishment of appropriate entities and/or instruments for that purpose.
5. The IGA shall meet at least once a year and/or at such time as may be convened by the Chairperson of the IGA provided however that a special meeting may be called on request by at least 50% plus one of the High Contracting Parties or by the secretariat of the IGA in consultation with the Chairperson.
 6. The IGA shall have the power to determine its procedures including the election of its chairperson.
 7. Decisions of the IGA which have a bearing on the Special Purpose Vehicle shall be in the form of directives and once duly issued shall be considered as annexes to this Protocol.
 8. The secretariat of the IGA shall be the NEPAD e-Africa Commission or its successor in title.
 9. The administrative costs of the IGA and its secretariat shall be funded through a levy imposed from time to time by the IGA on the Special Purpose Vehicle.

Article 19

Implementing Agency for the Protocol

1. The NEPAD e-Africa Commission or its successor in title shall be the implementing agency of this Protocol and shall accordingly be responsible for the following:



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- a. Submit regular reports to the Summit of the Heads of State and Government Implementation Committee of NEPAD and the IGA on the progress regarding the implementation of the Protocol.
- b. Coordinate efforts of the High Contracting Parties in the implementation of this Protocol.
- c. Identify potential private sector, development partners and other potential partners that may assist in ensuring the successful and speedy implementation of this Protocol.
- d. Subject to paragraph 18(5) be the Convenor of the IGA, upon instruction of the Chairperson.
- e. Represent the IGA on the board of directors of the Special Purpose Vehicle as and when so mandated.
- f. Carry out any such activity as the IGA may direct in pursuance of the objectives of this Protocol.



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CHAPTER X

Miscellaneous Provisions

Article 20

Amendments to the Protocol, Annexes and Inclusion of Annexes

1. Any High Contracting Party may propose an amendment to this Protocol, an amendment of an existing annex or the inclusion of a new annex to this Protocol.
2. A proposal made in Article 20.1. shall be transmitted to the Secretariat of the IGA, which shall table such proposal at the next meeting of the IGA.
3. The IGA shall reach a decision on the proposal by a two-third majority of the High Contracting Parties and shall thereafter transmit the decision to the Secretariat of the IGA, which shall in turn submit the proposal to the High Contracting Parties.
4. The High Contracting Parties, preferably acting through the Ministers responsible for ICT and/or Telecommunications, shall decide on the proposal by a two-third majority.
5. In case of a proposal to amend an existing annex or include a new one, the decision shall be made by a decision of a simple majority of the IGA.
6. The Annexes to this Protocol shall form an integral part of this Protocol.

Article 21

Signature, Ratification and Accession

1. This Protocol shall be open for signature by any country.
2. Countries that have signed the Protocol shall:
 - a. Ratify the Protocol in accordance with their national legislative or constitutional procedures;



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- b. Amend, repeal, if required, national legislation to give effect to the provisions of this Protocol; and
3. Any country may accede to the Protocol subject to accepting the provisions of this Protocol and may if necessary, amend, or repeal, national legislation to give effect to the provisions of this Protocol.



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Article 22

Entry into Force

1. This Protocol and any subsequent amendments thereto shall enter into force on ratification by at least 51 (fifty one) percent of the High Contracting Parties.
2. This Protocol shall come into force in relation to the acceding state on the date its instrument of accession is deposited with the African Union and the NEPAD e-Africa Commission.

Article 23

Depository

1. This Protocol, drawn up in 3 (three) original text, English, French and Portuguese, all of which are authentic, shall be deposited by the NEPAD e-Africa Commission with the Chairperson of the African Union.
2. The NEPAD e-Africa Commission shall transmit a certified true copy of the Protocol to all High Contracting Parties

Article 24

Withdrawal from the Protocol

1. Any High Contracting Party wishing to withdraw from the Protocol shall notify by giving one year notice in writing to the African Union through the NEPAD e-Africa Commission or its successor in title.

Article 25

Relationship with other International Agreements

1. This Protocol shall not alter in any way the obligations of any High Contracting Party stemming from a bilateral or multilateral agreement to which such a High Contracting Party is also a party at the time of signing of, ratification of, or accession to this Protocol.



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2. High Contracting Parties affirm their intention to ensure that their existing agreements with each other are progressively adapted over time to comply with the provisions of this Protocol.
3. High Contracting Parties shall ensure that all future agreements concluded by them with other High Contracting Parties or other states comply with the provisions of this Protocol.



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IN WITNESS WHEREOF, WE, the Ministers responsible for information and communication technologies and/or telecommunications in Africa have signed this Protocol.

DONE ATthisDay of2006 in three original texts in the English, French and Portuguese languages all being equally authentic, provided that in case of inconsistencies and differences in interpretation the English text shall prevail.

HIGH CONTRACTING PARTY	DATE OF SIGNING /ACCEDING
For and on behalf of the Republic of Botswana	October 16, 2006
For and on behalf of the Democratic Republic of Congo	November 29, 2006
For and on behalf of the Kingdom of Lesotho	August 29, 2006
For and on behalf of the Republic of Madagascar	August 29, 2006
For and on behalf of the Republic of Malawi	August 29, 2006
For and on behalf of the Republic of Mauritius	November 20, 2006
For and on behalf of the Republic of Rwanda	August 29, 2006
For and on behalf of the Republic of South Africa	August 29, 2006
For and on behalf of the Republic of Tanzania	August 29, 2006
For and on behalf of the Republic of Uganda	August 29, 2006
For and on behalf of the Republic of Zambia	November 30, 2006
For and on behalf of the Republic of Zimbabwe	October 16, 2006



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ANNEX I OBJECTIVES AND PRINCIPLES OF NEPAD

NEPAD'S PRIMARY OBJECTIVES

1. To eradicate poverty.
2. To place African countries, both individually and collectively, on a path of sustainable growth and development.
3. To halt the marginalization of Africa in the globalization process and enhance its full and beneficial integration into the global economy.
4. To accelerate the empowerment of women.

PRINCIPLES OF NEPAD

1. Good Governance as a basic requirement for peace, security and sustainable political and socio-economic development.
2. African ownership and leadership, as well as broad and deep participation by all sectors of society.
3. Anchoring the development of Africa on its resources and resourcefulness of its people.
4. Partnership between and amongst African peoples.
5. Acceleration of regional and continental integration.
6. Building the competitiveness of African countries and the continent.
7. Forging a new international partnership that changes the unequal relationship between Africa and the developed world.
8. Ensuring that all Partnerships with NEPAD are linked to the Millennium Development Goals and other agreed development goals and targets.



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ANNEX II

TIMETABLE FOR HARMONISATION OF NATIONAL POLICIES, LEGISLATION AND REGURATION TO CONFORM TO THIS PROTOCOL.

High Contracting Parties hereby agree, with reference to Article 12 and 13, to ensure that their national policies, legislation are modified, adapted or amended to conform to the principles enunciated in this Protocol by March 31st 2008.