



STATUTORY INSTRUMENT

*Universal Access and Service Fund Regulation, 2013*

***DRAFT UAS REGULATIONS***

***FOR NICTA REVIEW AND COMMENT***

MADE under the

National Information and Communications Technology Act, 2009

**ARRANGEMENT OF SECTIONS**

**PART I—UAS POLICIES AND OBLIGATIONS**

1. Objective
2. Interpretation
3. Universal service principles to guide projects
4. Implementation of UAS Policies and Projects
5. Functions of NICTA and the UAS Board
6. Review
7. Mandatory facility and spectrum sharing for UAS Projects

## **PART II—UNIVERSAL ACCESS AND SERVICE FUNDING**

8. Principles of UAS Projects
9. Mechanisms to distribute funds

## **PART III—PROJECT SELECTION MECHANISMS**

10. Submission of proposals for UAS Projects
11. Identification of UAS Projects
12. Identification of UAS Projects by UAS Board
13. Eligibility to bid on UAS Projects
14. Award of funding
15. Project Implementation
16. Enforcement of Project implementation

## **PART IV— ADMINISTRATION OF UNIVERSAL ACCESS AND SERVICE FUNDS**

17. Separate accounts
18. Separate budgets
19. Audit of the fund administration
20. Reporting requirements of the UAS Board.

## **PART 1 – UAS POLICIES AND OBLIGATIONS**

### **1. Objective**

- (1) The objective of the Universal Access and Service Fund in Papua New Guinea (PNG) shall be the expansion of the public information and communications networks (including access to basic and advanced information and communications services) in PNG to ensure universal availability and affordability of those services on an equitable basis to all end-users, regardless of where they live or work.
- (2) The Fund shall also be guided by the objective of creating a competitive communications market in PNG.

### **2. Interpretation**

“Act” means National Information and Communications Technology Act, 2009

“providers of information and communications services” and “information and communications network/facilities operators and service providers” include an operator licensee, access provider, or a service provider;

“Fund” means the Universal Access and Service Fund established under the Act.

“universal service providers”

In this regulation unless the contrary intention appears, any words or phrases that are defined in the Act have that meaning in the Act.

### **3. Universal Service Principles to Guide Projects**

- (1) The following principles shall guide the UAS Board and UAS Secretariat in identifying, developing and estimating the costs of UAS Projects under section 08(1) of the Act-
  - (a) the principles contained in current Government policies on telecommunications, broadcasting and information and communications services generally;
  - (b) high quality information and communications services should be available at equitable, reasonable, and affordable rates;
  - (c) consumers in all regions, including low-income consumers and those in remote and high cost areas, should have access to information and communications services that are reasonably comparable to those services

provided in urban areas in PNG and that are available at rates that are reasonably comparable to rates charged for similar services in such urban areas;

- (d) all providers of information and communications services should make an equitable and non-discriminatory contribution to the preservation and advancement of universal service;
- (e) there should be specific, predictable and sufficient legal and regulatory mechanisms to preserve and advance universal service that minimise market distortions, in particular the provision of services at prices or subject to other terms and conditions which depart from normal commercial conditions, while safeguarding the public interest;
- (f) in cases such as those referred to in (d) above, to safeguard the role of competitive markets with respect to fostering continued economic growth, exit strategies that can ultimately restore effective competition in areas where distortion has occurred should be included as part of the overall measures and an action plan formed for delivering this particular UAS program. Multiple methods of achieving universal access and service should be implemented, including coverage and build-out obligations in licences, in addition to universal service obligations; and
- (g) UAS Programs and Projects should include measures to ensure access to information and communications services for persons with disabilities or special needs, women, educational institutions, health care facilities, community access centres, libraries and other target communities as identified by the UAS Board.

#### **4. Implementation of UAS Policies and Projects**

The UAS Secretariat shall-

- a) liaise and consult with information and communications providers, other industry stakeholders and end-users on the status of information and communications technologies, markets, and other relevant developments to determine and report on the key international best practice indicators that best measure progress towards UAS policy outcomes, such as access gaps, connectivity targets attained, usage take-up, and human resource capacity building;
- b) identify appropriate projects and targets for moving toward universal access and service for designated types of communications services nationwide within a reasonable time frame;
- c) determine, pursuant to public consultation, appropriate socio-economic

criteria to identify the geographic areas, population groups, institutions and organisations that may be eligible to benefit from UAS Project financing as provided for under these Regulations;

- d) evaluate and define the scope and terms of potential UAS Projects;
- e) monitor UAS Projects and enforce the terms of UAS Project contracts;
- f) evaluate UAS Projects after their implementation;
- g) monitor and enforce the mechanism for the assessment, collection and recovery of the required contributions to the UASF; and
- h) determine the mechanisms that may be used to decide on UAS Projects as provided for in these regulations.

## **5. Functions of NICTA and the UAS Board**

- (1) NICTA and the UAS Board shall work together to-
  - (a) establish administrative mechanisms, systems and structures for proper management of the Fund;
  - (b) supervise and provide broad policy directions for the management of the Fund and Universal Service Programs;
  - (c) develop specific indicators of communications access;
  - (d) use competitive selection processes to select beneficiaries of the Fund;
  - (e) develop appropriate socio-economic criteria for identifying the geographical areas, population groups, institutions and organizations that may be eligible to benefit from the Fund;
  - (f) develop criteria for evaluating UAS Project proposals for funding;
  - (g) monitor and evaluate the UAS Projects;
  - (h) formulate the annual operating plans of the Fund;
  - (i) impose mandatory sharing of infrastructure and scarce resources (such as spectrum) in UAS Project areas;
  - (j) approve standing orders to establish and regulate its meetings and proceedings;
  - (k) Coordinate with the UAS Secretariat; and

- (1) Provide for the award of UAS Licenses to facilitate the completion of UAS Projects where determined to be appropriate by NICTA with input from the UAS Board
- (2) In order to facilitate the functions under sub-regulation (1)-
  - a) NICTA and the UAS Board shall hold regular joint meetings.
  - b) The UAS Secretariat shall report regularly to the UAS Board and to NICTA.

## **6. Review**

- (1) NICTA and the UAS Board shall every three years review the scope of universal access and service objectives to be promoted in light of social, economic and technological developments, and of the prevailing technologies used by the majority of subscribers.
- (2) In considering whether the scope of universal service objectives should be changed or redefined, the UAS Board shall consider the following-
  - (a) whether specific services that are available to and used by a majority of consumers result in social exclusion by the minority of consumers who lack availability to such services; and
  - (b) whether the availability and use of specific services convey a general net benefit to all consumers such that public intervention is warranted in circumstances where the specific services are not provided to the public under normal commercial circumstances.

## **7. Mandatory facility and spectrum sharing for UAS Projects**

- (1) NICTA may impose the mandatory sharing of facilities and spectrum on operators licensed under the Act for the purpose of the implementation of any UAS Project.
- (2) Sharing of facilities shall take place on a neutral, transparent, fair and non-discriminatory basis.
- (3) Non-replicable facilities such as towers, ducts and rights of way may be shared for installations that serve a similar purpose, which allows for optimal use and can be offered on a first-come first- served basis subject to commercial agreements under fair pricing conditions.
- (4) Spectrum sharing can be implemented on the basis of geography, time or frequency separation.

- (5) An operator may deny access to a facility installation only where it demonstrates that there is insufficient capacity in such facility, taking into account its reasonably anticipated requirements, or for reasons of safety, security, reliability or difficulty of a technical or engineering nature.
- (6) Where an operator denies access to a facility installation or to spectrum under this section NICTA shall determine whether such denial is in accordance with the provisions of these regulations and where the determination finds that the denial is not in accordance with these regulations NICTA may make an order compelling the access to a facility installation or to spectrum.
- (7) NICTA may regulate the rates, terms and conditions for access to any facility or use of spectrum, such rates, terms and conditions to be just and reasonable and it may adopt procedures necessary and appropriate to resolve disputes concerning such rates, terms and conditions.

## **PART II—UNIVERSAL ACCESS AND SERVICE FUNDING**

### **8. Principles of UAS Projects**

- (1) The Fund shall seek to promote efficient, self-sustaining projects which may continue to expand access to information and communications on their own initiative, requiring the minimum amounts of UAS Fund resources possible.
- (2) The Fund may be used to finance UAS Projects to the extent necessary to create adequate economic incentives for investors to self-finance and manage such projects commercially.
- (3) Notwithstanding the provisions of sub-regulation (1) and (2), complementary strategies to meet UAS objectives and targets may be implemented by NICTA where commercially viable projects may not be feasible in the short run.
- (4) Mechanisms under sub-regulation (3) may include, among other options-
  - (a) additional roll-out targets;
  - (b) microcredit programmes;
  - (c) public-private-partnerships;
  - (d) build-transfer-operate arrangements; and
  - (e) cooperatives.

### **9. Mechanisms to Distribute Funds**

- (1) The primary mechanism for distributing UASF funds shall be through competitive bidding procedures, which ensure equitable and transparent allocation of funds among qualified bidding organisations.
- (2) NICTA shall determine the procedures and criteria for the competitive bidding processes required under sub-regulation 1 above.
- (3) Notwithstanding the provisions of sub-regulation 1 above, NICTA through the UAS Secretariat may also, following public consultation as provided for in sub-regulation 5 below, determine to distribute the funds on the basis of a restricted bidding procedure, a sole source procurement procedure or an emergency procurement procedure.
- (4) NICTA, through the UAS Secretariat, shall determine which method of procurement is appropriate in the circumstances and shall manage the procurement processing accordance with the requirements and procedures set out in this Act and the regulations.
- (5) Where NICTA determines to use a method of procurement other than open competitive bidding, it shall notify the public of its intention to do so and the reasons for choosing of the proposed procurement method to be used.

### **PART III—PROJECT SELECTION MECHANISMS**

#### **10. Submission of Proposals for UAS Projects**

Notwithstanding Regulation 11, in accordance with these Regulations and the procedures set forth by the Minister, any person may submit a proposal for a UAS Project to be reviewed by the UAS Secretariat.

#### **11. Identification of UAS Projects**

At the end of each operating year, the UAS Secretariat shall initiate the process of identifying projects for the next operating year to be considered for UAS funding, including those to be funded through the various financing mechanisms provided for under these Regulations within the operating year.

- (1) This process shall include-
  - (a) solicitation of proposals from information and communications network/facilities operators and service providers and other interested parties;
  - (b) determination of the priority of projects based on the UAS policy;



- (c) development of proposals for projects identified by the UAS Board; and
  - (d) costing of proposals to be financed and identification of financing mechanisms.
- (2) In identifying projects under sub-regulation (1) the UAS Secretariat -
- (a) shall abide by the principles set out in regulation 8 (1); and
  - (b) may support projects-
    - (i) that are not commercially feasible without support of the Fund; and
    - (ii) to the extent necessary to create adequate economic incentives for investors.

## **12. Identification of UAS Projects By UAS Board**

- (1) Notwithstanding Regulation 11 above, the UAS Secretariat may identify and solicit UAS projects through a Request for Proposals at any time during the operating year.
- (2) The process of soliciting project proposals from network operators and service providers and other interested parties as provided for under Regulation 11 above, may be done through-
- (a) public meetings;
  - (b) electronic and online advertisements or solicitations;
  - (c) public announcements;
  - (d) advertisements; or
  - (e) appropriate promotional activities.
- (3) The final selection of which projects shall be undertaken shall be made in consultation with NICTA.
- (4) The UAS Board cannot approve projects not recommended by the UAS Secretariat.

## **13. Eligibility to Bid On UAS Projects**

- (1) Notwithstanding the terms of its licence, any authorised network operator or service provider shall be automatically considered eligible to bid for any UAS Project, as long as the provider is authorised to operate the network or offer the

service or services that comprise a universal service initiative and is not in material breach of any of its license terms and conditions.

- (2) In addition to current authorised network operators and service providers, any other duly qualified organisation may be eligible to submit a bid to provide UAS Projects that are within the capabilities and resources of such organisation. The UAS Board, on recommendation of the UAS Secretariat, shall determine minimum eligibility and qualification criteria for each UAS Project.

#### **14. Award of Funding**

Funding for a universal service project shall be awarded in the form of a fixed price contract and may be disbursed by the UAS Secretariat in one or more payments to correspond to milestones established under the service contract for each project.

#### **15. Project Implementation**

- (1) In accordance with the terms and conditions of the UAS contract, a contractor shall provide periodic reports to the UAS Board/UAS Secretariat, detailing its progress in fulfilling contractual requirements, reporting on project financing and accounts, reporting on achieving project objectives and timetables, and explaining any delays.
- (2) The UAS Board may adopt and publish guidelines establishing minimum project management principles to which UAS contractors shall adhere to based on international best practices and subject to public consultation.

#### **16. Enforcement of Project Implementation**

- (1) Where a UAS contractor fails to complete or comply with the requirements of a Project contract, the NICTA may, in addition to any other penalties it may impose under law, require the contractor to compensate the NICTA up to the amount of funds paid to achieve UAS under the terms of the project contract, plus any administrative and legal costs incurred.
- (2) Contractors shall not be required to pay such compensation until dispute resolution provisions provided for in the law or contract have been exhausted.

### **PART IV—ADMINISTRATION OF UNIVERSAL ACCESS AND SERVICE FUNDS**

#### **17. Separate Accounts**

Any monies accruing to the UAS shall be-

- (a) kept in one or more accounts, separate and independent from any other operating accounts of NICTA; and
- (b) initially deposited in a designated Fund bank account and shall be disbursed upon authorisation of NICTA for specific Fund-related activities in accordance with these Regulations.

### **18. Separate Budgets**

UAS Board shall prepare and keep separate budgets for the Fund Projects and Fund Operations through accounting allocations-

- (a) the Operating Budget shall be used for operating the Fund and administrative expenses charged to the Fund shall not exceed ten (10) percent of the annual budget of the Fund;
- (b) the Fund Project Budget shall be allocated to Fund Projects that have been selected and approved for financing in accordance with these Regulations; and
- (c) before the end of the financial year, NICTA/UAS Board shall prepare budget forecasts for the Fund for the following financial year.

### **19. Audit of the Fund Administration**

Where an audit under section 106(1) of the Act is not completed within [6] months after the end of a financial year NICTA may appoint an independent auditor for the Universal Access and Service Fund, who shall provide an annual audited financial statement that shall be included in NICTA's annual report to the Minister.

### **20. Reporting Requirements of the UAS Board**

The UAS Board shall in its an Annual Report on the Universal Access and Service Fund published under section 120 of the Act include -

- (a) details of activities supported, whether by the Universal Access and Service Fund or otherwise and progress made; and
- (b) details of awards of contracts under the UAS.