

# TELKOM INTERNET TERMS AND CONDITIONS

Last Updated July 2017

## 1. INTRODUCTION

- 1.1 These terms and conditions, as amended by Telkom from time to time, are applicable to the provision and use of the Telkom Internet Service which is provided by Telkom to its Customers. The Telkom Internet Service is provided by Telkom in terms of, and subject to:
- 1.1.1 the ECA;
  - 1.1.2 Telkom's ECS licence issued in terms of the ECA;
  - 1.1.3 the Telkom Internet Service Level Agreement.
  - 1.1.4 these terms and conditions;
  - 1.1.5 the Telkom Internet AUP; and
  - 1.1.6 Telkom's Standard Terms and Conditions for the Provisioning of Electronic Communications Services and Products
- 1.2 In the event of a conflict arising between the provisions of any of the above documents, the order of precedence shall apply as listed in 1.1.1 to 1.1.6.

## 2. INTERPRETATION

- 2.1 In these terms and conditions, unless inconsistent with or otherwise indicated by the context, the following words and terms shall have the meanings ascribed to them below:
- 2.1.1 Activation: means the processes undertaken by Telkom to enable a Customer to access the Internet and send and receive data and electronic mail, by making use of the Telkom Internet Service;
  - 2.1.2 Activation Date: means the date on which Activation takes place;
  - 2.1.3 All Networks Internet Bundle – means a 3G/4G/LTE-based Internet bundle that is used to access data on Telkom Mobile's and MTN's GSM networks
  - 2.1.4 AUP: means the Telkom Internet Acceptable Use Policy located at [www.telkom.co.za/general/termsandconditions/downloads/TelkomInternetAUP.pdf](http://www.telkom.co.za/general/termsandconditions/downloads/TelkomInternetAUP.pdf);
  - 2.1.5 Business Day: means any day, other than a Saturday, Sunday or official public holiday in the Republic of South Africa between 07:00 and 16:30;
  - 2.1.6 Cap: means a limit on the amount of Shaped/Unshaped Data Usage, measured in MB or GB, which the Customer can upload or download during a specific calendar month without having to purchase additional data, as determined by the terms of the Telkom Internet Service;
  - 2.1.7 Post-Paid Data: means an alternative Data Top-Up function whereby a Customer can consume out-of-bundle data which shall be charged for on the Customer's Telkom invoice;
  - 2.1.8 Concurrent Session: means the existence of multiple open ports per username or account at any given time;

- 2.1.9 Customer: means a person who has applied for a Telkom Internet Service and who receives such service from Telkom pursuant to an application, and shall also include an applicant for a Telkom Internet Service, who will be liable for the payment of the Telkom Internet Service Charges associated with the Telkom Internet Services and for compliance with these terms and conditions;
- 2.1.10 Top-Up: means the additional amount of Data Usage which may be purchased by a Customer in respect of the Telkom Internet Service during a specific calendar month;
- 2.1.11 Data Usage: means the volume of electronic data that can be uploaded or downloaded by a Customer through the use of the Telkom Internet Service, measured in MB or GB;
- 2.1.12 ECA: means the Electronic Communications Act, 36 of 2005;
- 2.1.13 ECS: means Electronic Communications Service as defined in the ECA;
- 2.1.14 ECNS: means Electronic Communications Network Service as defined in the ECA;
- 2.1.15 GB: means gigabytes, which is the measurement of data transfer capacity, calculated as: 1024 x 1024 x 1024 bytes equals 1 GB;
- 2.1.16 MB: means megabyte, which is the measurement of data transfer capacity, calculated as: 1024 x 1024 bytes equals 1 MB;
- 2.1.17 IM: means Instant Message, a real-time, text-based communication medium similar to chat, as utilised in some social networking environments.
- 2.1.18 In-bundle; means usage, bandwidth or storage within a usage limit communicated to the Customer in the product definition;
- 2.1.19 International Data: means data used to access international Internet protocol addresses;
- 2.1.20 IP Address: the Internet protocol address of a device connected to the Internet;
- 2.1.21 **MAC address** – Stands for "Media Access Control Address," A MAC address is a hardware identification number that uniquely identifies each device on a network. The MAC address is manufactured into every network card, such as an Ethernet card or Wi-Fi card, and therefore cannot be changed.
- 2.1.22 Out-of-bundle: means usage, bandwidth or storage usually metered outside of the usage limit communicated to the Customer in the product definition. Out of bundle services may be subject to metering and charging specified in each product definition.
- 2.1.23 Shaped Data means International Data in respect of which prioritisation is applied to protocols used over the Internet.
- 2.1.24 SoftCap Internet Usage Product: refers to a metered usage service with a customer selected usage limit, usually in GB. Once the soft cap has been reached, the internet speed will be throttled to a proportion of the ADSL port speed. Bandwidth intensive websites and / or protocols, namely peer-to-peer protocols and websites with video streaming will be significantly restricted.
- 2.1.25 Telkom: means Telkom SA SOC Limited, a listed company duly incorporated in the Republic of South Africa, with registration number 1991/05476/30 and with its registered office at Telkom Park, 61 Oak Avenue, Highveld, Techno Park, Centurion 0157

- 2.1.26 Telkom Internet Service Charges: means the amount(s) levied for the provisioning of the Telkom Internet Service;
- 2.1.27 Telkom Internet Service: means a Telkom service consisting of those Telkom Internet Service Offerings as contained in the relevant application for such service and provided under and in terms of Telkom's ECS licence and these terms and conditions;
- 2.1.28 Telkom Internet Service Offerings: means internet access, e-mail, domain name and web hosting services, provided by Telkom under and in terms of its ECS licence and these terms and conditions;
- 2.1.29 Telkom Internet SLA: means the Telkom Internet Service Level Agreement with web site <http://www.telkom.co.za/general/termsandconditions/index.html>;
- 2.1.30 Telkom Internet Website means the website with address [www.telkom.co.za](http://www.telkom.co.za);
- 2.1.31 Uncapped Internet Usage Product: means a service provided without a predetermined usage cap, subject to the Fair Usage Policy clause of the Telkom Internet Acceptable Use Policy;
- 2.1.32 Unshaped Data: Usage that is not subject to shaping technologies but usage that is prioritised within the overall pool of usage data from Telkom Internet to ensure maximum throughput and minimal latency.
- 2.1.33 Social Networking Services: refer to electronic social network platforms used to build relations among people who share interests and activities;
- 2.1.34 Night Surfer: refers to users who use the internet service between 00:00am and 07:00am;
- 2.1.35 Instant Messaging (IM): Refers to real-time texting application and associated file transfers over the Internet;
- 2.1.36 Add-on services: refer to services that you can purchase from Telkom in addition to your existing SoftCap product.
- 2.1.37 Apps: means applications. Applications are a type of software that runs on the internet through devices such as computers, Apple TV and smart TV's. Examples of applications on these devices are Netflix, Hulu, YouTube, Skype etc.

### **3. ACTIVATION AND PROVISIONING OF THE TELKOM INTERNET SERVICE**

- 3.1 Subject to clause 3.2 below, Telkom will activate the Telkom Internet Service on the date of application, unless a Customer requests a specific Activation Date after the application date.
- 3.2 In the event that Telkom provides a Customer with an Activation Date as contemplated in clause 2.1.2 above and Activation does not take place by such Activation Date, Telkom shall not be liable for any damages, costs or expenses whatsoever incurred or suffered by a Customer or any third party as a result of any failure by Telkom to activate the Telkom Internet Service by the Activation Date. Billing will however only commence from the date on which the Telkom Internet Service was actually activated and available for use by the Customer.
- 3.3 In the event that a Customer cancels his application for the Telkom Internet Service before the Activation Date, the Customer shall be liable for any abortive costs.

- 3.4 Telkom shall not incur liability for any failure of a Customer to access his Telkom Internet account in the event that the Customer did not arrange for a suitable access medium.
- 3.5 The Customer shall be responsible for the provisioning, configuration and maintenance of all of the Customer's equipment and software, including (without limitation) computer hardware equipment, electronic communications equipment and modems necessary and required by the Customer to use the Telkom Internet Service, and specifically the installation of Internet security software.
- 3.6 The Telkom Internet Service is a best effort service and Telkom Internet shall not be held liable for temporary interruptions in the provision of the Telkom Internet Service.

#### **4. TELKOM INTERNET SERVICE OFFERINGS**

The different Telkom Internet Service Offerings and the relevant charges are set out on the Telkom Internet Website. The Telkom Internet Service Offerings and charges may be amended by Telkom from time to time.

The amended terms and conditions on Telkom's website at the following link: <http://www.telkom.co.za> which will be deemed incorporated into the Agreement and bind the Customer from the date that the amendment was listed on the abovementioned site.

##### **4.1 Uncapped Internet Services**

Telkom Internet Uncapped Internet Service is prioritised for either Home or Business Customer use. The Telkom Internet Acceptable Use Policy "AUP" is the mechanism whereby Telkom Internet manages the impact on the quality and bandwidth pool

##### **4.2 SoftCap Internet Services**

Internet access shall be made available subject to the SoftCap applicable to the relevant Telkom Internet Service as well as the considerations set out hereunder:

###### **4.2.1 Data Usage**

- a) Subject to clause 4.2.2 below, Telkom Internet SoftCap Service Offerings include Shaped or Unshaped Data
- b) Data usage is counted from the first to the last day of every calendar month.
- c) Notwithstanding the contents of clause 4.2.1(a) above, a Customer can reach the Cap through Data Usage consisting of Shaped or Unshaped Data.
- d) Subject to clause 4.2.2 below, once a Customer has reached the Cap, the Customer's Internet Service will be converted to SoftCap internet usage mode.
- e) When customer reached the SoftCap threshold of his package all related add on services ie. Entertainment bolt-on, IDS, will be subject to the reduced speed until such time the customer has purchased TopUp data or agreed to post-paid data billing.

###### **4.2.2 Internet access**

- a) When a Customer has reached the predetermined usage cap limit, the Customer will by default be converted to SoftCap internet usage mode.

- b) Should a Customer wish to access full Data speed after having reached the Cap as contemplated in clause 4.2.2(a) above, the Customer will need to purchase Data Top-Up or agree to post-paid data billing.
- c) After purchasing Top-Up Data as foreseen in clause 4.2.2(b) above, Shaped or Unshaped Data will again be used first and once the Customer has used the Shaped or Unshaped Data, that is, reached the Cap again, the Customer will again be moved back to a slower internet speed with international internet access limitations.
- d) Data Top-Up can be purchased in GB data increment. Telkom reserves the right to limit the number of transactions.
- e) Where the Telkom Internet Service consists of a specific internet access type the service can be topped up with additional data of that specific data type only such as shaped and unshaped data.
- f) Data Top-Up purchased via credit card in a particular month will be available until the end of the next following calendar month, after which any unused data will be forfeited.
- g) Data Top-Up purchased cannot be refunded or exchanged for cash.
- h) Only one Add-on Service can be purchased within a 30 calendar day period.
- i) Add-on services purchased in a particular month will be available for 30 calendar days from the date of activation. Add-on services purchased cannot be refunded or exchanged for cash
- j) In the event that a Customer has paid for Data Top-Up or an Add-on Service, but is unable to access or use the data due to any failure by Telkom in the provisioning of the Telkom Internet Service, Telkom shall not be liable for any damages or expenses of whatsoever nature and howsoever incurred by the Customer.
- k) It is the Customers' responsibility to ensure that any Add-on promotions are activated on their accounts before making use of any services that are provided free as part of the Add-on. If an Add-on is not active, any data used relating to the Add-on will count towards the customer's quota, and Telkom will not be liable to refund any data. Customers can verify which Add-ons are active on their account by logging on to the Telkom Internet Usage Tracker at <https://secure.telkomsa.net/titracker>

**4.2.3 Free data on Social Networking** (Not available to 1 GB customers and only applicable to SoftCap products)

- a) The promotional offer which includes data for use on the following websites and IM services is available for Twitter, Facebook, LinkedIn, WhatsApp, Google Chat (IM only), Yahoo Messaging (IM only), MSN/Windows Live Messaging (IM only).
- b) Data accessed via links or embedded content (for example YouTube, VOIP, Video Calling, Cloud/Storage services and e-mail via social networking) will not qualify as free data but will count towards your monthly limit.

- c) Telkom reserves the right to change qualifying websites and services without prior notification. You are therefore advised to check whether the website you wish to access is listed on [www.telkom.co.za](http://www.telkom.co.za) before attempting to access any website or IM service.
- d) Accessing identified Social Networking services is subject to Telkom Internet Acceptable Use Policy.
- e) Once your SoftCap limit is reached the social networking services will also be subjected to the SoftCap restrictions.
- f) Total usage for identified websites and services can be viewed by using the Telkom Internet Usage Tracking Tool (<https://customerportal.telkomsa.net>).

#### **4.2.4 Free data on Night Surfer** (Not available to 1 GB customers and only applicable to SoftCap products)

All data used between 00:00am to 7:00am will not count towards your SoftCap. However, once you have reached your SoftCap limit, the all Night Surfer data usage will also be subject to SoftCap restrictions.

#### **4.2.5 Telkom Internet Mobile Data**

Telkom Internet mobile data allocation is available to all Telkom Internet customers on SoftCap and Uncapped products excluding the 1GB and 1Mbps Uncapped products; however Telkom reserves the right to apply distribution thereof. Telkom Internet Customers that have registered for this capability will receive a set allocation of recurring data to be consumed from their fixed or mobile connection, subject to the following conditions:.

- a. RICA shall apply.
- b. The first SIM will be supplied free of charge, however a SIM and connection fee shall apply for any additional SIM's.
- c. A maximum of 5 SIMs will be allowed for a residential customer and 10 SIMs for a business customer.
- d. The data usage is shared on multiple SIMs linked to the same Telkom Internet account
- e. A compatible 3G and LTE device is required to use through the Telkom Mobile 3G and LTE network respectively. The maximum speed that can be experienced by the subscriber is dependent on the speed specification of the device or supported by the network.
- f. An LTE modem/router that is compatible with the 1800MHz and/or 2300MHz band will be required for the subscriber that wishes to experience the LTE speeds on the Telkom Mobile network.
- g. 3G and LTE Data modems and routers that support download speeds of up to 7.2Mbp/s and up to 21Mbp/s will be available in store. The device speed has an impact on the network speed experienced by the subscriber.

- h. All Telkom Mobile Internet data allocations are LTE enabled thus can also be used in LTE network coverage to access Internet subject to using an LTE enabled device.
- i. LTE access is limited to availability of LTE network coverage visit the following site to check if you are in an LTE coverage <https://secure.telkom.co.za/today/ucm/> .
- j. Subscription to Telkom Internet Mobile data is subject to Telkom 3G/LTE network coverage and network availability. The service is a best-effort service and no guarantees are provided on availability or throughput.
- k. The Telkom Internet mobile data is available only on the Telkom Mobile network.
- l. Out of bundle data can be purchased on Top-up.
- m. Telkom shall not be held responsible for failure to access Internet at locations where Telkom's mobile network does not have coverage and the service experience may change from time to time.
- n. Data balances of inclusive Internet bundles for Telkom Internet mobile data will not carry over to the following month but will expire at the end of the month.
- o. Telkom Internet mobile data – Top-up is valid until the end of the following calendar month from date of activation.
- p. Out of bundle rates will apply for Telkom Internet mobile data when activated by the subscriber.
- q. Telkom is not liable for any loss or damage to a Customer's property or equipment arising out of the provision, installation or maintenance and use of Telkom's mobile's 3G/LTE service.
- r. Telkom will not incur any liability whatsoever for any loss or damage as a result of any use, authorised or unauthorised, resulting from virus attacks, security vulnerabilities, and loss of information.
- s. Prices include VAT.
- t. SMS and voice capabilities are not available.
- u. Integrated data can be purchased by accessing Self Service Portal at <https://customerportal.telkomsa.net>

#### **4.2.6 Add-on services (Not available to 1 GB customers)**

##### a) TI Entertainment

Includes uncapped data to the following video services subject to the uncapped Fair Usage Policy clause in the Telkom Internet Acceptable Use Policy:

- i. iTunes (AppleTV)\*
- ii. DStv BoxOffice Online\*\*
- iii. DStv CatchUp Online\*\*\*

\* Will require an Apple TV device

- Excludes all apps services for example YouTube, Hulu, Netflix and Podcasts etc.
- Uncapped data only includes iTunes movies renting, buying and music

\*\*Must have a subscription to DSTV BoxOffice

\*\*\*Must be a DSTV Premium Subscriber

#### b) Integrated Data Service (IDS)

Telkom Integrated Data (IDS) service is available to all SoftCap Telkom Internet customers on 20GB and higher packages. Telkom Internet Uncapped products are excluded from this add-on service. Telkom Internet customers that have registered for this capability will receive the add-on to utilise the Telkom Internet SoftCap data allocation on their fixed broadband and allocated Telkom mobile data SIM, subject to the following conditions:.

- i) All prospective subscribers shall undergo credit vetting process before provisioning of the Telkom Integrated Data service.
- ii) RICA shall apply.
- iii) The first SIM will be supplied free of charge, however a SIM and connection fee shall apply for any additional SIM's.
- iv) Existing Telkom Internet mobile data SIMs associated with the Telkom Internet SoftCap account will be upgraded to be used on the IDS service.
- v) The Telkom Internet mobile data allocations will no longer apply when the IDS add-on service is enabled.
- vi) A maximum of 5 SIMs will be allowed for a residential customer and 10 SIMs for a business customer.
- vii) The data usage is shared on multiple SIMs linked to the same Telkom Internet account
- viii) A compatible 3G and LTE device is required to use through the Telkom Mobile 3G and LTE network respectively. The maximum speed that can be experienced by the subscriber is dependent on the speed specification of the device or supported by the network.
- ix) An LTE modem/router that is compatible with the 1800MHz and/or 2300MHz band will be required for the subscriber that wishes to experience the LTE speeds on the Telkom Mobile network.
- x) 3G and LTE Data modems and routers that support download speeds of up to 7.2Mbps and up to 21Mbps will be available in store. The device speed has an impact on the network speed experienced by the subscriber.
- xi) The IDS service add-on data allocation is LTE enabled thus can also be used in LTE network coverage to access Internet subject to using an LTE enabled device.



- xii) LTE access is limited to availability of LTE network coverage visit the following site to check if you are in an LTE coverage <https://secure.telkom.co.za/today/ucm/> .
- xiii) Subscription to the IDS add-on service is subject to Telkom 3G/LTE network coverage and network availability. The service is a best-effort service and no guarantees are provided on availability or throughput.
- xiv) The Integrated Data is available only on the Telkom Mobile network.
- xv) Out of bundle data can be purchased on Top-up at defined IDS rates.
- xvi) Telkom shall not be held responsible for failure to access Internet at locations where Telkom's mobile network does not have coverage and the service experience may change from time to time.
- xvii) The use of data on IDS excludes the following data usage. Such usage will be accounted for as normal data usage that is deducted from the SoftCap data allocation when used from the IDS mobile SIM:
  - Night Surfer data available on SoftCap
  - TI Entertainment Bolt-on data
  - Free data to selected social networking and educational websites
- xviii) Data usage allocations on IDS does not roll over to the following month but will expire at the end of the month.
  
- xix) Telkom Internet IDS data – Top-up is valid until the end of the following calendar month from date of activation.
- xx) Out of bundle rates will apply for Telkom Internet IDS data when activated by the subscriber.
- xxi) Telkom is not liable for any loss or damage to a customer's property or equipment arising out of the provision, installation or maintenance and use of Telkom's mobile's 3G/LTE service.
- xxii) Telkom will not incur any liability whatsoever for any loss or damage as a result of any use, authorised or unauthorised, resulting from virus attacks, security vulnerabilities, and loss of information.
- xxiii) Prices include VAT.
- xxiv) SMS and voice capabilities are not available.
- xxv) Integrated data can be purchased by accessing Self Service Portal at <https://customerportal.telkomsa.net>
- xxvi) The IDS service is subject to the compulsory use of a broadband access line using Telkom's Fibre/xDSL service or a third party fibre service bundled with Telkom Internet.
- xxvii) For every broadband service only 5 Telkom Internet accounts can be provisioned

- xxviii. The broadband access line associated with the IDS service is required to be billed on the same invoice from Telkom

#### **4.2.8 Post-Paid Billing**

In the case of post-paid data:

- a) Customers need to register online for Post-paid Billing,;
- b) Post-paid billing Cap will be set to a specified maximum limit, as applicable;
- c) Such higher Cap limit shall be billed on the Customer's next Telkom invoice;  
and
- d) All data consumed Out-of-bundle will be charged per MB.

#### **4.2.7 Monitoring Usage**

Subject to clause 16.2 below, Telkom Internet provides the following measures to assist Customers to monitor their Data Usage:

- a) The Telkom Internet Website assists Customers to monitor their Data usage online.
- b) Telkom reports on a Customer's usage, and uses its best endeavours to update these reports at hourly intervals.
- c) A Customer may also subscribe to e-mail and SMS notifications from Telkom at selected intervals pertaining to Data Usage.
- d) Telkom does not guarantee the efficiency of the measures available in this clause 4.2.7. The Customer remains responsible for monitoring and controlling his Data Usage and may be charged for out-of-bundle data where applicable. For customers on uncapped packages, no usage data records will be made available.
- e) Customers subscribed to SoftCap products should activate the notifications on the Self Service Portal at <https://secure.telkomsa.net/titracker> to receive browser notifications at set usage level intervals, informing them of their data usage levels.

#### **4.3 Domain Name Services**

- 4.3.1 A domain name registered by a Customer with Telkom is valid for a period of 12 (twelve) months from date of registration. Telkom shall automatically renew the domain name on annual basis, unless the domain name is terminated by the Customer upon written notice to Telkom one calendar month prior to renewal date.
- 4.3.2 If payment for a domain name(s) has not been made within 20 (twenty) Business Days of the registration or renewal contemplated in clause 4.3.1 above, Telkom reserves the right, in its sole discretion and without any notice to the Customer, to deregister the domain name(s) and make it available for re-registration.
- 4.3.3 Should domain name(s) be terminated by Telkom or the Customer for any reason whatsoever, Telkom shall, without incurring any liability of whatever nature, be entitled to notify the relevant domain name administrator of such termination and to instruct the aforementioned domain name administrator to remove Telkom as the host of such domain name, allow the domain name(s) to terminate and not to renew the aforementioned domain name(s).
- 4.3.4 Registration, maintenance and transfer of a domain name(s) are subject to the terms and conditions of the relevant domain name administrator who allocates and governs such domain name(s), and Telkom cannot guarantee the registration of domain name(s) selected by a Customer.
- 4.3.5 All domain names such as .co.za, .com, .net and related subdomains are subject to the terms and conditions of the relevant domain name administrator, as amended from time to time.
- 4.3.6 The Customer warrants that the use or registration of the domain name(s) does not interfere with, nor infringe, any trade mark, service mark, trade name, company name, close corporation name, copyright nor any other intellectual property right of any third party, and indemnifies Telkom against any and all claims that may arise out of such interference or infringement.

- 4.3.7 In the event that any of the domain name administrator suspends, amends, or terminates its provision of a domain name(s), or any other aspect of its services upon which Telkom depends for the provision of domain name(s) to the Customer, Telkom will use reasonable endeavours to ensure the continuance of domain. In the event that Telkom is unable to ensure such continuance, Telkom shall be entitled to terminate domain name(s) with immediate effect in which event, Customer agrees that Telkom will not be liable to Customer or any other third party for any loss or damages as contemplated in clause 16.2 below.
- 4.3.8 Telkom reserves the right to change its domain name administrator from time to time.
- 4.3.9 If the domain is registered as part of a contract with Telkom, and if the customer terminates the contract before the end of the contract period, Telkom reserves the right to charge the customer a pro-rata determined penalty in order to recover the cost of the registration of the domain, based on the rate negotiated by Telkom with the respective domain registrar.

#### **4.4 E-Mail Accounts**

- 4.4.1 An e-mail address will be allocated by Telkom to a Customer upon the Activation Date.
- 4.4.2 The Customer will be responsible for activating his/her own e-mail address before it can be used.
- 4.4.3 Despite the fact that a Product Offering may indicate that more than one e-mailbox accompanies the offering the Customer must activate or de-activate e-mail box(es) as needed or required.
- 4.4.4 Telkom does not accept any liability howsoever arising , in respect of any damages, loss , consequential losses , costs or claims instituted against Telkom including but not limited to the use, application or subscription to the email stored on the Telkom servers or breach of the applicable terms and conditions .
- 4.4.5 eMail is a best effort service and no SLA exists for delivering or receiving email with the consumer edition of the solution and Telkom shall not be responsible for or liable to create any back-up of any e-mail messages stored by a customer on the mailbox.
- 4.4.6 The Customer further accepts that he/ she / they remain responsible for managing their own data which includes read and delivery receipts and back-up of any e-mail messages stored by a customer on the mailbox as well as the consequences of a decision to migrate, change or delete e-mails from the server.

#### **4.5 Web Hosting Services**

Telkom, in it's sole discretion will make available an amount of space on it's web server for use by the Customer to host web-pages.

### **5. MIGRATION**

- 5.1 Subject to clauses 5.2 and 16.2 below, Customers may migrate between different predefined packages of Data Usage as ordered by the Customer and made available by Telkom from time to time.
- 5.2 Any migration between such predefined packages of Data Usage must be done in accordance with the procedures determined by Telkom in this regard from time to time, as set out on the Telkom Internet Website.

5.3 Telkom shall not be liable for any consequences, including but not limited to any damages suffered or losses accrued by a Customer, whether direct or indirect, resulting from a decision by a Customer to migrate from one predefined Data Usage package to another.

5.4 Telkom Internet provides for four types of migrations:

5.4.1 From SoftCap to Uncapped

a) Data Usage:

- The Customer's current used data will not be transferred to the uncapped package.
- Any TopUp data purchased but not used prior to the migration will be forfeited.

b) Billing:

- Any data used whilst still subscribed to the Capped package will be charged for on the next invoice

5.4.2 From Uncapped to SoftCap

a) Data Usage:

- The Customer's current used data will not be transferred to the SoftCap package.

5.4.3 From SoftCap to SoftCap

a) Shaped to Shaped or Unshaped to Unshaped:

i) Data Usage:

○ Higher data cap to lower data cap:

- Current data cap will expire and will be replaced by new. Therefore the Customer's the data utilised whilst on the old package will thus not be deducted from the newly selected data cap."
- If the Customer purchased any TopUp data prior to migration, it will be transferred

○ Lower data cap to higher data cap:

- Only the higher data cap will be provided. The data utilised whilst on the lower data cap package will be deducted from the new cap.
- If the Customer purchased any TopUp data prior to migration it will be transferred

ii) Billing:

○ Higher data cap to lower data cap:

- Any data used whilst still subscribed to the higher cap package will be charged for on the next invoice.

- Lower data cap to higher data cap:
  - Any data used whilst still subscribed to the lower cap package will be charged for on the next invoice.
- b) Shaped to Unshaped or Unshaped to Shaped:
  - i) Data Usage:
    - Current data cap will expire and will be replaced by new. Therefore the Customer's current data usage for the month will not be deducted from the new data cap.
    - If the Customer purchased any TopUp data prior to migration, it will be transferred
  - ii) Billing:
    - Any data that was billed on the Customer's current cap product will still be invoiced.

## **6. CONCURRENCY**

- 6.1 When a Customer purchases a Telkom Internet Service Offering, there is a maximum number of Concurrent Sessions associated with the particular Telkom Internet Service Offering, as set out on the Telkom Internet website.
- 6.2 The number of Concurrent Sessions per Telkom Internet Service offering may be amended by Telkom from time to time.

## **7. SUPPORT SERVICE**

- 7.1 Telkom shall, as and when specifically requested to do so by the Customer, render such consultation and support services to the Customer pertaining to the identification and, if possible, solution of problems encountered by the Customer as regards the Telkom Internet Service rendered to the Customer.
- 7.2 Telkom shall, as part of such service, attempt to identify the Customer's problem, but does not give any undertaking that it will be able to rectify all or any of the problems so identified.
- 7.3 The Customer shall render to Telkom, its agents, representatives and employees all necessary assistance to identify, locate and solve any problem encountered by the Customer.
- 7.4 Telkom does not and shall not accept any responsibility or liability for any existing data on the Customer's equipment and shall specifically not be required to back-up any data before commencing any work in an attempt to assist the Customer.
- 7.5 The Customer hereby indemnifies and holds Telkom harmless against any cost, liability, loss or damage incurred or suffered by the Customer or by Telkom as a result of the loss of any such data as contemplated in clause 7.4 above, whether occasioned by any act or omission of Telkom, its representatives, agents or employees or otherwise.

## **8. TELKOM INTERNET SERVICE CHARGES**

- 8.1 Telkom will levy Telkom Internet Service Charges in accordance with the rates as determined by Telkom from time to time subject to Telkom's ECS licence conditions, or any other applicable licences, laws or regulations which may apply from time to time.
- 8.2 The Telkom Internet Service Charges are available on the Telkom Internet Website and may be amended by Telkom from time to time.

## **9. BILLING**

- 9.1 Telkom will commence to bill a Customer for the Telkom Internet Service upon Activation.
- 9.2 Telkom will periodically provide a Customer, usually on a monthly basis, with an invoice for the amounts payable by the Customer in respect of the Telkom Internet Service rendered. The Customer remains liable for payment in respect of the aforementioned Telkom Internet Service, irrespective of whether an invoice has been received by the Customer.
- 9.3 Billing will not be effected on a pro rata basis in respect of any partial Data purchased by the Customer.
- 9.4 Upon Activation, a Customer will be billed for the full first month, irrespective of when in the particular month the Telkom Internet Service was activated, and thereafter on a monthly basis.
- 9.5 Notwithstanding the provisions of clauses 9.3 and 9.4 above, Telkom may, at its own discretion, issue a Customer an account outside of the normal billing cycle, and/or demand immediate payment of any amounts due by a Customer.
- 9.6 An account rendered by Telkom to a Customer as contemplated in this clause 9 is prima facie proof of the amount due by the Customer to Telkom in respect of the Telkom Internet Service.

## **10. PAYMENTS**

- 10.1 A Customer is liable for the payment of all charges as reflected in the account rendered by Telkom from time to time (where applicable) in respect of the Telkom Internet Service.
- 10.2 Amounts are due and payable on or before the due date indicated on the account.
- 10.3 Any amount due by the Customer to Telkom not paid on or before the due date indicated on the account, shall bear interest at a rate not exceeding the maximum rate allowed by the National Credit Act 34 of 2005, compounded monthly, calculated from the date of issue of the account until date of actual payment.
- 10.4 Should the Customer default on its obligations in terms of these terms and conditions, the Customer shall be liable for all costs, including legal costs on an attorney and client scale, and tracing cost and collection commission incurred by Telkom in respect of the enforcement of any obligations of the Customer in terms of this Agreement and in the case of a Consumer, subject to the provisions housed under Regulation 44 (3) (aa) of the CPA.
- 10.5 Should the bank dishonour any payment offered by a Customer to Telkom, Telkom shall be entitled, over and above the dishonoured payment as well as bank charges, to charge, and the Customer shall be obliged to pay, a reasonable administration fee.

## **11. SUSPENSION OF THE TELKOM INTERNET SERVICE**

- 11.1 Telkom may from time to time and with notice where possible, suspend the Telkom Internet Service in any of the following circumstances:

- 11.1.1 non-payment by a Customer of any fees due to Telkom for the Telkom Internet Service or non-payment by a Customer of his Telkom telephone service;
- 11.1.2 during any technical failure, modification or maintenance of either the service or the equipment by means of which the Telkom Internet Service is provided; or
- 11.1.3 if the Customer:
  - a) fails to comply with:
    - i) any of these terms and conditions (including failure to pay any charges due),
    - ii) the Telkom Internet AUP; or
    - iii) the Telkom Internet Service Level Agreement.
  - b) does or allows to be done anything which, in Telkom's reasonable opinion, may have the effect of negatively affecting the operation of the Telkom network or the provision of services to the Customer or to any other Customer(s) of Telkom.
- 11.2 In the event that a Customer's Telkom Internet Service is suspended in terms of clause 11.1.1 above, the Customer will be able to reconnect to the Telkom Internet Service upon payment of a reconnection fee.
- 11.3 Notwithstanding any suspension of service under this clause 11, the Customer shall remain liable for all charges due in respect of the Telkom Internet Service throughout the period of suspension.
- 11.4 The Customer indemnifies Telkom against any damage, loss, costs or claims which the Customer may suffer or incur arising from the suspension of the Telkom Internet Service.

## **12. TERMINATION OF THE TELKOM INTERNET SERVICE**

- 12.1 Upon termination of the Telkom Internet Service, Telkom shall disconnect the Customer from Telkom's electronic communications networks.
- 12.2 After disconnection of the Customer as set out in clause 12.1 above, the Customer shall on demand pay all charges outstanding at the time of disconnection which may be charged by Telkom.
- 12.3 The Customer indemnifies Telkom against any damage, loss, costs or claims which Telkom may suffer or incur arising from the termination of the Telkom Internet Service.

## **13. INTELLECTUAL PROPERTY RIGHTS**

- 13.1 Any intellectual property rights vesting in Telkom, whether by statute or common law, shall remain vested in Telkom and the Customer agrees not to do anything or allow anything to be done that may infringe Telkom's rights in this regard.
- 13.2 The Customer hereby indemnifies Telkom against any claims, actions and proceedings of whatsoever nature that may arise in connection with any intellectual property rights vesting in Telkom.



- 13.3 Should Telkom be required to develop any computer code, data, documents, presentations, solutions design, web site or any application, all intellectual property rights in and to such work shall vest exclusively in Telkom. To the extent that intellectual property rights in the work vests, for whatever reason, in the Customer, the Customer hereby agrees to assign all such intellectual property rights to Telkom, which hereby accepts such assignment.
- 13.4 The Customer shall not modify, reverse engineer or use any software, computer code, data, documents, presentations, solutions design, web site or any application licensed to it in terms of these terms and conditions to create a derivative work.

#### **14. RISK**

The Customer subscribes to and uses the Telkom Internet Service at his own risk.

#### **15. EXCUSABLE EVENTS**

Telkom shall not be liable to the Customer for any breach of the provisions of these terms and conditions or failure to perform any obligation as a result of any force majeure event, including but not limited to technical problems relating to Telkom's network, acts of God, Government controls, restrictions or prohibitions or any other Government act or omission, whether local or national, any act or default of any supplier, agent or sub-contractor, industrial disputes, strikes or work stoppages of any kind or any other similar or dissimilar cause, in so far as these are beyond Telkom's control.

#### **16. LIABILITY AND INDEMNITY**

- 16.1 Telkom assumes no responsibility for, and shall not attract any liability in respect of, the integrity, correctness, retention or content of information transported via its network.
- 16.2 In terms of condition 9 of its Standard Terms and Conditions for the Provision of Electronic Communications Services and Products, Telkom shall under no circumstances be liable (including liability for negligence) for any loss, damage or injury that the Customer or any third party may suffer, irrespective of when or how arising, specifically including (but not limited to) refunds of fees, loss of profits, financial loss, loss of contracts, loss of income, loss of anticipated business, cost of replacement services, goodwill or any other form of consequential loss, arising from the provision and / or use of the Telkom Internet Service to the Customer, its employees, directors, agents and / or representatives.
- 16.3 In addition to what is set out in clause 16.1 and 16.2 above, the Customer shall and hereby does indemnify Telkom against:
- 16.3.1 any damage, loss or liability of whatsoever nature arising from a breach of Telkom or the Customer's security measures, which may result in, inter alia, data theft, abuse of a Customer's e-mail account or the defacing of websites hosted by Telkom, any misuse of Telkom facilities or services and/or any act or omission of any other Customer of Telkom;
- 16.3.2 any claim by any third party arising directly or indirectly out of or related to the Customer's access to or use of the Telkom Internet Service or any information or data obtained through such access or use.

#### **17. WHOLE AGREEMENT**

- 17.1 These terms and conditions, read with Telkom's Standard Terms and Conditions for the Provision of Electronic Communications Services and Products ("Telkom's Standard Terms and Conditions"), constitute the whole agreement between Telkom and the Customer relating to the subject matter hereof and save as otherwise provided herein no amendment, alteration, addition, variation or consensual cancellation will be of any force or effect unless reduced to writing and signed by the parties or their duly authorised representatives. If there is any discrepancy between these terms and conditions and Telkom's Standard Terms and Conditions, these conditions shall prevail.
- 17.2 Errors and Omissions are specifically excluded.

**18. SEVERABILITY**

If any of the provisions or any portion of the provisions of these terms and conditions shall be invalid or unenforceable, such invalidity or unenforceability will not invalidate or render unenforceable the entire terms and conditions, but rather the entire terms and conditions will be construed as if not containing the particular invalid or unenforceable provisions or portion thereof, and the rights or obligations of Telkom and the Customer will be construed and enforced accordingly.