



**STANDARD TERMS AND CONDITIONS
FOR
SERVICES**

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1. **INTRODUCTION**

The Standard Commercial Terms and Conditions, even if not specifically incorporated, will apply to all agreements, unless otherwise indicated in the letter of ACCEPTANCE of the BID. Amendments, unique terms and conditions, if any, will be indicated in the letter of ACCEPTANCE of the BID.

2. **DEFINITIONS AND INTERPRETATIONS**

2.1 **Definitions**

Unless the context indicates otherwise, the words and expressions set out below shall bear the following meanings and cognate expressions shall bear corresponding meanings:

“ACCEPTANCE” means an official letter duly signed by an authorized TELKOM representative;

“AFFILIATES” means with respect to any person, any other person that, directly or indirectly through one or more intermediaries, controls, or is controlled by, or is under common control with, such person, and the term “control” (including the terms “controlled by” and “under common control with”) means the possession, directly or indirectly, of the power to direct or cause the direction of the management of the business and policies of such person, whether through ownership of voting securities, by contract or otherwise;

“AGREEMENT” means this agreement resultant from the acceptance of a BID, SERVICE REQUEST, these Standard Commercial Terms and Conditions and documents incorporated by reference by Telkom;

“BENEFICIAL USE” means SERVICES that are available and are being

utilised by TELKOM productively in accordance with the AGREEMENT;

“BID” means a proposal, bid, tender or quote which is a written offer by the BIDDER including the Request for BID document;

“BIDDER” means a registered legal entity (excluding trusts) submitting a BID and whose name appears or is indicated on the “Conditions and Undertakings by Bidders;

“CONFIDENTIAL INFORMATION” means information that, by its nature, is confidential to a Party, including but not limited to material, information, data, techniques and procedures that relate to that Party’s business;

“CONTRACTORS” means any person that renders and/or executes services for Telkom and that is certified by Telkom in writing to benefit;

“CLOSING DATE” means the time and date specified in the request for BID for the receipt of BIDS;

“FAULT” includes, but is not limited to, failure to comply with TELKOM’S specifications, non-compliance with agreed SERVICE levels, inferior service, and inferior workmanship;

“PARTY/PARTIES” means the SERVICE PROVIDER and/or TELKOM;

“REQUEST FOR BID” means an invitation by TELKOM for BIDS;

“SERVICE” that SERVICE requested by TELKOM in the REQUEST FOR BID, and offered by the BIDDER

and accepted by TELKOM, but not limited thereto, and other SERVICES required to be rendered as defined in the BID and related documents, and accepted by TELKOM;

“SERVICE LOCATION”	means the address where the SERVICE will be performed;
“SERVICE PROVIDER”	means any natural person or legal entity, including its contractors, sub-contractors, agents and employees that are a PARTY to the AGREEMENT with TELKOM;
“SERVICE REQUEST”	means an official TELKOM request/order, in writing wherever practical following the acceptance of the BID with a unique number;
“SUBSIDIARIES”	means as ascribed to such term in the Companies Act No. 61 1973;
“TELKOM”	TELKOM South Africa Limited, a company duly incorporated under the laws of South Africa, registration number 1991/005476/06, with its registered address at 152 Proes Street, Pretoria, 0002, South Africa;
“TENDER BULLETIN”	means the official document issued by TELKOM advertising the invitation to submit BIDS;
“WORKING DAY”	means Monday through Friday between the hours of 07:30 and 16:30, excluding Saturdays, Sundays and Public holidays;

2.2 Interpretations

Words referring to the singular also include the plural and vice versa where the context requires; any one gender includes the other;

Reference to a person includes all entities (i.e. corporations, associations, partnerships, government authorities and other) legal entities and natural persons.

2.3 Precedence

In conflict the order of precedence of said AGREEMENT will be:

- a. The acceptance of BID;
- b. Service Request;
- c. Standard Commercial Terms and Conditions for SERVICES;
- d. BID.

3. AGREEMENT

3.1 The AGREEMENT may only be amended in writing by an authorised representative and will be signed by both PARTIES. The SERVICE PROVIDER will only perform in terms of said written amendment/s.

3.2 The Group Executive, Procurement Services, or his authorised representative, will be the only authorised TELKOM person to approve material amendments to the AGREEMENT.

3.3 Terms and conditions in the Service Provider's documentation which conflict with the acceptance of the BID, SERVICE REQUEST, Standard Commercial Terms and Conditions for SERVICES, will be of no force or effect.

4. BID

4.1 Validity Period

The period for which the BID will remain valid and binding will be at least 180 (one hundred and eighty) days or will be indicated in the Request For BID document and is calculated from the CLOSING DATE on the understanding that the BID is to remain in force and binding until the close of business on the last day of the period calculated. If the closing date falls on a Saturday, Sunday or Public Holiday, the BID shall remain valid until the close of business on the following WORKING DAY.

4.2 Acceptance

The successful BIDDER will be notified, of the acceptance of its BID.

5. SERVICE REQUEST

5.1 Service Request

5.1.1 SERVICE will be rendered only upon receipt of the SERVICE REQUEST and in accordance with the AGREEMENT.

5.1.2 The true intention and meaning of the SERVICE REQUEST is that the SERVICE PROVIDER will, in all respects, render and complete the SERVICE in a workmanlike manner to the satisfaction of TELKOM.

5.1.3 Notwithstanding anything contained herein each SERVICE REQUEST will constitute a separate AGREEMENT.

5.2 Discordance

5.2.1 If there appears to be any conflict, or want of agreement, and/or contradiction between the documents comprising the AGREEMENT and a SERVICE REQUEST, the SERVICE PROVIDER will refer the matter to TELKOM for a decision before proceeding with the execution of the SERVICE REQUEST or part thereof affected by the conflict or want of Agreement.

5.2.2 All SERVICES and the like not expressly mentioned in the SERVICE REQUEST or the AGREEMENT, but which are necessary to fulfil its intent, will be performed by the SERVICE PROVIDER, as if specifically mentioned or described in the SERVICE REQUEST.

5.3 Service Request Confirmation

Immediately after receiving the SERVICE REQUEST the SERVICE PROVIDER will, in writing, confirm receipt of each SERVICE REQUEST. Failure by the SERVICE PROVIDER to confirm receipt will constitute a material breach of the AGREEMENT.

5.4 Variations, Amendments and Omissions

5.4.1 TELKOM reserves the right to, during the execution of the AGREEMENT, require the SERVICE PROVIDER, by notice, to alter, amend, omit, add to, or otherwise vary any SERVICE without validating the SERVICE REQUEST and the SERVICE PROVIDER will be obliged to carry out such variations.

5.4.2 If said variations involve an additional payment or prevent the SERVICE PROVIDER from fulfilling any obligations and/or guarantees, the SERVICE PROVIDER will, before proceeding therewith, notify TELKOM in writing. In such case TELKOM will decide whether the SERVICE PROVIDER may proceed. If TELKOM confirms its instructions to proceed with said variation, the SERVICE PROVIDER's obligations and guarantees will be varied to such extent. The difference in cost, if any, occasioned by any such variation, will be added or deducted from the price, as the case may be.

6. PERFORMANCE

6.1 Service Performance

6.1.1 The SERVICE date specified in the SERVICE REQUEST is of the utmost importance, non-compliance with said date will constitute a material breach of the AGREEMENT. Partial performance will not constitute the provision of the SERVICE.

6.1.2 The SERVICE PROVIDER assumes professional and technical responsibility for its performance which will be in accordance with recognised professional standards employed by SERVICE PROVIDER's performing work of a comparable nature and that the qualitative and quantitative value added is to the satisfaction of TELKOM. If the SERVICES prove to be not of a satisfactory nature, the rework to improve the SERVICE to conform to the qualitative standards of TELKOM will not be chargeable.

6.2 Independent Status

- 6.2.1 The SERVICE PROVIDER will be an independent SERVICE PROVIDER and not an employee, agent, joint venture, or partner of TELKOM. Nothing in this AGREEMENT will be interpreted or constitute as creating or establishing the relationship of employer and employee between TELKOM and the SERVICE PROVIDER.
- 6.2.2 A Contractor supplied by the SERVICE PROVIDER will be an independent Contractor as defined by the Labour Relations Act, No. 66 of 1995 and the Occupational Health and Safety Act, No. 85 of 1993, amongst others, and will provide said SERVICES as such. The SERVICE PROVIDER will not have the authority to act on behalf of TELKOM or to bind TELKOM without TELKOM's express written consent and shall not be considered as having employee status for the purpose of any benefit applicable to TELKOM employees generally, other than those stated in this AGREEMENT.
- 6.2.3 The SERVICE PROVIDER warrants it has full knowledge of the relevant statutory, collective and other stipulations applicable to the relationship with its Contractors and the relationship with TELKOM. This includes, but is not limited to, the Labour Relations Act, No. 66 of 1995, as amended and the Basic Condition of Employment Act or any other employment legislation current in force or it may come into force during the duration of this agreement. The SERVICE PROVIDER warrant that it is not and will not in future be in contravention of the said legislation and in the event of such contravention, the SERVICE PROVIDER undertakes to immediately remedy such contravention. If TELKOM advises the SERVICE PROVIDER of a contravention, the SERVICE PROVIDER shall, within ten (10) business days remedy such contravention and shall keep TELKOM informed regarding the steps taken and the implementation and the results thereof.
- 6.2.4 The SERVICE PROVIDER acknowledges that it is conversant with section 198(4) of the Labour Relation Act, No. 66 of 1995, as amended. The SERVICE PROVIDER hereby identifies and holds TELKOM harmless against any claim or action whatsoever in terms of section 198(4), taken against TELKOM by a Contractor of the SERVICE

PROVIDER or an independent or agent of his Contractor. In the event of the SERVICE PROVIDER or its Contractor of the SERVICE PROVIDER rendering its services to TELKOM, becoming involved in arbitration or falling within a collective agreement under a Bargaining Council, then the SERVICE PROVIDER shall immediately inform TELKOM thereof and on request supply TELKOM with a copy of such award, agreement or any documentation that TELKOM may request. The SERVICE PROVIDER will insure itself against any claim that may result from section 198(4) of the Labour Relation Act, No. 66 of 1995, as amended. Non compliance with this clause will be considered to be a material breach of this agreement and will entitle TELKOM to terminate this agreement with the SERVICE PROVIDER, without limiting TELKOM right to recover damages from the SERVICE PROVIDER, resulting from such cancellation or to take all steps and do all things necessary to remedy such a contravention itself.

6.3 Service Location

6.3.1 The SERVICE PROVIDER will render the SERVICE at the SERVICE LOCATION indicated in the SERVICE REQUEST.

6.4 Failure or delay in providing SERVICE

6.4.1 Upon any delay beyond the set date, TELKOM may, without terminating the AGREEMENT, be entitled forthwith to obtain similar SERVICES from a third party as TELKOM may require to duly performing the SERVICE.

6.4.2 TELKOM will recover any adverse difference in price it may incur as well as any other damages that may be suffered by TELKOM due to the SERVICE PROVIDER's non- or partial performance of the SERVICE.

6.4.3 If the SERVICE PROVIDER fails to deliver the SERVICE within the CONTRACTUAL DELIVERY DATE, TELKOM will have the right, in its sole discretion to either deduct as a penalty an amount equivalent to 2,5% (two and a half percent) of the SERVICE REQUEST/AGREEMENT value (as the case may be) per week/portion of a week for the period of delay, or to claim any damages or loss

suffered in lieu of such penalty, provided that the penalty will be applied to the value of the outstanding portion of the SERVICE REQUEST/AGREEMENT (as the case may be), only where TELKOM has BENEFICIAL USE of the SERVICE.

7. PRICING, PAYMENT, AND INVOICING

7.1 Price

The price will be as stated by TELKOM in the Letter of Acceptance of BID. The SERVICE PROVIDER warrants that the prices, changes and fees to TELKOM as contained in the AGREEMENT are at least as favourable as those offered by the SERVICE PROVIDER to any of its other customers that are the same or similarly standing as TELKOM.

7.2 Firm price

The SERVICE PROVIDER must submit firm prices. Firm prices are deemed to be the prices at which the SERVICE/S are rendered without any adjustment being made thereto for any reason whatsoever.

7.3 Completion of Services

After due completion of SERVICE/S, and upon request by the SERVICE PROVIDER, TELKOM will supply the SERVICE PROVIDER with a written acknowledgement to the effect, that the SERVICE has been rendered in accordance with the AGREEMENT.

7.4 Terms of Payment

7.4.1 Telkom does not allow Advance Payments to Suppliers.

7.4.2 Payment of invoices for local SERVICE PROVIDERS will be effected on the last day of the calendar month following the calendar month of receipt of a correct and original invoice. Invoices should be submitted continuously throughout the month after TELKOM has, in writing, acknowledged receipt of the SERVICES rendered and shall be raised and submitted in the month in which the SERVICE/S was/were rendered. A correct and original monthly statement reflecting the above invoices must be submitted to TELKOM by the 5th of each month.

- 7.4.3 Payment will be effected directly to the foreign SERVICE PROVIDERS subject to South African Reserve Bank approval. Payment to the foreign SERVICE PROVIDER will be effected in the relevant foreign currency by means of Swift payment, 45 (forty five) days from receipt of a correct and original invoice.
- 7.4.4 All payments shall be made by TELKOM to the SERVICE PROVIDER's account. The following particulars of the SERVICE PROVIDER's banking details must be furnished:
- a. Account name;
 - b. Account number;
 - c. Routing number (ABA no.); and
 - d. Bank name and country.
- 7.4.5 The monthly statements, invoices and all supporting documentation must be received before payment can be effected. If the SERVICE PROVIDER's documentation be incomplete or incorrect, payment of these documents will only be effected the month following the month during which the correct documents were received and in the case of foreign SERVICE PROVIDERS, payment will be effected 45 (forty five) days from receipt of a correct invoice to the closest payment run. Telkom has 2 (two) payment runs, which is mid month and month end.
- 7.4.6 For VAT registered SERVICE PROVIDERS; all invoices on the SERVICE PROVIDER's statement must comply with the VAT Act, No. 89 of 1991, before payment can be effected.
- 7.4.7 The SERVICE PROVIDER will provide TELKOM, an IRP30 exemption certificate (exception certificate in respect of employee tax) that is valid for the current year of assessment. The SERVICE PROVIDER will annually provide TELKOM, a valid IRP30 exemption certificate for the ensuing year/s of assessment or until termination of the AGREEMENT. The original IRP30 exemption certificate or a certified copy thereof must be delivered to TELKOM at the address stipulated on the SERVICE REQUEST or as per the relevant AGREEMENT.

7.4.8 Settlement discounts, if any, agreed upon shall be deducted from payments.

7.4.9 TELKOM may set-off any amounts owed by the SERVICE PROVIDER from any amount due, with the exception of payment being withheld in terms of clause 21.

7.4.10 Payment will be effected by bank transfer. TELKOM'S liability towards the SERVICE PROVIDER will be deemed to be met when the bank transfer being made. The SERVICE PROVIDER assumes the entire risk for Bank Transfers from the moment of transfer being made. The SERVICE PROVIDER will ensure that TELKOM at all times has the correct banking information in order to make a bank transfer.

7.4.11 All original invoices must be forwarded to TELKOM on a continuous basis throughout the month to the address stated below:

TELKOM SA LTD
Account Payable
Private Bag X145
Pretoria, 0001

7.4.12 All payments are provisional and are subject to audit by TELKOM. The SERVICE PROVIDER will preserve its records for such a period as the South Africa Revenue Services may require or 5 (five) years from date of payment, whichever is the longer.

8. BLACK ECONOMIC EMPOWERMENT

8.1 The Supplier shall at all material times during the course of this Agreement keep and maintain its Black Economic Empowerment ("BEE") status at the same (if not better) level as set out in its Proposal i.e. and without limitation, its shareholding, employment equity etc. shall not fall below the status indicated in its aforesaid Proposal.

8.2 In the case where the appointment of the Supplier is subject to the Supplier committing to a BEE Commitment Plan ("BEE Plan"), then within 30 days of signature of this Agreement, the Supplier shall negotiate and conclude with TELKOM a BEE Commitment Plan. In the event that the parties fail to reach agreement on a BEE Plan contemplated hereinabove within

the said 30 day period, this Agreement may be terminated by TELKOM at its sole discretion by written notice and TELKOM shall have no obligation or liability to the Supplier save for Orders that TELKOM may have placed with the Supplier. The commitment plan shall form part of the main contract. Telkom shall further perform quarterly assessment on the Supplier against all transformation pillars agreed upon. The two last quarterly assessments will be used to measure performance against the entire B-BBEE contract.

Non-compliance shall mean performance which is 10% below the agreed performance on each of the Transformation pillars.

- 8.3 The Supplier shall, within 90 days (quarter) from date of signature of the MOA or signature of the Commitment Plan contemplated in 18.2 above, and every quarter thereafter, furnish TELKOM with a report from its Auditors or its designated personnel certifying that the Supplier complies with the provisions of clause 18.1 or 18.2 above as the case may be.
- 8.4 Should the Supplier fail to provide TELKOM with the Audit report, it shall be deemed that the Supplier has failed to comply with the provisions of clauses 18.1 or 18.2 as the case may be, in which case TELKOM shall be entitled to invoke the provisions of clause 18.7.
- 8.5 The Supplier agrees that notwithstanding the audit contemplated in clause 18.3 above, TELKOM shall at any time be entitled to appoint external auditors of its choice to audit the Supplier's compliance with the provisions of clause 18.1 and 18.2, in which case, the Supplier shall be obliged to cooperate with such auditor's investigation, including but not limited to furnishing such auditors with all such information and access to such personnel as the auditors may in their sole and absolute discretion deem necessary.
- 8.6 The Supplier agrees and accepts that the report of the auditors contemplated in clause 18.5 shall be final, binding, shall take precedence over its auditor's report and may be used by TELKOM for purposes of clause 18.7.
- 8.7 In the event that the Supplier breaches any provision of this clause, TELKOM shall be entitled to:-

- 8.7.1 cancel or withdraw any Order placed with the Supplier, provided such Order was not placed more than 7 days from date of cancellation or withdrawal and provided that no Delivery has taken place pursuant to such Order; and/or
- 8.7.2 suspend the placing of further Orders with the Supplier until the breach has been rectified to the satisfaction of TELKOM and/or
- 8.7.3 impose penalties against the Supplier per each pillar agreed upon in the commitment plan where there is no compliance as agreed. Each pillar except for Equity Ownership pillar shall be penalised at a rate of 3% of the total value of invoices paid or payable or due as at the time of breach and all subsequent invoices until the breach is rectified to the satisfaction of TELKOM. Equity Ownership shall be penalised at 10% of the total value of invoices paid or payable or due at the time of breach and all subsequent invoices until the breach is rectified to the satisfaction of Telkom. All the pillars penalties shall have total percentage of 25% of the value of invoices due and/or
- 8.7.4 terminate this Agreement forthwith.
- 8.8 The Supplier agrees and accepts that should the auditor's report contemplated in clause 18.4 indicate any partial or non-compliance by the Supplier to the provisions of clause 18.1 and/or 18.2, the Supplier shall be liable for all costs and expenses relating to the preparation of such report.
- 8.9 Notwithstanding anything to the contrary, it is specifically recorded and agreed by the Parties that TELKOM shall be entitled to recover any penalties imposed against the Supplier in terms of this clause from any amounts owed by TELKOM to Supplier in terms of any other agreement the Supplier may have with TELKOM and notwithstanding any provisions to the contrary contained in such agreement.
- 8.10 It is specifically agreed and recorded that notwithstanding the foregoing, the Supplier is obliged to comply with all and any other law enacted by Parliament, pertaining to Black Economic Empowerment, including but not limited to the Broad Based Black Economic Empowerment Act No 53 of 2003 (as amended from time to time), and the Codes of Good Practice.

8.11 In the event that the Supplier contravenes the provisions of clause 18.10 above, TELKOM shall be entitled to invoke the provisions of clause 18.7 above.

9. NON-EXCLUSIVITY

The AGREEMENT will be a non-exclusive AGREEMENT and TELKOM reserves the unconditional right to obtain SERVICES from any other SERVICE PROVIDER.

10. INDEMNITIES AND LIMITATION OF LIABILITY

10.1 The Bidder/s indemnifies TELKOM against all damages, losses or liabilities due to an event that is at its risk or due to the Bidder/s' negligence either contractually or delictually. The liability of the Bidder/s to indemnify TELKOM shall be reduced proportionally if the event at TELKOM's risk or negligence contributed to the damage, loss or liability.

10.2 Notwithstanding any of the above, the SERVICE PROVIDER's total liability per occurrence, excluding clause 10 shall not exceed the payment of/or claim for the excess payable towards TELKOM's insurers for insurable events, currently R5 million.

11. INSURANCE

11.1 Without limiting the SERVICE PROVIDER's liabilities or responsibilities in terms of the AGREEMENT, the SERVICE PROVIDER will provide insurance to cover its liability and responsibilities in terms of the AGREEMENT.

11.2 Notwithstanding anything elsewhere contained in the AGREEMENT, the SERVICE PROVIDER will provide at least:

11.3 Insurance in terms of the Compensation for Injuries and Diseases Act, No 130 of 1993, as amended. The SERVICE PROVIDER will upon request from TELKOM submit proof to the satisfaction of TELKOM that it is insured under the Compensation for Injuries and Diseases Act by providing TELKOM with adequate proof stating that it has paid all assessments due.

11.4 Employers Common Law Liability covering the SERVICE PROVIDER'S LIABILITY.

- 11.5 Legal Liability in respect of claims for death of/or injury to persons or loss of/or damage to third PARTY property.
- 11.6 Motor Vehicle Liability Insurance in respect of all motor vehicles brought onto the premises of TELKOM.
- 11.7 TELKOM will have the right to examine the policies maintained by the SERVICE PROVIDER at any time before or during the AGREEMENT period.

12. INTELLECTUAL PROPERTY RIGHTS

- 12.1 The SERVICE PROVIDER is responsible for all expenses and other liabilities in regard to intellectual property rights in respect of SERVICE/S supplied by it to TELKOM and the SERVICE PROVIDER indemnifies TELKOM against any claims that may arise from the infringement of such rights.
- 12.2 The SERVICE PROVIDER will at any time furnish, on request, adequate security to the satisfaction of TELKOM for the payment of all such claims which may arise and costs, including attorney and client costs, in cases where proceedings are instituted against TELKOM in respect of alleged breach of intellectual property rights; or
- 12.3 TELKOM shall give the SERVICE PROVIDER prompt written notice of all such claims, actions, proceedings or suits alleging infringement or violation and the SERVICE PROVIDER shall have the authority to assume and control the defence thereof, including appeals, and to settle same. TELKOM shall furnish the SERVICE PROVIDER with all reasonable assistance, furnish all reasonable information available to TELKOM and TELKOM shall co-operate in every reasonable way to facilitate the defence and / or settlement of any such claim, action, proceeding or suite. However, the SERVICE PROVIDER will reimburse TELKOM for all reasonable expenses so incurred.
- 12.4 If TELKOM's use shall be enjoined or, in the opinion of the SERVICE PROVIDER is likely to be enjoined, the SERVICE PROVIDER will, at its expense and its option, either –

- a. Replace the affected SERVICE or other item furnished pursuant to this Agreement with a suitable substitute, free of any infringement or violation;
- b. Modify it so that it will be free of the infringement or violation; or
- c. Procure for TELKOM a licence or other right to use it.

If none of the foregoing options are practical, the SERVICE PROVIDER will remove the enjoined SERVICE or other item and refund to TELKOM any amounts paid to the SERVICE PROVIDER, without prejudice to any rights Telkom may have.

12.5 No undertaking by the SERVICE PROVIDER under this clause shall extend to any such alleged infringement or violation to the extent that it:

- a. Arises from adherence to design, modifications, specifications, drawings or written instructions which the SERVICE PROVIDER is directed by TELKOM to follow, but only if such alleged infringement or violation does not reside in corresponding commercial SERVICE of the SERVICE PROVIDER's design or selection; or
- b. Arises from adherence to instructions to apply TELKOM's trade mark, trade name or other company identification; or
- c. Resides in a SERVICE which is not provided by the SERVICE PROVIDER and which is furnished by TELKOM to the SERVICE PROVIDER for use under this Agreement;
or
- d. Relates to the use of products or other items provided by the SERVICE PROVIDER in combination with other products or items, furnished by TELKOM, other SERVICE PROVIDERS or the SERVICE PROVIDER which combination was not installed, recommended or otherwise approved by the SERVICE PROVIDER; or
- e. Arises from a modification not approved by the SERVICE PROVIDER.

12.6 Intellectual property rights resulting from the AGREEMENT will be owned by TELKOM and will be used for TELKOM purposes only. All documents including information, data, plans, investigation schedules, working papers, diagnostic models, methodology, reports or the like developed or used by the SERVICE PROVIDER for this AGREEMENT and supplied or delivered to TELKOM pursuant to this AGREEMENT shall be the property of TELKOM.

12.7 The SERVICE PROVIDER will grant TELKOM the right to access at no cost to TELKOM, to all source code and object code, relating the SERVICE, should the following events occur:

12.7.1 If the SERVICE PROVIDER be liquidated (provisionally or final) or enter into an AGREEMENT/arrangement with his creditors or commit an act of insolvency.

12.7.2 If the SERVICE PROVIDER transfers, or attempts to transfer any intellectual property rights of the SERVICE.

12.7.3 If the SERVICE PROVIDER is in breach of any terms of this AGREEMENT and fails to remedy such breach within 10 (ten) after having received a written notice from TELKOM calling on it to do so.

12.7.4 If the SERVICE PROVIDER ceases to trade.

12.8 Irrespective of the events in clause 11.4 materialising or not, the SERVICE PROVIDER grants TELKOM access, at no cost to TELKOM, to the object code, source code, all configuration files, script files and templates, including but not limited interface configuration files and event handling configuration templates for purposes of:

1. Maintenance
2. Enhancements
3. Integration / Compatibility

and the like, by TELKOM, or a third PARTY acting on behalf of TELKOM, if in TELKOM's sole discretion said maintenance/ enhancements or integration/compatibility are to be done by TELKOM or a third PARTY acting on behalf of TELKOM. TELKOM will

ensure that if such information are made available to third PARTIES, that the necessary confidentiality agreements are entered into.

12.9 If the SERVICE PROVIDER is not the owner of the intellectual property rights, the SERVICE PROVIDER will do his best efforts to secure, on behalf of TELKOM, the rights to enforce clause 11.6 and 11.7.

12.10 Both PARTIES obligations in terms of this clause will survive the completion or termination of the AGREEMENT.

13. **CONFIDENTIALITY**

13.1 The PARTIES agree to hold each others confidential information in the strictest confidence, not to make use thereof other than for the performance of the obligations under the AGREEMENT and to release such material and information on a "need to know" basis provided that such persons undertake to be bound by the confidentiality obligations contained herein.

13.2 Such information shall exclude:

13.2.1 Information which, at the time of disclosure thereof to any PARTY, is already lawfully in the possession of that PARTY, free of restriction on disclosure and use thereof is restricted by the other PARTY;

13.2.2 information that is thereafter lawfully disclosed to a PARTY by any third PARTY, free of restriction on disclosure and use;

13.2.3 information that is, or becomes generally available, to the public in printed publications, of general circulation through no act or omission of a PARTY or of its employees.

13.2.4 information that a PARTY is obliged by any law or legal process to disclose.

- 13.3 In the performance of the AGREEMENT, the PARTIES may disclose to each other certain materials, information, data, techniques and procedures which relate to each others business which the PARTIES agrees to keep confidential and will confine such materials, information, data, techniques and procedures only to those persons, if any, on a “need to know” basis.
- 13.4 Neither PARTY will use the name of the other or of any PARTY to the AGREEMENT in publicity releases or advertising, nor for other promotional purposes, without securing the prior written approval of the PARTIES concerned.
- 13.5 Both PARTIES’ obligations in terms of this clause will survive the completion or termination of the AGREEMENT.

14. BREACH AND TERMINATION

14.1 If a PARTY to this AGREEMENT:

14.1.1 Fails to pay any amount due by it in terms of this AGREEMENT, by the due date, and fails to remedy such breach within 30 (thirty) days of written notice to do so; or

14.1.2 Commits a material breach of any provision of this AGREEMENT and fails to remedy such breach within 30 (thirty) days of written notice to do so; or

14.1.3 Commits an act which would be an act of insolvency as defined in the Insolvency Act 24 of 1936, becomes insolvent or enters into voluntary or compulsory liquidation, or passes a resolution for liquidation or makes an arrangement or compromise with its creditors, takes steps to deregister itself or is deregistered;

such PARTY shall be in default.

14.2 If a PARTY is in default, the agreed PARTY shall be entitled, in addition to all other remedies to which it may be entitled in law or in terms of this AGREEMENT, to terminate this AGREEMENT.

14.3 TELKOM may, without prejudice to any other rights herein, at any time and by giving written notice, terminate the AGREEMENT if-

14.3.1 TELKOM has any reason to believe that the SERVICE PROVIDER or anyone employed by it or acting on its behalf, whether with or without the SERVICE PROVIDER's knowledge, engages in a corrupt practice/s in connection with the AGREEMENT;

14.3.2 There is a substantial change of ownership or control of the SERVICE PROVIDER to a third PARTY, without TELKOM's prior written permission for assignment; or

14.3.3 The SERVICE PROVIDER fails to satisfy a judgement against the SERVICE PROVIDER within 21 (twenty one) days after the SERVICE PROVIDER becomes aware of the judgement, except if the SERVICE PROVIDER provides evidence on an ongoing basis to the reasonable satisfaction of TELKOM that steps have been initiated within the 21 (twenty one) days to appeal, reveal or rescind the judgement and to procure suspension of execution of the judgement and that such steps are being expeditiously pursued, the period of 21 (twenty one) days shall run from the date on which judgement becomes final, or the date on which the attempts to procure the suspension of the execution fail;

14.3.4 The SERVICE PROVIDER acts against the expressed policies and instructions of TELKOM or acts fraudulently,

14.4 The termination of the AGREEMENT will not prejudice the rights of TELKOM to claim damages or to obtain any other relief in respect of any antecedent breach of the terms and conditions of the AGREEMENT prior to such termination.

15. **DISPUTE RESOLUTION**

15.1 All disputes of law, and disputes that relate to the legal interpretation of any provision of the AGREEMENT, or to the legal validity of the AGREEMENT or any part thereof, will be referred to the North Gauteng High Court of South Africa. In addition, where the PARTIES

agree that any particular dispute will best be dealt with by a court of law, it may also be referred to the above division of the High Court.

15.2 All other disputes, especially disputes of a technical nature relating to the functioning of any of the subject matter of the AGREEMENT, will be referred to arbitration on the terms set out herein.

15.3 Where efforts to resolve any dispute referred to in clause 14.2 by negotiation have failed, then either PARTY:

15.3.1 may declare a dispute by delivering the details of the dispute in writing to the other PARTY within 5 (five) days after declared dispute; and

15.3.2 may request that the dispute be referred by the PARTIES, with or without legal representation, to arbitration by a single arbitrator at a place and time determined by him.

15.4 Such arbitration will be finally resolved conducted by a single arbitrator appointed by the Arbitration Foundation of Southern Africa and will be conducted in accordance with the rules of the Arbitration Foundation of Southern Africa.

15.5 The award of the arbitrator will be final and binding on the PARTIES, who hereby agree to give effect to the award. Either PARTY will be entitled to have the arbitrator's award made an order of court at the cost of the PARTY requesting same.

15.6 This clause will constitute the irrevocable consent of the PARTIES to the arbitration proceedings in terms hereof, and neither of the PARTIES will be entitled to withdraw there from nor to claim at any such arbitration proceedings that they are not bound by the arbitration provision of the AGREEMENT. Nothing in this AGREEMENT shall preclude either PARTY from obtaining interim relief from a Court of Law.

15.7 In the event of a dispute, the SERVICE PROVIDER will proceed to perform in accordance with the AGREEMENT with due diligence pending resolution of the dispute.

15.8 This clause is severable from the rest of the AGREEMENT and will remain in effect if the AGREEMENT is terminated.

16. NOTICE AND DOMICILIUM

16.1 For the purpose of the AGREEMENT the PARTIES respective addresses will be:

16.1.1 as regards TELKOM:

TELKOM SA Limited
The Group Executive
Procurement Services
TELKOM Tower North
152 Proes Street
PRETORIA
REPUBLIC OF SOUTH AFRICA
0002

TELKOM SA Limited
The Group Executive
Procurement Services
PO Box 447
PRETORIA
REPUBLIC OF SOUTH AFRICA
0001

Facsimile No: +27 12 311 2227

16.1.2 the SERVICE PROVIDER's address will be as indicated in the BID.

16.2 Any notice given, or other documents sent (excluding invoices) in terms of the AGREEMENT, will be in writing and will-

16.2.1 if delivered by hand deemed to have been duly received by the addressee on the first WORKING DAY after the date of delivery;

16.2.2 if posted by prepaid registered post deemed to have been received by the addressee on the 10th WORKING DAY following the date of such posting;

16.2.3 in the case of a facsimile, such notice will be deemed to have been received on the date appearing on the facsimile transmission report.

16.3 Notwithstanding anything to the contrary contained in the AGREEMENT, a written notice or communication actually received by one of the PARTIES from the other shall be adequate written notice of communication to such a PARTY.

17. APPLICABLE LAW

17.1 The laws of the Republic of South Africa will govern the AGREEMENT. The PARTIES consent to the jurisdiction of the courts of the Republic of South Africa.

17.2 All SERVICE PROVIDERS will choose a domicilium citandi et executandi in the Republic of South Africa.

18. FORCE MAJEURE

18.1 If circumstances which were not foreseeable with reasonable foresight or avoidable with reasonable care ("circumstances"), arise or be reasonably anticipated and delayed or have potential to delay the performance, whether in whole or in part impossible, the PARTY whose performance is affected, or whose performance may be affected ("affected PARTY"), will forthwith, in good faith and by the most expeditious means, notify the other PARTY in writing of:

- a) The cause, nature and extent of the circumstances;
- b) The expected duration of the circumstances; and
- c) The extent to which the performance will be affected.

- 18.2 If the circumstances change after the affected PARTY has notified the other PARTY in accordance with clauses stated above, the affected PARTY shall, forthwith, in good faith and by the most expeditious means, inform the other PARTY of such changes and keep the other PARTY updated on such changes.
- 18.3 Subject to the clauses stated above, the circumstances will not terminate the AGREEMENT between the PARTIES, or absolve the affected PARTY from performance.
- 18.4 If the circumstances make the agreed performance impossible, the affected PARTY will, having regard for all relevant factors, as soon as possible and in good faith, put BIDS for alternatives to the other PARTY. Such BIDS will be in sufficient detail to enable the other PARTY to technically and informationally assess the alternatives and to decide whether any alternative is acceptable.
- 18.5 If no alternative is acceptable to the other PARTY, it may elect to terminate the AGREEMENT with immediate effect and without prejudice to any other rights it may have.
- 18.6 If the circumstances delay the agreed performance;
- 18.6.1 The affected PARTY will, forthwith and in good faith, take all reasonable steps to mitigate delay and recover lost time
- 18.6.2 Having regard for all relevant factors and in good faith, notify the other PARTY as soon as possible of the steps to be taken to mitigate the delay and recover lost time and keep the other PARTY updated on changes and progress thereof
- 18.6.3 The other PARTY may, if the extend to which the delay may be mitigated and time lost to be recovered are unacceptable to it, elect to terminate the AGREEMENT.
- 18.7 Neither of the PARTIES will have any claim, arising from the circumstances, on the other.
- 18.8 Without limiting the generality and intention of the clauses above in any way, the circumstances may include, without being limited thereto:

- a) War, riots, civil or military insurrection and like political happenings.
- b) Natural disasters such as earthquakes, fire, storms and floods.
- c) Governmental acts and omissions.
- d) Terrorism and sabotage.

19. ASSIGNMENT

The SERVICE PROVIDER will not abandon, transfer, assign or sublet the AGREEMENT or part thereof, or delegate any of its obligations in terms of the AGREEMENT, without the prior written permission of TELKOM.

20. SAFETY AND SECURITY

- 20.1 The SERVICE PROVIDER agrees to comply with TELKOM'S security and safety procedures (*refer to all Telkom SHE documentation*). Without limiting the generality thereof, the SERVICE PROVIDER will specifically comply with the Occupational Health and Safety Act. This Agreement will constitute compliance with section 37(2) of said act and the SERVICE PROVIDER will ensure that all necessary steps are taken to comply with said act.
- 20.2 TELKOM may allow the SERVICE PROVIDER access to TELKOM'S premises in terms of its security procedures as amended from time to time.
- 20.3 TELKOM will be entitled to request the SERVICE PROVIDER to remove any employee, agent, consultant or subcontractor from its team if TELKOM is of the opinion that such a person is a security or safety risk or that the conduct of such a person is detrimental to the relationship between the PARTIES. The SERVICE PROVIDER will remove such a person within the time period stipulated by TELKOM. The SERVICE PROVIDER indemnifies TELKOM against any claims that might arise due to such removal.

21. CANVASSING, GIFTS, INDUCEMENTS AND REWARDS

21.1 The SERVICE PROVIDER will not under any circumstances offer, promise or make any gift, payment, loan, reward, inducement, benefit or other advantage to any of TELKOM's employees.

21.2 Such an act will constitute a material breach of the AGREEMENT and TELKOM will be entitled to terminate this AGREEMENT forthwith, without prejudice to any rights.

22. FRAUD

22.1 If, at any time during the duration of the AGREEMENT, TELKOM in its reasonable discretion determines, based on prima facie evidence, that the SERVICE PROVIDER has, in respect of the AGREEMENT to which they were or are Parties:

- a. Acted dishonestly and/or in bad faith; and/or
- b. Has made any intentional or negligent misrepresentation to TELKOM, whether in any negotiations preceding the conclusion of, or in the execution of the AGREEMENT between the parties;

then TELKOM will be entitled by written notice to the SERVICE PROVIDER forthwith to terminate the AGREEMENT. Upon such termination TELKOM shall be entitled, in addition to all other remedies available to it, to recover from the SERVICE PROVIDER all damages it has suffered by virtue of such conduct by the SERVICE PROVIDER. If, at any time of such termination, TELKOM be indebted to the SERVICE PROVIDER for any amounts whatsoever, TELKOM shall be entitled to withhold payment in respect thereof for a period of 90 (ninety) days from the date of termination in order to investigate the SERVICE PROVIDER conduct and any damages suffered by TELKOM. No payment by TELKOM to the SERVICE PROVIDER after the lapse of such period shall preclude TELKOM thereafter, from recovering from the SERVICE PROVIDER any such damages as it may have suffered.

23. LIENS AND CLAIMS BY THIRD PARTY

23.1 The SERVICE PROVIDER waives all liens and rights of possession relating to the SERVICE.

23.2 If a third party makes a claim on TELKOM to anything connected with the SERVICE the SERVICE PROVIDER will:

- a. After notification by TELKOM, deal with such a claim in such a manner as to avoid all prejudice to TELKOM and keep TELKOM fully informed; or
- b. Alternatively, TELKOM may deal with such a claim at its discretion, in which event the SERVICE PROVIDER will render to TELKOM all necessary assistance.

23.3 If TELKOM incurs any fair and reasonable expenses or make any disbursements in terms of clause 22, it may be set-off against moneys owed to the SERVICE PROVIDER.

24. TELKOM PROPERTY IN POSSESSION OF THE SERVICE PROVIDER

24.1 TELKOM'S property supplied to a SERVICE PROVIDER for the execution of the AGREEMENT remains the property of TELKOM and will at any time be available for inspection by a TELKOM representative. Any such property in the possession of the SERVICE PROVIDER on completion of the AGREEMENT will, at the SERVICE PROVIDER's expense, be returned to TELKOM forthwith.

24.2 The SERVICE PROVIDER will be responsible at all times for any loss of or damage to TELKOM property in his possession, and if required the SERVICE PROVIDER will furnish such security for the payment of any such loss or damage as TELKOM may require.

25. USE OF SOFTWARE, SERVICE AND PURCHASE OF PRODUCTS

The supplier agrees that Telkom's current and future, local and international Subsidiaries, Affiliates, and Contractors shall be entitled to obtain, procure, acquire and use the software, service and/or products from the Supplier in terms of this Agreement or in accordance with a separate agreement which will include substantially the same terms and conditions as this Agreement inclusive of the same prices, delivery periods, warranties, indemnities etc the Supplier supplies software, services and/or products to Telkom.

26. SEVERABILITY

In the event that any provision of this AGREEMENT is held to be invalid or otherwise unenforceable, such provision will be deemed to be deleted from this AGREEMENT, while the remaining provision of this AGREEMENT will be unaffected and continue in full force and effect.

27. WAIVER

No relaxation or indulgences which either PARTY may afford the other or failure by any PARTY to enforce its rights consequent to any breach of the AGREEMENT will, in any way, prejudice the rights of the first-mentioned PARTY, nor will the first-mentioned PARTY be stopped from exercising such rights by reason thereof.

28. MODIFICATION

If the parties require amending or varying the AGREEMENT during the duration of the AGREEMENT, all amendments or variations must be in writing and signed by both parties and in accordance with clause 3 of these Terms and Conditions.

29. ENTIRE AGREEMENT

The AGREEMENT and any annexures represent the entire AGREEMENT between the SERVICE PROVIDER and TELKOM, canceling and taking the place of all prior oral, written or implied AGREEMENTS between them, with respect to the SERVICE.