

# TELKOM'S STANDARD TERMS AND CONDITIONS FOR THE PROVISION OF ELECTRONIC COMMUNICATIONS SERVICES & PRODUCTS

## FOREWORD

The Applicant must take note of the details set out under this Foreword.

If you cannot understand these general provisions, which are pre-conditions to the standard Telkom terms and conditions, please contact your Telkom service provider.

Please note that the Telkom standard terms and conditions are attached for you to read and consider.

They will become binding and apply to you once Telkom has agreed to provide you with the service or device, which you have requested under the Application form.

## EXCLUSION OR LIMITATION OF LIABILITY CLAUSES

*In terms of section 49 of the Consumer Protection Act, 2008 (the CPA)*

*A term or notice which purports to limit in any way the risk or liability of the supplier or any other person or constitutes an assumption of risk or liability by the consumer or imposes an obligation on the consumer to indemnify the supplier or any other person for any cause, or constitutes the acknowledgement of any fact by the consumer, must be written in plain language and the fact, nature and effect of such provision must be drawn to the attention of the consumer before the consumer concludes the transaction or is required to offer consideration under it.*

*This must be done in a conspicuous manner and form likely to attract the attention of the ordinarily "alert" consumer having regard to the circumstances and the consumer must be given adequate opportunity to comprehend the notice or provision.*

Telkom has housed certain clauses, which contain certain limitations under its Standard Terms and Conditions.

These clauses are highlighted in red/ capital letters and include:

- 4.2 **Cancellation or variation of the Telkom Services or Selected SE before the Connection date-** if you cancel or vary any of the Telkom Services, and / or the Selected SE, which cancellation is not as a result of any breach on the part of Telkom, before the Connection date, in whole or in part, Telkom will have the right to charge you all Abortive Costs which Telkom has incurred as a result of the cancellation or variation.
- 4.3 **Termination of a Fixed Term Agreement by an Individual Consumer for no cause** – if you as a Consumer, conclude a Fixed Term Agreement with Telkom, you will have the right to terminate the Fixed Term Agreement, for no particular reason or cause, at any time, on 20 (Twenty) Business days written notice, which termination will be subject to payment of a reasonable cancellation fee, determined using the guidelines set out under section 14 and Regulation 5(2) of the CPA.
- 5.7.2 **Migration-** Any request by you to migrate, will be subject to certain conditions, including the payment of any additional Migration charges, levied by Telkom, which charges are detailed under the Tariff List or as advised by Telkom and the signing of a new Agreement.
- 6. **Charges and payment-** Telkom will levy certain charges in respect of the use by you of the Telkom Services and Selected SE. Telkom also has the right to ask for a deposit and set credit limits and levy interest on unpaid charges.
- 5.5 **Change in numbers due to reasons beyond Telkom's control** -Telkom may be forced to change your number by a regulator, and if this occurs Telkom will not be liable to you or to any other person for any loss, damage or costs (direct, consequential or otherwise) which may be incurred in consequence of any change to the number .
- 5.1.8 **Incorrect use of SE or use of illegal equipment** - Telkom reserves the right to disconnect from the TECN or Network and suspend or terminate the Telkom Service, where any unlicensed or illegal SE is used in connection with the Telkom Services in such case you will indemnify Telkom against any liability, loss or damage which you or Telkom may incur as a result of the unlawful or incorrect usage of such SE.
- 5 & 9 **Limited liability and indemnity** -Telkom, under certain circumstances will not be responsible for certain damages or losses which may be incurred as a result of the purchase and /or use of the Telkom Services and / or Goods.

The Applicant must before it concludes the Application, carefully consider the Telkom standard terms and conditions housed under the Agreement, and applicable to the Telkom Goods and / or Services which purport to limit the risk or liability of Telkom and other third parties acting on behalf of Telkom.

## APPLICATION OF STANDARD TERMS AND CONDITIONS

These standard terms and conditions, as amended by Telkom from time to time in accordance with the provisions of Telkom's Electronic Communications Service (ECS) license, the Electronic Communications Act 36 of 2005, the Consumer Protection Act, 68 of 2008 or any other applicable legislation, are applicable to the provision and use of all electronic communications services and products provided by Telkom to customers.

The Customer accepts and agrees that these terms and conditions become binding on it once Telkom has processed the Customer's Application and agreed to provide the Customer with the Telkom Services and where applicable the Selected SE. Telkom will notify the Customer of its acceptance or non-acceptance and where applicable the deposit which it may require in order to secure the Telkom Services and or Selected SE.

## APPLICATION FOR TELKOM SERVICES AND CONDITIONS APPLICABLE TO SUCH APPLICATION

Persons wishing to obtain a Telkom Service and where applicable, the SE, must apply for the Telkom Service and SE by signing the standard Telkom Application Form, which can be either downloaded from the Telkom Website or obtained on request from Telkom's customer service branches; or by following any other application procedure determined by Telkom from time to time.

If:

- the Applicant is unable to either afford the service or goods applied for, or is in arrears on existing or closed Telkom or 8ta mobile accounts;
- the Applicant has not paid a deposit where required;

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- the Applicant has been blacklisted or has an adverse credit rating as per the National Credit Act, 34 of 2005;
- the Applicant is under some form of legal disability, for example is under the age of 18, is insolvent or has been sequestered or is insane;
- the Applicant has not provided the required or correct information;
- Telkom is unable to provide the required services or goods due to unavailability of infrastructure or infrastructure limitations; or
- there is an unavailability of coverage in a specific area,

then Telkom has the right to decline and / or reject the Application and the offer to contract, provided that such rejection is not discriminatory as per Section 9 of the Constitution, 1996.

### AMENDMENT OF THE TELKOM STANDARD TERMS AND CONDITIONS

Telkom reserves the right to amend its standard terms and conditions from time to time, subject to the provisions of the Consumer Protection Act, 68 of 2008, in so far as these amendments may relate to a Consumer, as defined.

Telkom will place the amended terms and conditions on the Telkom website [www.telkom.co.za](http://www.telkom.co.za) and file such amended terms and conditions with ICASA, and the National Consumer Commission, which amendment, from date of such filing, will thereafter be deemed to be incorporated into the Agreement.

### CREDIT REFERENCING

The Applicant and Customer give Telkom express permission to carry out general and specific credit reference enquiries about the Applicant who has applied for Telkom Services or Selected SE. In addition the Applicant and Customer expressly give Telkom permission to check the correctness of any of the information supplied by the Applicant when applying for a service.

### WARRANTY BY APPLICANT

**THE APPLICANT WARRANTS AND REPRESENTS THAT ALL INFORMATION SUPPLIED BY IT IN APPLYING FOR THE TELKOM SERVICE AND WHERE APPLICABLE THE SELECTED SE, IS TRUE, CORRECT AND COMPLETE AND INDEMNIFIES AND HOLDS TELKOM HARMLESS AGAINST ALL CLAIMS, OF WHATSOEVER NATURE, THAT ARISE, DIRECTLY OR INDIRECTLY, AS A RESULT OF THE APPLICANT OR ITS AGENT PROVIDING TELKOM WITH ANY INCORRECT INFORMATION.**

Telkom will use the Applicant's/Customer's information strictly in accordance with the Regulations promulgated in terms of Section 69 of the Act, being Regulation 1740 headed: Code of Conduct for electronic communications and electronic communications network services licences (*Government Gazette* No. 30553) and in particular Regulation 3.8, which states as follows:

*Licensees must protect the confidentiality of consumer information, and in particular, must (a) use the information only for the purpose permitted or required, (b) report or release that information only to the consumer or prospective consumer, (c) only release that information to another person:*

- when directed by the written instruction of the consumer or prospective consumer, or*
- when directed by an order of a court.*
- during the process of collection of debts owed to the licensees to accredited debt collection agencies.*
- by the licensees' auditors for the purpose of auditing their accounts.*
- in terms of any applicable law.*

### ADDITIONAL COPIES

Additional copies of the Telkom standard terms and conditions can be obtained on request from Telkom's customer service branches or downloaded from the Telkom website at [www.telkom.co.za](http://www.telkom.co.za).

**TELKOM'S STANDARD TERMS AND CONDITIONS FOR THE PROVISION OF ELECTRONIC COMMUNICATIONS SERVICES & PRODUCTS**

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**1. MEANINGS OF CERTAIN WORDS AND PHRASES**

*This section sets out the meaning of certain words and phrases, which are used throughout the Agreement. To enable the Customer to read and understand the contents of Agreement, the Customer must first understand the meanings of these words and phrases.*

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- 1.1 Unless it appears differently from the context or under this clause 1, words, terms and phrases used in the Agreement shall have the same meaning as the definitions set out in the Electronic Communications Act, 36 of 2005 (Act) and under Telkom's Individual Electronic Communications Services License, which Act and related content can be viewed on the ICASA Website; <http://www.icasa.org.za/> under the heading "Legislation";
- 1.2 Words importing the singular shall include the plural and *vice versa*.
- 1.3 Words denoting persons shall include natural human beings, legal entities and unincorporated associations of persons, and *vice versa*.
- 1.4 The headings in these terms and conditions shall not affect their interpretation.
- 1.5 In addition to the above provisions, unless inconsistent with the terms set out under the acts and/or license referred to under clause 1.1 or otherwise indicated by the context, the words and phrases set out below shall mean as follows:

**"Abortive costs"** has the meaning as set out in clause 6.2.8;

**"Act"** means the Electronic Communications Act 36 of 2005, as amended from time to time, and any regulations, as may be amended or replaced from time to time, which Act, amongst other things, regulates the telecommunications industry and related sectors and the provision by them of certain electronic communications network services and electronic communication services. The Act and related content can be viewed on the ICASA Website at <http://www.icasa.org.za/>

**"Applicant"** means the person whose details are reflected on the Application Form, whether captured on paper, or via electronic means such as voice recordings, computer generated and captured data or similar means;

**"Agreement"** means the Application Form, the Tariff List, and these terms and conditions which will apply to the Customer, in respect of the Telkom Services and Selected SE, together with any Renewal Addendum (where applicable);

**"Application Form"** means the official Telkom Application Form which is completed by the Applicant in writing, electronically or telephonically, which houses the Applicant's details and the Applicant's/Customer's request that Telkom provide it with certain Telkom Services and/or the Selected SE;

**"Authority"** means the Independent Communications Authority of South Africa established in terms of section 3 of the Independent Communications Authority of South Africa Act, 2000 and its successors who govern and oversee the telecommunications and electronic communications industry;

**"Applicable Law"** means any of the following, to the extent it applies to Telkom, the Customer or the Goods and Services:

- (i) any statute, regulation, by-law, ordinance or subordinate legislation in force from time to time;
- (ii) the common law and the law of equity;
- (iii) any binding court order, judgment or decree;
- (iv) any applicable industry code, policy or standard enforceable by law; and

any applicable direction, rule, pronouncement, policy or order that is given by a regulator.

**"Basic telephone service"** means an electronic communications service comprising technical features, which are the minimum necessary to allow the establishment of a telephony channel for the purpose of providing an electronic communications service in order to convey voice grade signals between two items of SE connected to TECN;

**"Business Day"** means Monday to Friday, excluding Saturday and Sunday and excluding any public holiday as defined under the Public Holiday Act, 36 of 1994;

**"Connections"** means the TECN Connections, which Telkom will install at the Customer's premises as reflected under the Application Form, which allows the Customer to use the Telkom Service;

**"Connection date"** means the date when Telkom installs the Connections at the Customer's premises where the Telkom Service will be used, which allows the Customer to utilize the Telkom Services and Selected SE or the SE;

**"Consumer"** means a Customer who is a "consumer" as defined under section 1, section 6 and Regulation GN 294 of 2011 of the CPA;

**"Charges"** means the amounts charged by Telkom in respect of the Selected SE, where purchased or leased from Telkom, and the Telkom Services, which charges are set out under the Tariff List or as notified by Telkom from time to time, and which Charges will be set out under the Invoice which will be submitted to the Customer in terms of the Agreement;

**"CPA"** means the Consumer Protection Act, 68 of 2008, as amended and any regulations published in terms thereof, as amended or replaced from time to time;

**"Credit referencing procedure"** means the procedure set up by Telkom to determine the creditworthiness of an Applicant;

**"Commencement date"** means the date when Telkom has processed the Application and notified the Customer that it has agreed to provide the Customer with the Telkom Services and where applicable the Selected SE;

**"Customer"** means the person who has applied for and who Telkom has agreed to provide the Telkom Services and Selected SE, where applicable, and who will be liable for the payment of the Charges and for compliance with the Agreement. Customer will also include "Subscriber" and "End-user" as defined in section 1 of the Act;

**"Due date"** means the date on which any amounts owed by Customer to Telkom in respect of the Telkom Services and the Selected SE, where applicable, become due and payable, and which is printed on the Invoice;

**"Detailed billing"** means a detailed statement of account provided by Telkom to the Customer setting out all billable elements, including without limitation all charges, fees, tariffs, disbursements, rates and taxes levied by Telkom in respect of the Telkom Services and the Selected SE, where applicable;

**"Directory"** means a printed directory service containing an alphabetical or classified listing of names, addresses, and telephone numbers, of specific persons, groups, or firms which directory is governed by section 75 of the Act;

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**“Electronic Communications”** means the emission, transmission or reception of information, including without limitation, voice, sound, data, text, video, animation, visual images, moving images and pictures, signals or a combination thereof by means of magnetism, radio or other electromagnetic waves, optical, electromagnetic systems or any agency of a like nature, whether with or without the aid of tangible conductor/conduit, but does not include content service as defined in section 1 of the Act;

**“Electronic Communications Network” or “ECN”** means any system of electronic communications facilities (excluding Selected SE and SE), as defined under section 1 of the Act, including without limitation satellite systems; fixed systems (circuit- and packet-switched); mobile systems; fibre optic cables (undersea and land-based); electricity cable systems (to the extent used for electronic communications services); and other transmission systems, used for conveyance of electronic communications;

**“Electronic Communications Network Service” or “ECNS”** means a service as defined under section 1 of the Act, whereby a person makes available an electronic communications network, whether by sale, lease or otherwise, for that person's own use for the provision of an electronic communications service or broadcasting service; to another person for that other person's use in the provision of an electronic communications service or broadcasting service; or for resale to an electronic communications service licensee, broadcasting service licensee or any other service contemplated in the Act, and 'network services' is construed accordingly;

**“Electronic Communications Service” or “ECS”** means any service provided to the public, sections of the public, the State, or the Customers to such service, which consists wholly or mainly of the conveyance by any means of electronic communications over an electronic communications network, but excludes broadcasting services;

**“Exchange connection”** means the line that connects a main telephone service to an exchange which is also referred to as a private branch exchange line (PBX line) when terminated in a private branch exchange (PBX) or in any other type of telephone system;

**“Fixed Term Agreement”** means an Agreement concluded by Telkom with a Customer which is in excess of a one month period, as selected by the Applicant under the Application Form, and which for any avoidance of doubt will be limited in the case of a Consumer, to a maximum period of 2 (two years) together with any renewed period or term as requested by the Consumer in accordance with options granted by Telkom to the Consumer as per the provisions of section 14 of the CPA;

**“Initial Period”** means the number of months which the Customer has selected under the Application Form under the line item “contract period” for which the Agreement will run, which period will start running on the Connection date;

**“Individual Consumer”** means a Consumer who is natural person;

**“Interest rate”** means the interest rate determined by Telkom from time to time levied on any outstanding amounts due to Telkom which will not exceed the maximum rate allowed under the National Credit Act, 34 of 2005 and provided that the said rate shall be uniformly applied to all amounts outstanding and due;

**“Invoice”** shall mean the notification of Charges sent to the Customer setting out all amounts due and owing to Telkom by the Customer in respect of the Telkom Services and/or where applicable, the Selected SE;

**“Migration”** means the Customer's election to change the Telkom Services and or Selected SE received under the Agreement to another, which if accepted by Telkom will give rise to a review and amendment of the Charges;

**“Minimum Service Standards”** means the minimum service standards for end users and subscribers set by the Authority (ICASA), housed under the Act, titled Regulations Setting Out The Minimum Standards For End-User And Subscriber Service Charters, GNR.774 of 24 July 2009, Government Gazette no 32431, as amended or replaced from time to time;

**“Month to Month Agreement”** means the Agreement, which has been concluded between Telkom and the Customer, which will run on a month to month basis and which is capable of being terminated by either party on 1 (one) month written notice, which option the Customer has selected under the Application Form under the line item “contract period”, or being the default contract term once a fixed term agreement between Telkom and the Customer has expired, which the Customer chose not to renew or cancel;

**“Office hours”** means Telkom's normal business hours, as determined by Telkom from time to time, currently being Monday to Friday, 7h30 to 17h00, but excluding public holidays;

**“Private branch exchange (PBX) switching unit”** means a telephone-switching unit installed on the Customer's premises, or intended for such an installation, that is capable of being connected to an Electronic Communications Network by means of one or more exchange connections. Such a unit functions as an intermediary switching device for traffic between exchange Connections and extension circuits of the PBX (extensions), or between those extensions;

**“Private electronic communications network” or “PECN”** means an electronic communications network used primarily for providing electronic communications for the owner's own use as envisaged in Section 6 (2) (c) of the Act;

**“Parties”** means collectively, Telkom and the Customer;

**“Personal Data”** means all personal details conveyed to Telkom by the Applicant/Customer such as his/her identity, whereabouts, credit levels, financial status, earning capabilities, family members, likes, preferences and dislikes, which are required in order to process the application and required to determine current and future customer requirements;

**“Regulations”** means any regulations promulgated in terms of section 95 of the Act;

**“Renewal period”** means the additional number of months which the Parties have agreed to renew the Agreement for, as set out under the Renewal Addendum/ Application Form, which period will start on the day following the last day of the Initial Period, where applicable;

**“Renewal Addendum”** means the renewal agreement concluded by the Parties, which sets out the additional terms applicable to the Renewal period;

**“RICA”** means the Regulation of Interception of Communication and Provision of Communication Regulated Information Act 70 of 2002, as amended/replaced from time to time, and its related provisions, which apply to Telkom and to the Customer;

**“SE”** means the equipment used by Customers to access, use or receive electronic communications services or the Telkom Services and as defined in section 1 of the Act;

**“Selected SE”** means the equipment used by Customers to access, use or receive electronic communications services or the Telkom Services and as defined in section 1 of the Act, which SE is leased or purchased by the Customer from Telkom in terms of the Agreement;

**“Standard terms and conditions”** means the standard terms and conditions as described in this Agreement and any annexures or amendments thereto and the word “conditions” shall bear the same meaning;

**“Tariff List”** means the list of Charges levied by Telkom in respect of the Telkom Services and where applicable the Selected SE, as amended from time to time, and payable to Telkom

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by the Customer;

“**Telkom**” means Telkom SA Limited, Registration number 1991/005476/06, a public company incorporated in terms of the laws of the Republic of South Africa;

“**Telkom Services**” means the electronic communication services, as selected by the Customer under the Application Form, which Telkom will provide to the Customer in terms of the Agreement;

“**TECN**” means the electronic communications network used by Telkom to render electronic communications services in terms of Telkom’s Individual Electronic Communications Service Licence and “Network” shall have the same meaning; and

“**Terminal connection equipment**” or “**TCE**” means the electronic communications equipment and/or electronic communication facility on which Telkom terminates Electronic Communication Service(s).

- 1.6 The Customer is to note that the provisions of the Electronic Communications and Transactions Act, 25 of 2002 (ECTA) shall apply, the Parties expressly agreeing:
- 1.6.1 that where a provision of the Agreement requires that a document must be signed or initialled, that signing or initialling may be effected in any manner recognised by law, including the use of an electronic signature, as defined in ECTA; Telkom/ in this regard will take reasonable measures to prevent the use of the Consumer’s electronic signature for any purpose other than the signing or initialling of the particular document that the consumer intended to sign or initial; and
  - 1.6.2 that where anything is required to be in writing, unless expressly stipulated to the contrary by Telkom, any electronic communication, including an SMS, telephonic call or electronic message such as an email, exchanged between the Parties, will meet this requirement.
  - 1.7 The Customer is to note that when a particular number of days is provided for between the happening of one event and another, the number of days must be calculated by:-
    - 1.7.1 excluding the day on which the first such event occurs;
    - 1.7.2 including the day on or by which the second event is to occur; and
    - 1.7.3 excluding any public holiday, Saturday or Sunday that falls on or between the days contemplated in clauses 1.7.1 and 1.7.2, respectively.

## 2. AGREEMENT TO CONTRACT AND APPLICATION OF THESE TERMS AND CONDITIONS

***This clause confirms that you, the Customer, have asked Telkom to provide you with certain electronic communication services and equipment, which you selected when you completed the Application Form. Telkom has agreed to provide you with the selected services and equipment, but these will be provided on condition that you will comply with the terms and conditions set out under the Agreement.***

- 2.1 The Customer accepts and agrees that the terms and conditions set out under the Agreement will become binding on it once Telkom has processed the Application Form and agreed to provide the Customer with the Telkom Services and where applicable, the Selected SE.
- 2.2 Telkom reserves the right to amend these terms and conditions from time to time. Telkom will give written notice to each Consumer of such amendments and will place the amended terms and conditions on the Telkom website [www.telkom.co.za](http://www.telkom.co.za) and file such amended terms and conditions with the Authority, which amendment will be deemed to be incorporated into the Agreement and bind the Customer from the date that the amendment has been filed with the Authority.
- 2.3 Where, as a result of any amendment anticipated under clause 2.2, a Consumer is of the view that such amendment is to its detriment; the Consumer may terminate the Agreement without penalty provided that it gives Telkom 20 (twenty) Business days notice in writing of its election to terminate the Agreement. Where a Consumer terminates the Agreement as per his rights under this clause 2.3, such termination will be **WITHOUT PENALTY, SAVE WHERE THE CONSUMER HAS BEEN GIVEN OR HAS PURCHASED BUT NOT YET PAID FOR, SELECTED SE. IN SUCH A CASE THE CONSUMER WILL HAVE A LEGAL DUTY AND TELKOM WILL HAVE A LEGAL RIGHT TO DEMAND FROM THE CONSUMER, FULL PAYMENT IN RESPECT OF THE SELECTED SE, LESS ANY AMOUNTS WHICH HAVE ALREADY BEEN PAID TO TELKOM IN RESPECT THEREOF PRIOR TO SUCH TERMINATION.**

## 3. PROCESSING OF PERSONAL INFORMATION, RIGHTS TO PRIVACY AND RICA

***Although Telkom respects you, the Customer’s privacy and to this end your right not to have your personal data misused or distributed to other persons, you, the Customer have to comply with the provisions of RICA, which is a law which requires that bodies such as Telkom verify your details before they are able to provide you with a communication service or device. This clause sets out Telkom’s undertaking to protect and respect your personal data and not to misuse it. It also sets out your undertaking to comply with RICA.***

- 3.1 Telkom at any time reserves the right to make general credit reference enquiries about the Customer and to check the correctness of the information that has been supplied. Telkom shall also be entitled to furnish any information relating to the Customer’s account and compliance with these conditions to any registered credit bureau.
- 3.2 **THE CUSTOMER WARRANTS AND REPRESENTS THAT ALL INFORMATION SUPPLIED BY IT IS TRUE, CORRECT AND COMPLETE AND INDEMNIFIES AND HOLDS TELKOM HARMLESS AGAINST ALL CLAIMS, OF WHATSOEVER NATURE, THAT ARISE, DIRECTLY OR INDIRECTLY, AS A RESULT OF ANY INCORRECT INFORMATION BEING FURNISHED.**
- 3.3 Telkom will use the Customer’s information strictly in accordance with the Regulations promulgated in terms of Section 69 of the Act and undertakes to process and use the Customer personal data only for the purpose for which it has been collected and undertakes that this processing will be carried out in accordance with any notice, consent or other requirement which may be required by any applicable law in force in South Africa from time to time. Telkom furthermore will use the Customer’s information strictly in accordance with the provisions housed under its Telkom Individual Communications Service Licence.
- 3.4 The Customer accepts that RICA applies to the Telkom Services, SE and / or the Selected SE, which the Customer has requested Telkom to provide it with under this Agreement, and agrees that it must, where applicable, comply with the relevant requirements of RICA, including, without generalising:
- 3.4.1 to provide Telkom with all required Personal Data and other details which Telkom is required to obtain from the Customer, in terms of section 39 of RICA. An extract of these sections is attached as **Schedule “A”**;

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3.4.2 not to transfer the Telkom service or SE/ Selected SE to another person, other than a family member or dependant without providing Telkom with the Personal Data and other details of the person who is taking over the Telkom service or SE/ Selected SE.

3.5 **THE CUSTOMER ACKNOWLEDGES AND ACCEPTS THAT WHERE IT DOES NOT COMPLY WITH THESE PROVISIONS THAT THIS WILL AMOUNT TO A MATERIAL BREACH BY THE CUSTOMER OF THIS AGREEMENT WHICH WILL ALLOW TELKOM TO CANCEL THE AGREEMENT AND TO CLAIM DAMAGES AS A RESULT OF THE CANCELLATION.**

3.6 The Customer also acknowledges and accepts that where it does not comply with the provisions set out under clause 3.4, that this will be a breach of RICA and this will give rise to a possible criminal charge and sanction being imposed against the Customer as per the requirements of RICA.

### 4. DURATION, RENEWAL AND TERMINATION FOR NO CAUSE

*The clause sets out how long the Agreement will run for and your rights to cancel the Agreement.*

#### 4.1 Duration of the Agreement and renewal rights

4.1.1 Notwithstanding the Connection date, the Agreement will start on the Commencement date and will carry on for either the Initial Period or on a Month to Month basis, as selected by the Customer under the Application Form and for any Renewal Period, where renewed by the Customer, save for where the Agreement is terminated earlier by either of the Parties in accordance with their respective rights set out under this clause 4 or clause 11 of the Agreement.

4.1.2 On expiration of the Initial Period, the Customer will have the right to terminate the Agreement by giving Telkom written notice of its election to terminate the Agreement or enter into a Renewal Addendum or complete a new Application Form, which Renewal Addendum or Application Form will set out the Renewal Period, and the applicable terms and conditions pertaining to such renewal.

4.1.3 Should a Customer fail to notify Telkom of its election to terminate or renew the Agreement, and more in particular where a Consumer fails to notify Telkom of its election to either terminate or renew the Agreement as permitted under section 14 of the CPA, then the Agreement will continue on a month to month basis on the same terms and conditions as contained under the Agreement and subject always to any variations in accordance with the Tariff List. Any month to month Agreement as envisaged in terms of this clause may be terminated by either party by giving 1 (One) months written notice to the other party.

#### 4.2 Cancellation or variation of the Telkom Services or Selected SE before the Connection date

**WHERE THE CUSTOMER CANCELS OR VARIES ANY OF THE TELKOM SERVICES, AND / OR THE SELECTED SE AS SELECTED UNDER THE APPLICATION FORM, WHICH CANCELLATION IS NOT AS A RESULT OF ANY BREACH ON THE PART OF TELKOM, BEFORE THE CONNECTION DATE, IN WHOLE OR IN PART, TELKOM WILL HAVE THE RIGHT TO CHARGE THE CUSTOMER ALL ABORTIVE COSTS WHICH TELKOM HAS INCURRED AS A RESULT OF THE CANCELLATION OR VARIATION, WHICH AMOUNT SHALL BE PAYABLE BY THE CUSTOMER ON DEMAND.**

#### 4.3 Termination of a Fixed Term Agreement by an Individual Consumer for no cause

4.3.1 Where an Individual Consumer has concluded a Fixed Term Agreement, the Individual Consumer will have the right to terminate the Fixed Term Agreement, for no particular reason or cause, at any time, provided the Consumer gives Telkom at least 20 (Twenty) Business days written notice of its election to terminate the Agreement, **WHICH TERMINATION WILL BE SUBJECT TO PAYMENT OF A REASONABLE CANCELLATION FEE, WHICH WILL BE DETERMINED AND CALCULATED AT THE TIME WHEN THE NOTICE TO TERMINATE IS GIVEN BY THE CONSUMER, USING THE GUIDELINES SET OUT UNDER SECTION 14 AND REGULATION 5(2) OF THE CPA.**

4.3.2 Should the Individual Consumer elect to terminate the Agreement earlier than anticipated, as envisaged and permitted under clause 4.3.1, **I.E. BEFORE THE EXPIRATION OF THE INITIAL PERIOD**, then on receipt of the termination notice, Telkom will advise the Individual Consumer of the amounts which are still owed to it, namely all the arrears amounts owing to Telkom in terms of the Agreement up to date of termination; and the cancellation fee, as determined by Telkom as per the provisions of clause 4.3.1.

4.3.3 The Individual Consumer will pay Telkom the amounts referred to under clause 4.3.2 by the Due date indicated on the Invoice setting out the arrears amounts and the cancellation fee.

### 5. INSTALLATIONS AND PROVISION OF THE TELKOM SERVICES

*This clause sets out the type and quality of Telkom Services and where applicable the Selected SE which Telkom has agreed to provide you, the Customer with, who bears the risk of any misuse of the Telkom Services and Selected SE and what will happen when the Telkom Services are interrupted due to events/incidents which is beyond Telkom's control. It also covers your right to change the Telkom Service, and Telkom's right to change your number or the Telkom Services and or the Selected SE where required.*

#### 5.1 Installation of Telkom Services, SE and use of unauthorised Devices

5.1.1 The Telkom Service, including any Basic telephone service, is exclusive of any required SE, unless the Customer has expressly, under the Application Form, requested that Telkom provide it with the Selected SE. The Selected SE will be either leased or sold to the Customer at the prices, fees or rates set out under the Tariff List or as notified by Telkom to the Customer.

5.1.2 **WHERE ANY SE IS REQUIRED FOR THE USE AND ENJOYMENT OF THE TELKOM SERVICES WHICH IS NOT PROVIDED BY TELKOM, THE CUSTOMER WILL BE RESPONSIBLE FOR INSTALLING SUCH SE AT ITS OWN RISK, COST AND EXPENSE.**

5.1.3 Telkom shall install the Connections required for the use of the Telkom Services and where applicable, the Selected SE at the Customer's premises as set out under the Application Form, as requested by the Customer, against payment of the relevant installation fee and deposit, if applicable, as set out in the Tariff List or as quoted by Telkom.

5.1.4 Telkom shall make reasonable endeavours to meet the installation date as requested by the Customer. However it is a condition of the Agreement that Telkom gives no undertakings that it will be able to meet any installation date requested by the Customer, the Customer accepting that Telkom will install the Connections required for the use of the Telkom Services and where applicable the Selected SE when it is in a position to do so, which will depend on the availability of spares, parts and service providers or Telkom contractors, whatever the case may be.

## TELKOM'S STANDARD TERMS AND CONDITIONS FOR THE PROVISION OF ELECTRONIC COMMUNICATIONS SERVICES & PRODUCTS

- 5.1.5 Telkom will give the Customer notice of the installation date once it has received the Selected SE and secured the services of its Telkom contractors and service providers for the purposes of installing the Connections and selected SE.
- 5.1.6 Telkom will ensure that it complies with all installation requirements set out under the Minimum Service Standard in so far as installation of the Connections and the Selected SE is concerned.
- 5.1.7 Telkom's duty to physically install the Connections required for the use of the Telkom Services and where applicable the responsibility to install the Selected SE or SE will terminate once the Connections and where applicable the Selected SE or SE have been supplied, installed and the Customer is able to receive, via the Selected SE, the Telkom Services.
- 5.1.8 Only SE that has been type approved by the Authority may be used in conjunction with the Telkom Service, which SE must have all the technical and operational characteristics and modifications of the type that has been approved.
- 5.1.9 If the SE is modified, it may not be used in conjunction with the Telkom Service until such time that the Authority has approved the modification.
- 5.1.10 **TELKOM RESERVES THE RIGHT TO DISCONNECT FROM THE TECN OR NETWORK AND SUSPEND OR TERMINATE THE TELKOM SERVICE, WHERE ANY SE THAT HAS NOT BEEN APPROVED BY THE AUTHORITY OR THAT HAS BEEN LICENSED OR APPROVED BUT HAS BEEN MODIFIED WITHOUT THE APPROVAL OF THE AUTHORITY IN TERMS OF SECTION 35 OF THE ACT HAS BEEN USED IN CONNECTION WITH THE TELKOM SERVICES OR WHERE THE SE HAS BEEN INCORRECTLY INSTALLED OR CONNECTED TO THE CONNECTIONS AND THE CUSTOMER INDEMNIFIES TELKOM AGAINST ANY LIABILITY, LOSS OR DAMAGE WHICH TELKOM AND/OR THE CUSTOMER MAY INCUR AS A RESULT OF THE UNLAWFUL OR INCORRECT USAGE OF SUCH SE OR THE INCORRECT INSTALLATION OF THE SE, WHAT EVER THE CASE MAY BE.**
- 5.1.11 Owing to traffic considerations, the connection of any SE, other than a standard telephone instrument, to party-line services is not permitted, unless otherwise agreed by Telkom and subject to any conditions which may be laid down and applied by Telkom, from time to time.
- 5.1.12 A PBX switching unit may only be connected to the TECN, if it has been installed, or modified after installation, and/or commissioned by Telkom or by a person duly licensed by the Authority to install, modify, and/or commission such equipment, as the case may be.
- 5.1.13 Where the Customer has requested that Telkom provides it with an international private circuit, Telkom will be responsible for providing the half circuit terminating in the TECN. The Customer is responsible, at its own cost, expense and risk, for placing a matching order with the relevant service provider for the other half of the circuit terminating abroad. The Customer may request Telkom to provide the full circuit on a one-stop-shopping basis, at the rates quoted to the Customer on a case-by-case basis.
- 5.1.14 If the Customer is not the owner of the premises where the Telkom Service and / or where applicable the Selected SE is to be installed, the Customer must prior to any installation by Telkom, **AT ITS OWN COST AND EXPENSE, OBTAIN WRITTEN PERMISSION FROM THE OWNER OF SUCH PREMISES FOR ANY SUCH INSTALLATION AND THE CUSTOMER INDEMNIFIES TELKOM AGAINST DAMAGES OR CLAIMS RESULTING FROM THE FAILURE TO OBTAIN SUCH PERMISSION INCLUDING ALL AND ANY ABORTIVE COSTS WHICH MAY HAVE TO BE INCURRED BY TELKOM SHOULD TELKOM HAVE TO REMOVE ANY CONNECTIONS AND / OR THE SELECTED SE FROM THE PREMISES.**
- 5.1.15 The Customer must at its own cost and expense provide suitable and adequate electrical power supply as may be required for the proper functioning of the Connections and the Selected SE or SE.
- 5.1.16 **THE CUSTOMER MUST AT ITS OWN COST AND EXPENSE ENSURE THAT OPTIMUM ENVIRONMENTAL CONDITIONS AS MAY BE REQUIRED FOR THE PROPER MANAGEMENT AND/OR FUNCTIONING OF THE CONNECTIONS AND THE SELECTED SE OR SE ARE PROVIDED, SUCH AS ADEQUATE VENTILATION, LIGHTING AND WALL/RACK SPACE.**
- 5.2 **Printed Directories**
- 5.2.1 Where the Telkom Service or Selected SE is either a telephone or a telex service provided by Telkom, Telkom shall provide at no charge, an entry in the relevant Directory for the area in which the Selected Telkom Service is provided, which shall comprise in an abbreviated format, the Customer's name, address and service number.
- 5.2.2 Where the Customer in writing requests that its details are not included in the Directory, Telkom will ensure that the Customer's information is excluded from the Directory and the directory enquiry service.
- 5.2.3 If the Customer indicates in its order that its details should appear in the Directory, Telkom may make the details available in the directory enquiry services before or after publication of such a Directory.
- 5.3 **Use of the Telkom Services, SE and related equipment**
- 5.3.1 The provision of any Telkom Service to the Customer does not confer on the Customer any right to use the Telkom Service, the Selected SE or any element thereof, or to make them available to other parties, for purposes for which a licence or licence exemption is required under the Act, unless the Customer where applicable, and required in terms of the Act, has been granted such a licence or licence exemption, and such a licence or licence exemption is in effect.
- 5.3.2 The Customer agrees to only use the Telkom Services and the Selected SE or SE approved by the Authority and to comply with all relevant legislation applicable to the use of the Telkom Services, Selected SE, and SE, including, without limitation, any licence or licence exemption that may be required in terms of the Act, and to use the Telkom Service in accordance with such licence, the Act, the Regulations, any applicable and relevant legislation and any notices or directives issued by the Authority from time to time.
- 5.3.3 The Customer will ensure and warrants that the TECN, the Telkom Services, the Selected SE, or the SE shall not be used for improper, immoral or unlawful purposes.
- 5.3.4 The Customer shall not resell capacity on any communications facility obtained from Telkom including the Telkom Services and Selected SE, or cede or assign his/her rights to use the aforementioned services and equipment or any element thereof or otherwise part control of them, without Telkom's written consent.
- 5.3.5 The Customer shall not do anything or omit to do anything or allow anything to be done or omitted which infringes or may infringe Telkom's rights as set out in the Act and Telkom's licence conditions.

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- 5.3.6 The Customer must at all times whilst this Agreement is in place:
- 5.3.6.1 comply with any instructions issued by Telkom which concern the Customer's use of the Telkom Services, the Selected SE, the SE, Telkom's facilities or matters related thereto, and which may be required to ensure the satisfactory provision of the Telkom Services as a whole, or to protect the integrity of the TECN, or to deal with emergencies;
  - 5.3.6.2 provide Telkom with all information relating to the Customer's use of the Telkom Services and Selected SE, the SE, the Telkom facilities or premises where the Telkom Services are installed and being used and any other matters related thereto that Telkom may reasonably require from time to time; and which may be required to ensure the satisfactory provision of the Telkom Service, to protect the integrity of the TECN, or to deal with emergencies; and
  - 5.3.6.3 allow Telkom free access to his/her premises during reasonable hours to install, inspect, maintain or remove the Connection, SE or Selected SE.
- 5.3.7 Where an exchange connection or group of exchange connections rented by the Customer is used to such an extent that the number of calls to such lines cannot be completed because of engaged conditions become such that it causes an undue overload of the exchange, Telkom will notify the Customer in writing of the need to increase the number of exchange connections by a specified amount. Where the Customer fails to allow the installation of the additional exchange connections indicated in the notification Telkom may suspend the Telkom Service, until such time as the Customer has made contact with Telkom and has made arrangements for the installation of additional exchange connections. **TELKOM TAKES NO RESPONSIBILITY FOR THE QUALITY OF THE TELKOM SERVICE, WHICH MAY RESULT FROM ANY CIRCUMSTANCES AS ENVISAGED IN TERMS OF THIS CLAUSE.**
- 5.3.8 Where the Customer rents an electronic communications service for the purpose of a PECN, such service may only be used to:
- 5.3.8.1 provide communications between two SE's (Selected or otherwise) within that PECN; or
  - 5.3.8.2 receive communications from outside the PECN onto any SE (Selected or otherwise) within the PECN (break-in); or
  - 5.3.8.3 originate a communication from any SE (Selected or otherwise) within the PECN to any SE (Selected or otherwise) located outside of the PECN (break-out).
- 5.3.9 The switching of a call from outside the PECN, into the PECN and then subsequently breaking-out to the SE (Selected or otherwise) located outside the PECN, on the same communication, is prohibited, unless the Customer has an appropriate licence or licence exemption that permits such switching via a PECN.
- 5.3.10 Customers not licensed, or exempted from licensing, to provide switching via the PECN are obliged to ensure that suitable barring, to Telkom's satisfaction, of the SE (Selected or otherwise) is put in place so as to prevent break-in and break-out on the same communication.
- 5.3.11 If, in any building where Telkom must install the Telkom Service, no conduit-pipes are available for Telkom's use, Telkom may, at its discretion:
- 5.3.11.1 refuse to provide the Telkom Service in that building or in any part thereof until such conduit-pipes or other facilities have been so installed; or
  - 5.3.11.2 quote an installation cost in respect of the required conduit-pipes, and if accepted by the Customer, install at the Customer's cost the required conduit-pipes or other facilities.

### 5.4 Failure and unavailability of the Telkom Services or Selected SE

- 5.4.1 **WHILST TELKOM OPERATES THE TECN/NETWORK, TELKOM HEREBY EXPRESSLY ADVISES THE CUSTOMER THAT TELKOM DOES NOT OPERATE IN ISOLATION BUT INSTEAD RELIES ON FUNCTIONALITIES, EQUIPMENT AND/OR INFRASTRUCTURE WHICH ARE PROVIDED BY A NUMBER OF SERVICE PROVIDERS WHO PROVIDE SEPARATE BUT INTERRELATED AND CONNECTED SERVICES WHICH AS A WHOLE, ALLOWS THE TECN/NETWORK, THE SELECTED SE AND SE TO FUNCTION. THESE SERVICE PROVIDERS OPERATE AS INDEPENDENT SERVICE PROVIDERS WHO ARE NOT NECESSARILY CONTRACTED BY TELKOM AND THE CUSTOMER ACCEPTS AND ACKNOWLEDGES THIS FACT.**
- 5.4.2 **WHILST TELKOM WILL COMPLY WITH AND MEET THE MINIMUM SERVICE STANDARDS AND USE ITS BEST ENDEAVOURS TO ENSURE THAT THE TELKOM SERVICES AND ANY SELECTED SE ARE OPERATIONAL AT ALL TIMES, TELKOM DOES NOT WARRANT THAT THE TELKOM SERVICES WILL BE OPERATIONAL ON A 24 (TWENTY FOUR) HOUR 365 (THREE HUNDRED AND SIXTY FIVE) DAYS PER YEAR BASIS, THIS BEING DUE TO THE NATURE OF THE TELECOMMUNICATIONS INDUSTRY AND THE NETWORK, WHICH IS DEPENDENT ON THE ACTIONS AND/OR INPUT OF A NUMBER OF INDEPENDENT SERVICE PROVIDERS WHOM TELKOM HAS NO DIRECT CONTROL OVER.**
- 5.4.3 Telkom will use its best endeavours to notify the Customer in advance of any failure of, or interruption to the Telkom Services/ Selected SE or the Connections and where applicable any required maintenance and repairs which may result from such failure, interruption or unavailability, where Telkom is in a position to do this.
- 5.4.4 **TELKOM IN ADDITION EXPRESSLY ADVISES AND THE CUSTOMER ACKNOWLEDGES AND ACCEPTS THAT THE CERTAIN SELECTED SE ARE NOT MANUFACTURED BY TELKOM, BUT ARE MANUFACTURED BY THIRD PARTIES. IN MOST CASES, DUE TO THE PROVISIONS OF THE ACT READ TOGETHER WITH THE AUTHORITY CODE OF PRACTICE AND GUIDELINES, TELKOM WILL NOT BE IN A POSITION TO OPEN CERTAIN SELECTED SE OR TO TEST OR OPERATE THE SELECTED SE BEFORE THEY ARE HANDED TO THE CUSTOMER IN ORDER TO ENSURE THAT THEY ARE FIT FOR PURPOSE AND / OR ARE INTACT.**
- 5.4.5 **IN LIGHT OF THE DISCLOSURES HOUSED UNDER CLAUSES 5.4.1- 5.4.4 TELKOM EXPRESSLY STIPULATES AND THE CUSTOMER ACKNOWLEDGES THAT TELKOM CANNOT WARRANT OR GUARANTEE THAT THE TELKOM SERVICES AND / OR THE SELECTED SE WILL:**
- 5.4.5.1 **AT ALL TIMES BE FREE OF ERRORS OR INTERRUPTIONS;**
  - 5.4.5.2 **ALWAYS ARE AVAILABLE;**

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**5.4.5.3 BE FIT FOR ANY PURPOSE;**

**5.4.5.4 NOT INFRINGE ON ANY THIRD PARTY RIGHTS;**

**5.4.5.5 BE SECURE AND RELIABLE,**

**SAVE WHERE THE TELKOM SERVICES, THE CONNECTIONS AND / OR SELECTED SE ARE FOUND TO BE DEFECTIVE AND SUCH DEFECT HAS BEEN SOLELY CAUSED BY TELKOM AS ANTICIPATED UNDER SECTIONS 54, 55<sup>1</sup> AND 56<sup>2</sup> OF THE CPA, WHERE APPLICABLE.**

5.4.6 Notwithstanding the provisions of clause 5.4.5 above, Telkom will use its best endeavours to notify the Customer in advance of any failure of, or interruption to the Telkom Services, Connections and / or the Selected SE and where applicable any required maintenance and repairs which may result from such failure, interruption or unavailability, where Telkom is in a position to do so.

**5.4.7 TELKOM AND THE CUSTOMER AND MORE IN PARTICULAR THE CONSUMER CONFIRM THAT THE PROVISIONS HOUSED UNDER CLAUSE 5.4 EXPRESSLY SET OUT THAT THE SELECTED SE AND THE TELKOM SERVICES ARE SOLD OR OFFERED IN A SPECIFIC CONDITION. IN LIGHT OF THE ABOVE DISCLOSURES, WHICH ARE PERMITTED UNDER SECTION 54(1)<sup>3</sup> OR 55<sup>4</sup> (6) OF THE CPA, THE CUSTOMER AND MORE IN PARTICULAR THE**

### <sup>1</sup> 55. Consumer's rights to safe, good quality goods

1) This section does not apply to goods bought at an auction, as contemplated in section 45.

(2) Except to the extent contemplated in subsection (6), every consumer has a right to receive goods that—

(a) are reasonably suitable for the purposes for which they are generally intended;

(b) are of good quality, in good working order and free of any defects;

(c) will be useable and durable for a reasonable period of time, having regard to the use to which they would normally be put and to all the surrounding circumstances of their supply; and

(d) comply with any applicable standards set under the Standards Act, 1993 (Act No. 29 of 1993), or any other public regulation.

(3) In addition to the right set out in subsection (2)(a), if a consumer has specifically informed the supplier of the particular purpose for which the consumer wishes to acquire any goods, or the use to which the consumer intends to apply those goods, and the supplier—

(a) ordinarily offers to supply such goods; or

(b) acts in a manner consistent with being knowledgeable about the use of those goods,

the consumer has a right to expect that the goods are reasonably suitable for the specific purpose that the consumer has indicated.

(4) In determining whether any particular goods satisfied the requirements of subsection (2) or (3), all of the circumstances of the supply of those goods must be considered, including but not limited to—

(a) the manner in which, and the purposes for which, the goods were marketed, packaged and displayed, the use of any trade description or mark, any instructions for, or warnings with respect to the use of the goods;

(b) the range of things that might reasonably be anticipated to be done with or in relation to the goods; and

(c) the time when the goods were produced and supplied.

(5) For greater certainty in applying subsection (4)—

(a) it is irrelevant whether a product failure or defect was latent or patent, or whether it could have been detected by a consumer before taking delivery of the goods; and

(b) a product failure or defect may not be inferred in respect of particular goods solely on the grounds that better goods have subsequently become available from the same or any other producer or supplier.

(6) Subsection (2)(a) and (b) do not apply to a transaction if the consumer—

(a) has been expressly informed that particular goods were offered in a specific condition; and

(b) has expressly agreed to accept the goods in that condition, or knowingly acted in a manner consistent with accepting the goods in that condition.

### <sup>3</sup> 56. Implied warranty of quality

—(1) In any transaction or agreement pertaining to the supply of goods to a consumer there is an implied provision that the producer or importer, the distributor and the retailer each warrant that the goods comply with the requirements and standards contemplated in section 55, except to the extent that those goods have been altered contrary to the instructions, or after leaving the control, of the producer or importer, a distributor or the retailer, as the case may be.

(2) Within six months after the delivery of any goods to a consumer, the consumer may return the goods to the supplier, without penalty and at the supplier's risk and expense, if the goods fail to satisfy the requirements and standards contemplated in section 55, and the supplier must, at the direction of the consumer, either—

(a) repair or replace the failed, unsafe or defective goods; or

(b) refund to the consumer the price paid by the consumer, for the goods.

(3) If a supplier repairs any particular goods or any component of any such goods, and within three months after that repair, the failure, defect or unsafe feature has not been remedied, or a further failure, defect or unsafe feature is discovered, the supplier must—

(a) replace the goods; or

(b) refund to the consumer the price paid by the consumer for the goods.

(4) The implied warranty imposed by subsection (1), and the right to return goods set out in subsection (2), are each in addition to—

(a) any other implied warranty or condition imposed by the common law, this Act or any other public regulation; and

(b) any express warranty or condition stipulated by the producer or importer, distributor or retailer, as the case may be.

### <sup>3</sup> 54. Consumer's rights to demand quality service

1) When a supplier undertakes to perform any services for or on behalf of a consumer, the consumer has a right to—

(a) the timely performance and completion of those services, and timely notice of any unavoidable delay in the performance of the services;

(b) the performance of the services in a manner and quality that persons are generally entitled to expect;

(c) the use, delivery or installation of goods that are free of defects and of a quality that persons are generally entitled to expect, if any such goods are required for performance of the services; and

(d) the return of any property or control over any property of the consumer in at least as good a condition as it was when the consumer made it available to the supplier for the purpose of performing such services,

having regard to the circumstances of the supply, and any specific criteria or conditions agreed between the supplier and the consumer before or during the performance of the services.

**CONSUMER, ACKNOWLEDGES THAT IT WILL NOT BE ALLOWED TO:**

**5.4.7.1** withhold any amounts due and owing to Telkom; or

**5.4.7.2** deduct any monies,

**in respect of "dropped" or discontinued calls and/or connections or any temporarily unavailability of the Telkom Services, the Connections or the Selected SE, including as an example, extra traffic on the Network, excessive use by users or technical problems which result in line congestion, fatigue and the general unavailability of the Network, except and to the degree that Telkom is solely responsible for any such unavailability, or failure and in such case the Customer's remedies will be limited, at the Customer's election, to either having the defect remedied by Telkom or the right to receive a refund from Telkom of any reasonable portion of the price paid for the Selected Telkom Services which have not been performed or which have not been available, having regard to the extent of the failure.**

5.4.8 Furthermore, where the Connections or the Selected SE are defective, or faulty, then in such an event the Consumer's rights will be limited to those set out under clause 8.

**5.5 Change in numbers due to reasons beyond Telkom's control**

5.5.1 Notwithstanding anything to the contrary contained in the Agreement, the Customer acknowledges that it does not own the telephone number that is allocated to it in respect of the Telkom Service or Selected SE, which number is owned by the Authority and which has been allocated to Telkom as per the provisions of the Act.

5.5.2 Telkom reserves the right to change any number within the existing numbering plan, code, password, user identity or name allocated by Telkom from time to time for use in connection with the Telkom Services, the Selected SE or SE which change has been necessitated by the Authority who owns the number range and/or where Telkom may have to change the aforementioned numbers if it changes its technology and/or due to other operational requirements and/or where a customer moves to another location which falls within a different exchange area and this necessitates a change to the numbering scheme.

5.5.3 Telkom reserves the right to change any number within the existing numbering plan, code, password, user identity or name allocated by Telkom from time to time for use in connection with the Telkom Services, the Selected SE or SE which change has been necessitated by the Authority who owns the number range and/or where Telkom may have to change the aforementioned numbers if it changes its technology and/or due to other operational requirements and/or where a customer moves to another location which falls within a different exchange area and this necessitates a change to the numbering scheme. Adequate notice where possible will be provided to the Customer of the number change, the reasons therefore and the new number.

**5.5.4 TELKOM WILL NOT BE LIABLE TO THE CUSTOMER OR ANY OTHER PERSON FOR ANY LOSS, DAMAGE OR COSTS (DIRECT, CONSEQUENTIAL OR OTHERWISE) WHICH MAY BE INCURRED IN CONSEQUENCE OF ANY CHANGE TO THE NUMBER AS ANTICIPATED AND SET OUT UNDER CLAUSE 5.5.2 AND CLAUSE 5.5.3.**

**5.6 Customer's right to request an outdoor transfer of the Telkom Service or selected SE**

5.6.1 Where the Customer requests and puts in an the application for the outdoor transfer of an existing Telkom Service to a different building or premises, such application will be treated as:

5.6.1.1 an order to terminate the service at the existing building or premises subject to the payment of the unexpired portion of the Fixed Term Agreement in the case of a Customer who is not a Consumer and where the Customer is a Consumer a cancellation fee determined in accordance with section 14 read together with Regulation 5 of the CPA; and

5.6.1.2 an order for the provision of a new service at a different building or premises subject to the payment of the applicable Charges, set out under the Tariff List.

**5.7 Customer's right to a Migration of Selected Telkom Service or Selected SE Equipment**

5.7.1 The Customer has the right to amend and/or vary the Telkom Service or Selected SE, which it is receiving under the Agreement, which election, where accepted by Telkom is known as a "Migration".

5.7.2 Any request by a Customer to migrate, will be subject to the following conditions:

5.7.2.1 **ANY MIGRATION WILL BE AT TELKOM'S SOLE DISCRETION AND WHERE SUCH MIGRATION HAS BEEN PERMITTED, THIS WILL BE SUBJECT TO THE PAYMENT BY THE CUSTOMER OF ANY APPLICABLE MIGRATION CHARGES, LEVIED BY TELKOM, WHICH CHARGES ARE DETAILED UNDER THE TARIFF LIST OR AS ADVISED BY TELKOM;**

5.7.2.2 any Migration will be subject to the Customer signing a new Telkom agreement; and

5.7.2.3 any Migration will take effect at the end of the calendar month following the conclusion of the new Telkom agreement and payment of the Migration charges, whichever is the later.

**5.8 Bundled service offerings**

5.8.1 Should the Telkom Service or Selected SE incorporate bundled elements, as selected by the Customer, the following conditions shall apply to such bundled elements:

5.8.1.1 all elements used after the depletion of the bundled elements shall be charged at the current out of bundle rate as set out in the Tariff List; and

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(2) If a supplier fails to perform a service to the standards contemplated in subsection (1), the consumer may require the supplier to either—

(a)remedy any defect in the quality of the services performed or goods supplied; or

(b)refund to the consumer a reasonable portion of the price paid for the services performed and goods supplied, having regard to the extent of the failure.

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5.8.1.2 specific conditions pertaining to the carryover of unused elements shall be explained separately for each individual product in the Tariff List.

### 5.9 Risk in, Theft and Loss of Telkom Connections, Selected SE and equipment

5.9.1 Whenever any Connections, Telkom equipment and in particular the Selected SE is lost, stolen or destroyed, the Customer must immediately notify Telkom and any police official at any police station in writing that the Connections, Selected SE and or any other Telkom equipment has been lost, stolen, misplaced or destroyed.

5.9.2 **RISK IN AND TO THE USE OF THE TELKOM SERVICE, THE CONNECTIONS AND SELECTED SE WILL PASS TO THE CUSTOMER ON THE DATE OF DELIVERY TO THE CUSTOMER'S PREMISES. TELKOM RESERVES THE RIGHT TO HOLD THE CUSTOMER LIABLE FOR THE COST TO REPLACE THE CONNECTIONS, SELECTED SE AND OR ANY OTHER TELKOM EQUIPMENT, REGARDLESS OF THE CAUSE OF ANY SUCH LOSS OR DESTRUCTION.**

### 5.10 Maintenance of the Telkom Services and Selected SE

5.10.1 The Telkom Service, any Connection or Selected SE used by the Customer will be deemed to be in good working order until Telkom is advised otherwise.

5.10.2 Unless clauses 5.10.5 or 5.10.6 apply, or save where expressly stated to the contrary, the costs in respect of any repair and/or maintenance of the Connections and Telkom Service, will be incurred and covered by Telkom and will be deemed to be included in the Charges levied in respect of the Telkom Service.

5.10.3 Telkom will attend to faults reported by the Customer during Office hours, and will apply its reasonable endeavours to have the affected Connections and / or Telkom Service restored in the shortest possible time, and in line with the standards set down under the Minimum Service Standards. The Customer may, however, request that a fault be attended to immediately. Telkom in this regard will apply its reasonable endeavours to do so, subject to the provisions of clause 5.10.5.

5.10.4 The Customer is responsible for maintaining all Selected SE or SE, used in connection with the Telkom Service, unless Telkom has agreed to provide maintenance for the Selected SE, which will be charged out at the rate set out under the Tariff List or as advised by Telkom.

5.10.5 **IF THE CUSTOMER REQUESTS THAT A FAULT BE ATTENDED TO IMMEDIATELY, AND WHERE TELKOM IS IN A POSITION TO DO SO, AND IF THE WORK REQUIRED, REQUIRES THAT REPAIR WORK BE CARRIED OUT AFTER OFFICE HOURS, TELKOM MAY CHARGE AN AFTER-HOURS MAINTENANCE CHARGE APPLICABLE TO THE SPECIFIC SERVICE, AS DETERMINED BY TELKOM FROM TIME TO TIME.**

5.10.6 **IF TELKOM DETERMINES THAT THE FAULT REPORTED BY THE CUSTOMER WAS CAUSED BY THE CUSTOMER OR BY ANY SE OR BY ANY SELECTED SE WHICH TELKOM HAS NOT AGREED TO COVER, IN TERMS OF THE AGREEMENT THE CUSTOMER WILL BE LIABLE FOR PAYMENT OF THE RELEVANT CALL-OUT CHARGES, AS DETERMINED BY TELKOM FROM TIME TO TIME.**

## 6. CHARGES AND PAYMENT

**This clause sets out the Charges which Telkom is entitled to levy in respect of the use of the Telkom Services and Selected SE which you, the Customer, have asked Telkom to provide you with, its right to ask for a deposit and set credit limits and how the invoice will be paid by yourself once you receive it.**

6.1 In return for the supply of and access to the Telkom Services and the Selected SE, the Customer agrees and undertakes to pay to Telkom the Charges as per the Tariff List or as advised by Telkom and as set out under the Invoice.

6.2 For the avoidance of doubt any Invoice, which will be submitted to the Customer, will set out and detail the following Charges, where applicable:

6.2.1 **installation charge:** the installation charge, and any other introductory charges which will be charged during the first month of the Agreement and levied as a once off initial charge in respect of the connection of the Telkom Services and the Selected SE;

6.2.2 **reconnection charge:** levied, where the Customer's right to use the Telkom Services and Selected SE is suspended due to non payment, and which fee is in respect of any restoration of the Telkom Service or Selected SE, which fee is payable in advance, together with any outstanding amounts which are due to Telkom and any deposit which Telkom requests to be paid;

6.2.3 **service charges:** levied on each occasion for the provision of miscellaneous services requested by the Customer;

6.2.4 **rental charges:** levied periodically, usually on a monthly basis, in respect of the use and availability of the Telkom Services and Selected SE and subject to a minimum rental period of one calendar month. Rental charges are payable in advance for the first and any subsequent rental period, with effect from the Connection date;

6.2.5 **maintenance charges:** levied periodically, usually on a monthly basis, or on performance, depending on the type of maintenance contract, for maintenance of the Telkom Services and or Selected SE that Telkom has contracted to provide to the Customer and which are not covered by the rental charge, which amounts are payable in advance for the first and any subsequent maintenance period, as from the date on which the maintenance contract is signed, or as performed, as the case may be;

6.2.6 **cancellation fee:** levied to recover any costs incurred by Telkom in respect of the Customer electing to terminate the Agreement as per the provisions of clauses 4.2, 4.3 and 5.6 where applicable;

6.2.7 **call/usage charges:** levied on the use of the Telkom Service or on any element thereof, where such use is metered. Calls are metered from the moment that a connection is established up until the moment it is terminated. Call charges are billed to the Customer at the end of each billing period and are payable on the due date of the Invoice;

6.2.8 **Abortive costs:** levied to recover abortive costs incurred by Telkom in relation to the provision or maintenance of services. These will include, without limitation, the recovery of costs including any cost relating to the de-installation of the service (or any element or part thereof) that may result from changes to an application before the service is provided, or for work to repair faults caused by non-Telkom equipment. Abortive Costs are billed to the Customer at the end of the billing period in which they are incurred and are payable on the due date of the Invoice;

- 6.2.9 **interest on overdue amounts:** any amount due by the Customer to Telkom not paid on or before the Due date indicated on the Invoice, shall bear interest at the Interest rate, compounded monthly, calculated from the date of issue of the Invoice until date of actual payment thereof.
- 6.2.10 **migration costs:** levied in respect of any agreement reached by the Parties in respect of a Migration by the Customer; and
- 6.2.11 **VAT:** value added tax levied on the Charges as required under the Value Added Act 89 of 1991.

### 6.3 Deposits, set off and unpaid accounts

- 6.3.1 Telkom shall be entitled to levy and collect from the Customer the payment of a deposit, as determined by Telkom in its sole discretion, and communicated to the Customer when Telkom accepts the Customer's application and agrees to provide the Customer with the Telkom Services and Selected SE, where applicable, which will be a pre-condition for providing the Telkom Services and Selected SE. The deposit is to serve as security for payment of any amounts set out under the Invoice which are due to Telkom by the Customer, but not paid on Due date.
- 6.3.2 Where any amounts due to Telkom by the Customer, are not paid on Due date, Telkom shall have the right, without prejudice to any of its rights, to:
  - 6.3.2.1 suspend the Telkom Services and use of the Selected SE, and give the Customer 20 (Twenty) days notice to pay all arrears/outstanding amounts which suspension will stay in place until the Customer has paid all arrears amounts and Interest in full;
  - 6.3.2.2 use the deposit (where one has been paid) to settle any amount due to Telkom by the Customer together with interest thereon at the Interest rate, and
  - 6.3.2.3 demand from the Customer:
    - 6.3.2.3.1 the payment of a deposit where none has been paid;
    - 6.3.2.3.2 payment of an additional or an increased deposit; and
    - 6.3.2.3.3 payment of a reconnection charge,as determined by Telkom as a pre-condition for restoring the Telkom Services.

### 6.4 Billing

- 6.4.1 Telkom will periodically provide the Customer, usually on a monthly basis, with an account, which constitutes a statement in respect of the Telkom Services and where applicable, in respect of the use of the Selected SE, and an Invoice for the amounts payable by the Customer. The invoice will at the Customer's election be sent by email or by mail and at no charge to the Customer.
- 6.4.2 Detailed billing is available to the Customer and will be provided on request against the payment of the applicable service charge set out under the Tariff List.
- 6.4.3 Where Telkom notices that there is a significant increase in call/usage charges since the Customer's last Invoice, Telkom may, at its own discretion, issue to the Customer an Invoice outside the normal billing cycle, and/or demand immediate payment of any amounts due by the Customer in respect of such Invoice.
- 6.4.4 Telkom reserves the right to round a fraction of 1c (one cent) off to the nearest 5c (five) cent.
- 6.4.5 In the event that a faulty condition in the TECN which prevents an accurate determination of the number of units on which the call charges are determined for a billing period, the call charge for the period in question shall be set as the average call charge for the preceding 6 (six) billing periods (or lesser billing periods if the Telkom Service has been provided for a shorter time).
- 6.4.6 The Invoice rendered by Telkom to the Customer is on the face of it, and until the contrary is proved, (*prima facie*) proof of the amount due by the Customer to Telkom. The Customer is, however, entitled to query or dispute any element of the Invoice in accordance with the provisions set out under clause 10. All undisputed portions of the Invoice must, however, be paid by the Due date.
- 6.4.7 If Telkom determines that the disputed amount is in error, Telkom shall reverse the amount incorrectly debited, on the Customer's next Invoice. Should Telkom, however, determine and inform the Customer that the disputed amount was billed correctly, such, payment together with interest at the Interest rate shall be paid by no later than the Due date of the next Invoice.

### 6.5 Payments

- 6.5.1 The Customer is liable for the payment of all Charges as reflected in the Invoice, extraordinary Invoice or interim Invoice, as the case may be.
- 6.5.2 All monies payable by the Customer to Telkom shall be paid at the election of the Customer by cash, by way of monthly debit order, by cheque or by way of an EFT, which payment by whatever mode must be made timeously on or before the Due date as set out under the Invoice, free of deduction or set-off to Telkom at its principal place of business or to Telkom's bankers, which details are stated under the Invoice.
- 6.5.3 Non-receipt of an Invoice by the Customer shall not be considered as a valid reason for late or non-payment.
- 6.5.4 The Customer shall be liable and responsible for payment until payment has been received into Telkom's bank account.
- 6.5.5 The Customer shall be in breach of the Agreement by cancelling any debit order without the prior written consent of Telkom or where any debit order or cheque payment is returned unpaid or stopped or should any charge card account or credit card account of the Customer be rejected. In such case Telkom will have the right to suspend the Customer's account until such arrears amounts together with interest thereon at the Interest rate have been received and paid in full.
- 6.5.6 The Customer may pay an Invoice by means of a credit card to the maximum amount set for a single account, as determined by Telkom from time to time.

- 6.5.7 Where more than one Telkom Service is provided to the Customer and the Customer is in arrears with the payment for any of these services, Telkom may use any credit balance on any of the services to set off against or to settle the amounts that are in arrears.

## 6.6 Changes to Charges

- 6.6.1 Telkom shall be entitled in line with the Act and or any Regulation to increase and/or reduce any of the amounts reflected under the Tariff List from time to time.
- 6.6.2 Any increase as per clause 6.6.1 will be given to the Customer in writing at its appointed address for service. Whilst Telkom shall use its best endeavours to give the Customer timeous notice of any such changes, any such increase or decrease will be displayed on the Telkom Website under the revised Tariff List with effect from the date of such increase or decrease.
- 6.6.3 A Consumer will have the right to terminate the Agreement without penalty or charge where it is not in agreement with any such increases provided that it gives Telkom 20 (Twenty) Business days notice of its election to cancel the Agreement. **WHERE A CONSUMER TERMINATES THE AGREEMENT AS PER HIS RIGHTS UNDER THIS CLAUSE 6.6.3 SUCH TERMINATION WILL BE WITHOUT PENALTY, SAVE WHERE THE CONSUMER HAS BEEN GIVEN OR HAS PURCHASED BUT NOT YET PAID FOR, SELECTED SE. IN SUCH A CASE THE CONSUMER WILL HAVE A LEGAL DUTY AND TELKOM WILL HAVE A LEGAL RIGHT TO DEMAND FROM THE CONSUMER, FULL PAYMENT IN RESPECT OF THE SELECTED SE, LESS ANY AMOUNTS THAT HAVE ALREADY BEEN PAID TO TELKOM IN RESPECT THEREOF PRIOR TO SUCH TERMINATION.**

## 6.7 Credit Limit

Telkom reserves the right to impose a monetary limit on the maximum value of Charges incurred by the Customer during each billing period and Telkom shall be entitled after the Customer has been given 20 (Twenty) days notice of such overspend and which the Customer has not responded to, to suspend the Telkom Services should the Customer exceed the maximum amount.

## 7. RISK AND OWNERSHIP

**This section details when risk and ownership in the Telkom Service and Selected SE will pass to you, the Customer.**

- 7.1 Ownership in and to the Telkom Services and the Selected SE, where applicable, will remain vested in Telkom unless the Customer has bought and paid for in full, the Selected SE.
- 7.2 Notwithstanding the provisions of clause 7.1, risk in and to the Telkom Services and the Selected SE will pass to the Customer on the date of delivery of the Connections and the Selected SE to the Customer's premises, including risk of loss, theft, destruction or damage.

## 8. DEFECTS, LIABILITY, WARRANTIES, REPAIRS AND SUSPENSION OF THE TELKOM SERVICE

***The section details what you need to do if the Selected SE is defective and how they have to be returned to Telkom and the circumstances when Telkom will replace them and / or when you will receive a refund.***

### 8.1 Consumer's Implied Warranty On Selected SE

- 8.1.1 In light of the disclosures housed under clauses 5.4, Telkom expressly stipulates and the Consumer acknowledges that Telkom provides the Selected SE in a sealed package and hence it will not have been able to ascertain if the Selected SE is free from defect or in good order and condition. In other words Telkom cannot warrant or guarantee that the Selected SE will at all times be available, suitable for the intended purpose, are of good quality and in good working order, free of defects, free of errors or interruptions, fit for any purpose, do not infringe on any third party rights, or that they are secure and reliable.
- 8.1.2 Notwithstanding the above exclusions, should the Selected SE including the software and battery used in connection with the Selected SE, fall short of the standards set out under section 55(2) of the CPA, and such defect or fault becomes apparent within 6 (Six) months after the Selected SE has been delivered by Telkom to the Consumer, then the Consumer must immediately notify Telkom of the defect and /or failure and bring the Selected SE to a nominated Telkom repair centre.
- 8.1.3 No return will be accepted by Telkom unless the Consumer returns the complete unit of the Selected SE including packaging, accessories (including but not limited to CD's containing software, manuals, AC Adapter (charger) and any other inclusive part of the Selected SE) and can and does provide proof of purchase of the Selected SE from Telkom, which must be in the form of a sales record or Invoice.
- 8.1.4 On return of the Selected SE, the Consumer must:
- 8.1.4.1 describe what caused the Selected SE to malfunction or to stop functioning; and
  - 8.1.4.2 allow the Telkom representative to inspect the Selected SE for physical damage and/ or signs of liquid damage.
- 8.1.5 Further to clause 8.3, the acceptance of the returned SE by Telkom is subject to the following terms and conditions:
- 8.1.5.1 the Selected SE will be sent to the Telkom technical centre for further examination, and analysis, which will take no longer than 3 (Three) weeks or such a longer period as notified by Telkom;
  - 8.1.5.2 acceptance of the Selected SE is on behalf of the manufacturer and is not an admission of liability by Telkom, or Telkom acting on behalf of its suppliers or manufacturers, that the Selected SE is defective or that it is not in accordance with the standards as set out in section 55(2) of the CPA;
  - 8.1.5.3 Telkom will notify the Consumer as soon as is reasonably possible and within the prescribed period set out under sub clause 8.5.1.1 read together with the periods set out under the Minimum Service Standards of the results of any inspection and/or analysis and the cause of the defect and/or failure and whether the Telkom or the manufacturer of the Selected SE accepts responsibility or not for such defect and or failure.
- 8.1.6 Where on inspection it has been found that the Selected SE is not in accordance with the standards set out in section 55(2) of the CPA as the case may be, then Telkom, either itself, or on behalf of the supplier and / or manufacturer of the Selected SE will either, at the option of the Consumer:

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- 8.1.6.1 repair or replace the failed, unsafe or defective part of the Selected SE; or
- 8.1.6.2 instead, at the election of the Consumer, refund to the Consumer the price paid by the Consumer, for the returned Selected SE, less any reasonable Usage charges.
- 8.1.7 Where any returned Selected SE are found to fall outside of the minimum warranty period set out under section 55(2) of the CPA where applicable, then the supplier, manufacturer and in particular Telkom will have no further responsibility or liability in relation to the returned Selected SE, save that it has the right to offer to repair, at the Consumer's cost, the Selected SE and subject further to the following conditions:
  - 8.1.7.1 any acceptance of the Selected SE for repairs and maintenance will be done on or under the condition that Telkom is acting as an agent on behalf of the manufacturer or local supplier of the Selected SE; and
  - 8.1.7.2 Telkom will not be liable for any loss, damage, destruction, theft or negligent workmanship howsoever or by whomsoever caused to the Selected SE whilst under the manufacturer or local supplier's control who is performing the repair or maintenance work; and
  - 8.1.7.3 the costs of any such maintenance or repair work, which will be quoted for before commencement of the service and or repair work, will once accepted by the Consumer, be for the Consumer' account.

### 8.2 **Customer's warranty on Selected SE**

- 8.2.1 Where clause 8.1 does not apply, because the Customer is not a Consumer, as defined, and where the Customer is of the view that the Selected SE is faulty, then the Customer must immediately notify Telkom of the extent of the defect and /or failure.
- 8.2.2 Upon receipt of the complaint Telkom will notify the Customer where to take the faulty Selected SE for the purposes of inspecting the Selected SE, which is faulty or defective.
- 8.2.3 The acceptance of any returned goods by Telkom in terms of this clause 8.2.3, is subject to the following terms and conditions:
  - 8.2.3.1 the Selected SE will be sent to the Telkom technical centre for further examination, and analysis, which will take no longer than 3 (Three) weeks or such a longer period as notified by Telkom;
  - 8.2.3.2 acceptance of the Selected SE is on behalf of the manufacturer and is not an admission of liability by Telkom, or Telkom acting on behalf of its suppliers or manufacturers, that the Selected SE is defective;
  - 8.2.3.3 Telkom will notify the Customer as soon as is reasonably possible and within the prescribed period set out under sub clause 8.2.3.1 of the results of any inspection and/or analysis and the cause of the defect and/or failure and whether Telkom or the manufacturer accepts responsibility or not for such defect and/or failure;
  - 8.2.3.4 Where on inspection it has been found that the Selected SE is defective and is covered under the manufacturer's warranty, then Telkom will submit on behalf of the Customer to the supplier and / or manufacturer the defective Selected SE for repair and/or replacement as per the standard manufacturer's warranty;
  - 8.2.3.5 Where any returned Selected SE are found to fall outside of the manufacturer's warranty, then the supplier, manufacturer and in particular Telkom will have no further responsibility or liability in relation to the returned Selected SE.

### 8.3 **Suspension and Withdrawal of the Selected Telkom Service and or Selected SE**

- 8.3.1 Telkom may from time to time, and on notice where this is possible, or without notice where this is not possible, suspend the Telkom Service and where applicable the right to use the Selected SE, or in its discretion disconnect the Selected SE from the TECN in any of the following circumstances:
  - 8.3.1.1 for modifications to, or planned maintenance of the TECN;
  - 8.3.1.2 for routine maintenance of international facilities;
  - 8.3.1.3 if the Customer has failed to pay any amounts due to Telkom by Due date as reflected in the Invoice;
  - 8.3.1.4 where the Telkom Services are suspended or discontinued as a result of 3<sup>rd</sup> parties experiencing problems on their infrastructure which has affected or disrupted the Telkom Service;
  - 8.3.1.5 where certain Telkom Services are being abused by the Customer or by customers in general; and/or
  - 8.3.1.6 where the Telkom Service or Selected SE is found to contain a security risk or shortcoming which enables the Customer to exploit the Telkom Service to the detriment of Telkom;
- 8.3.2 The Customer accepts that the rights to suspend the Telkom Services and or Selected SE are necessary in order to protect the interest of both the Customer and Telkom and that during such period of suspension, despite the fact that limited or no Telkom Services will be available, that it will nonetheless in the case of the circumstances set out under clauses 8.3.1.3, 8.3.1.5, or 8.3.1.6 remain liable for all Charges due and set out under any Invoice which may be levied by Telkom during the period of suspension.
- 8.3.3 No interruption of the Telkom Service referred to under clause 8.3.1 shall be deemed to have occurred during any modifications and/or maintenance window or any authorised suspension of a service and the Customer acknowledges that it shall have no claim against Telkom in respect of all or any of the interruptions described under clause 8.3.1, save that the Customer will in the case of the circumstances set out under clauses 8.3.1.1, 8.3.1.2, and 8.3.1.4 be entitled to receive a reduction of the Charges levied by Telkom on a pro rata basis, taking into consideration the length and severity of the suspension or unavailability.

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- 8.3.4 Telkom may from time to time, and on notice where this is possible, or without notice where this is not possible, and without prejudice to any other claims or remedies, which Telkom may have in terms hereof or in law, discontinue or terminate any part of the Telkom Service and where applicable the right to use the Selected SE, or in its discretion disconnect the Selected SE from the TECN in any of the following circumstances:
- 8.3.4.1 where the Telkom Service or Selected SE is found to contain a defect which enables the Customer to exploit the Telkom Service to the detriment of Telkom;
  - 8.3.4.2 where the Telkom Service or Selected SE has reached the end of its lifespan and is uneconomical to maintain or continue;
  - 8.3.4.3 where there has been an insignificant interest in the use of a particular Telkom Service or Selected SE; and/or
  - 8.3.4.4 in response to an instruction from the Authority or in terms of the Act or some other law or body the Telkom Service or Selected SE or SE is discontinued.
  - 8.3.4.5 where the Customer uses SE that is not approved by the Authority for such use;
  - 8.3.4.6 if the Customer has received the Telkom Service as a result of fraud or misrepresentation;
  - 8.3.4.7 if the Customer uses in connection with the Telkom Service, SE that belongs to Telkom but which the Customer has obtained illegally;
  - 8.3.4.8 if the Customer makes or offers to make any arrangement or composition with its creditors or commits any act of insolvency in terms of the Insolvency Act or any other applicable legislation;
  - 8.3.4.9 if the Customer does or allows to be done any act or omission, which in Telkom's opinion will or may have the effect of negatively affecting the operation of the Telkom Service or the TECN;
  - 8.3.4.10 if the Customer is using, or permitting the use of the Telkom Service or any element thereof for any illegal purpose or in contravention of the Act, CPA and/or any act of Parliament;
  - 8.3.4.11 if Telkom has been instructed to do so by any authority competent to issue such instruction;
  - 8.3.4.12 where the Telkom Service is provided as a dedicated private international circuit, Telkom may terminate the service immediately where any remote portion of the circuit is suspended or terminated by the foreign service provider; or
  - 8.3.4.13 for any other reason incidental to 8.3.4.1 - 8.3.4.13 inclusive.
- 8.3.5 The Customer accepts that the rights to terminate or discontinue the Services and or Selected SE are necessary in order to protect the interest of both the Customer and Telkom and that where any such Service or Selected SE is discontinued that the Customer will be entitled to receive a reduction of the Charge levied by Telkom pro rata to such discontinuation or termination.
- 8.3.6 Where a Telkom Service or Selected SE is discontinued or suspended, as per this clause 8.3 then the Customer agrees that it will not:
- 8.3.6.1 withhold any amounts which are or which may become due and owing to Telkom;
  - 8.3.6.2 deduct any monies from the Charges, save for the amounts which Telkom may agree to as per the provisions of clause 8.3.5 above; and/ or
  - 8.3.6.3 demand any refund, or bring any action for damages or otherwise against Telkom, in respect of any such discontinued service.

## 9. LIMITED LIABILITY AND INDEMNITY

*This section sets out Telkom's liability in respect of the Telkom Services, the Selected SE or the SE, which you, the Customer, should take careful note of.*

- 9.1 Telkom assumes no responsibility for the integrity, correctness, retention or content of information transported via the TECN.
- 9.2 Telkom is not liable for any damages or loss suffered by the Customer as a result of any entry, incorrect entry or omission of an entry in the Directory, which is beyond Telkom's control.
- 9.3 **SUBJECT TO THE PROVISIONS OF CLAUSE 9.4 BELOW, TELKOM SHALL NOT BE LIABLE TO THE CUSTOMER OR ANY OTHER PERSON WHOMSOEVER, UNDER ANY CIRCUMSTANCES WHATSOEVER, OR INCUR ANY LIABILITY FOR ANY LOSS OR DAMAGES TO THE CUSTOMER OR ANY OTHER PERSON OR USER OF THE, WHICH ARISES OR OCCURS AS A RESULT OF THE USE OF, OR ARISING OUT OF THE PROVISION OF, THE CONNECTIONS; THE TELKOM SERVICES; THE SELECTED SE; THE SE; OR THE INSTALLATION, MAINTENANCE OR REMOVAL OF THE CONNECTION, THE TELKOM SERVICES, SELECTED SE OR SE, AND WHETHER SUCH CLAIM, ACTION OR DAMAGE IS DIRECT OR INDIRECT, CONSEQUENTIAL OR CONTINGENT AND IN PARTICULAR TELKOM SHALL NOT BE LIABLE FOR ANY:**
- 9.3.1 **LOSS OF LIFE,**
  - 9.3.2 **INJURY,**
  - 9.3.3 **MEDICAL EXPENSES,**
  - 9.3.4 **SUPPORT,**
  - 9.3.5 **FINANCIAL LOSS OR FINANCIAL SUPPORT,**
  - 9.3.6 **LOSS OF EARNINGS,**
  - 9.3.7 **LOSS OF PROFIT AND/OR INCOME,**
  - 9.3.8 **LOSS OF REVENUE,**
  - 9.3.9 **LOSS OF BUSINESS OR GOODWILL,**
  - 9.3.10 **ANY OTHER SPECIAL DAMAGES, OR**
  - 9.3.11 **ANY GENERAL DAMAGES**

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**INCURRED BY THE CUSTOMER, ANY USER OR ANY OTHER PERSON WHO MAY BE USING THE TELKOM SERVICES, SE, SELECTED SE OR THE CONNECTIONS, HOWSOEVER ARISING, AND THE CUSTOMER INDEMNIFIES TELKOM AGAINST ANY CLAIM OR ACTION, AS DESCRIBED ABOVE, WHICH MAY BE BROUGHT BY ANY PERSON IN THIS REGARD.**

- 9.4 Where a Consumer suffers any loss or damages as a result of the use of the Connections, or the Selected SE, THE CONSUMER IN THIS CASE WILL BE ALLOWED TO AVAIL ITSELF TO THE PROVISIONS HOUSED UNDER SECTION 61 OF THE CPA, BUT subject always to the defenses and exceptions permissible and available to Telkom and its service providers under section 61 of the CPA.
- 9.5 Telkom only provides access to the Internet. Telkom does not operate or control the information, services, opinions or other content of the Internet, and Telkom makes no warranties or representation regarding any such information, services, opinions or other content. The Customer agrees that it shall make no claim whatsoever against Telkom relating to the content of the Internet or respecting any information, product, service or software ordered through or provided by virtue of the Internet. Telkom reserves the right to take measures as may be necessary, in Telkom's sole discretion, to ensure security and continuity of service on the Telkom network, including but not limited to identification and blocking or filtering of internet traffic sources which Telkom deems to pose a security risk or operational risk or a violation of its acceptable use policy. In addition, the Customer understands that Telkom does not own or control other third party networks outside of the Telkom network, and Telkom is not responsible or liable for filtering or access restrictions imposed by such networks or for the performance (or non performance) within such networks or within interconnection points between Telkom network and other third party networks.
- 9.6 The provision of the Telkom Internet access is further subject to the Internet Terms and Conditions as well as the acceptable use policy as available on the Telkom web site ([www.telkomsa.net](http://www.telkomsa.net))
- 9.7 The Customer is responsible for maintaining the security of its internal network from unauthorised access through the Internet. Telkom shall not be liable for unauthorised access to the Customer's network or other breaches of the Customer's network security.
- 9.8 The limitation on liability set out above is addition to any limitation of liability set out elsewhere under the Agreement.

### 10. CUSTOMER ASSISTANCE, COMPLAINTS AND DISPUTES

***This section sets out how you, the Customer, can contact Telkom for assistance and how you must lodge a complaint, should one arise.***

- 10.1 Telkom provides Customer care to all Customers during Office hours, excluding times when it is unable to assist due to reasons beyond its reasonable control.
- 10.2 The Customer must, once it experiences any trouble with any of the Telkom Services and/or Selected Customer Equipment bring the suspected problem to Telkom's attention by contacting the relevant Customer care office at the number listed on the Invoice and website. The suspected problem will then be logged and detailed, and the Customer will be provided with a reference number.
- 10.3 Telkom will use its best endeavours to attend to the complaint as soon as it is possible, which will depend on the complexity and nature of the suspected problem, as logged, as well as resource/manpower availability, but subject always to the minimum service standards set out under the Minimum Service Standards.
- 10.4 Where a Customer is of the view that the matter has not been resolved to the satisfaction of the Customer, the Customer will have the right to elevate the matter to the Authority, which can be done by contacting either:
- 10.4.1 the complaints website <http://www.icasa.org.za> and selecting the tab "complaints"; or
- 10.4.2 by email at [Customers@icasa.org.za](mailto:Customers@icasa.org.za).
- 10.5 The above rights set out under clauses 10.1 to 10.4 are without prejudice to both parties' respective rights to pursue a complaint or action in any other forum, which has jurisdiction over the matter including the rights to submit the complaint, dispute or action to the National Consumer Commission or to arbitration.

### 11. BREACH AND TERMINATION

***This section sets out what will happen when one of the parties to the Agreement fails to comply with the terms and conditions, which is known as a breach of the agreement which will allow the party who has not breached the agreement to cancel the Agreement and claim damages.***

- 11.1 Should the Customer breach any term of this Agreement including any failure to pay Telkom any monies on Due date, then Telkom shall give the Customer 20 (Twenty) Business Days notice to rectify the breach. Should the Customer neglect or fail to rectify the breach within the 20 (Twenty) Business Days notice period, then Telkom will have the right to either suspend or to cancel the Agreement, *without prejudice* (meaning to preserve your respective rights and positions) to Telkom's rights to claim all and any damages which Telkom has incurred in consequence of such breach.
- 11.2 Should Telkom breach any material term of this Agreement, then the Customer will have the right to provide Telkom with a letter requiring Telkom to rectify the breach within a period of 20 (Twenty) Business Days. Should Telkom neglect or fail to rectify such breach within the 20 (Twenty) Business Days notice period, then the Customer may cancel the Agreement, which will be *without prejudice* (meaning to preserve your respective rights and positions) to the Supplier's rights to claim any damages which it may have incurred in consequence of Telkom's breach.
- 11.3 Should the Customer be sequestered, liquidated, Telkom shall be entitled to immediately cancel this Agreement upon notice to the Customer.
- 11.4 The Customer agrees that Telkom may register the details of the manner in which payments have been conducted by it or its agent, with any registered credit bureau.
- 11.5 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.
- 11.6 Without prejudice to any other claims or remedies which Telkom may have against the Customer in terms of this Agreement or in law, Telkom may on 20 (Twenty) Business Days notice terminate the Agreement if the Customer has delayed the installation of the Selected Telkom Service for longer than 3 (Three) months and hold the Customer liable for all and any abortive costs incurred by Telkom in this regard.

### 12. CONSEQUENCES OF ANY TERMINATION

***This section sets out what will happen when the Agreement is cancelled.***

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- 12.1 After termination of the Agreement for whatever reason,
- 12.1.1 Telkom may delete any entries of the Customer set out under the Directory;
- 12.1.2 Telkom may, on reasonable notice and in the Customer's presence enter the Customer's premises to remove the Selected SE and / or Connection, which is owned by Telkom; and
- 12.1.3 the Customer will remain liable for and will pay on demand all charges and/or costs outstanding at the time of termination, or accrued thereafter as a result of the termination.

### 13. LEGAL ADDRESS FOR SERVICE (DOMICILIUM AND NOTICES)

***This section sets out the addresses of each party where the other party can serve legal documents and notices on the other.***

- 13.1 The parties choose the addresses set out below as their chosen place to receive legal notices (*domicilium citandi et executandi*)
- 13.1.1 Telkom SA Ltd at: 152 Proes Street, Pretoria, and
- 13.1.2 the Customer at the physical or residential address specified in the Application Form.

- 13.2 All notices given in terms of this Agreement shall be in writing.

### 14. UNDERTAKING AS A SURETY AND CO-PRINCIPAL DEBTOR

***This section states that where the Customer is a company or legal entity, that in such case, the person who signs the agreement on behalf of the legal entity will be held responsible for the payment of all amounts due to Telkom, should the Customer fail to pay these amounts. This is known as a surety undertaking.***

If the Customer is a company, close corporation, trust or a division or any other entity with juristic personality, then the signatory who signs on behalf of the Customer warrants that he is duly authorised to enter into this Agreement on behalf of the Customer and, if applicable, to sign the debit authorization on the Customer's bank account. By his signature, the signatory also agrees to bind himself as co-principal debtor for the Customer in favour of Telkom for the fulfilment of all of the Customer's obligations to Telkom arising out of the Agreement including the payment of all charges, fees, penalties and liquidated damages.

### 15. GENERAL

***The details below are all general in content and should be read and considered carefully.***

#### 15.1 Consumer status

In consequence of the recently released CPA, certain rights have been granted to a Customer who is a Consumer, as defined under the CPA. Telkom reserves the right to withhold any of these rights and / or resultant benefits until such time as the Customer is able to prove to Telkom, which proof may be in the form of a set of Financial statements or an identity document, that it is a Consumer / and or in the case of a right which it is wanting to exercise under section 14 of the CPA, that it is an Individual Consumer. Where the Customer is unable to show that it is a Consumer or Individual Consumer, in such an event Telkom reserves the right to reverse or call for restitution (a refund) of any rights or benefits which are permitted under the CPA and which the Customer has unlawfully taken advantage of.

#### 15.2 Customer details and changes thereto

The Customer agrees to supply Telkom with such information, documentation and signatures that Telkom may reasonably require at the time that the Agreement is concluded, in order to give effect to the payment arrangements of the Agreement. Any subsequent changes that affect the information supplied to Telkom such as bank account, legal service address referred to under clause 13 and credit card details must be brought to the immediate attention of Telkom by the Customer in writing.

#### 15.3 Cession

Telkom shall be entitled to transfer (cede) its rights and/or to delegate its obligations arising from the Agreement and/or (hand over) assign the Agreement, wholly or partly, to any third party and it will give the Customer reasonable notice of this fact. The Customer shall not be entitled to cede, assign, encumber or delegate his obligations arising out of the Agreement without the prior written consent of Telkom, which will not be unreasonably withheld.

#### 15.4 Variation and Amendment

Subject to and save where the right to amend the Agreement, has been specifically mentioned under the Agreement, neither party may vary the terms of the Agreement unless the other party agrees to such variation and the variation is reduced to writing and signed by both parties.

#### 15.5 Whole Agreement

This document read with the relevant application form (which is deemed incorporated herein by reference), contains the sole and entire record of the Agreement between the parties. No party shall be bound by any express or implied term, representation, warranty, promise or the like not recorded herein or otherwise created by operation of law and no indulgence, leniency or extension of time which either party ("the grantor") may grant or show to the other, shall in any way prejudice the grantor or preclude the grantor from exercising any of its rights in the future.

#### 15.6 Authority

Where Telkom is represented by any duly authorised representative, Telkom's authority need not be proved.

#### 15.7 Duplicate and scanned version in place of original

The Customer agrees that the Application Form and the Agreement, in particular the face page may be scanned and the paper version destroyed, and agrees to the scanned version and waives his right to dispute the authenticity of the scanned version.

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### 15.8 Unsolicited marketing and right to opt out

The Customer understands that, in terms of section 45 of the Electronic Communications and Transactions Act 25 of 2002, the Customer and in terms of the provisions of the CPA in the case of a Consumer, the Consumer or the Customer has the option to request Telkom to remove its relevant contact particulars from its data base in respect of direct marketing and / or unsolicited commercial and/or marketing communications by Telkom.

### 15.9 Severability

In the event of any one or more of these terms and conditions being unenforceable, these clauses will be deleted and severed from the remainder of the Agreement, which will nevertheless continue to apply, be binding and enforceable.

### 15.10 Acts of God

Except as specifically provided under the Agreement, Telkom shall not be liable to the Customer for any breach of these conditions or failure to perform any obligation as a result of any *force majeure* (event beyond its reasonable control) event, including but not limited to technical problems relating to the TECN/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, lockouts or work stoppages of any kind or any other similar or dissimilar cause, in so far as these are beyond Telkom's reasonable control.

### 15.11 Indulgence and relaxing

The failure of Telkom to enforce at any time the Agreement or any part thereof, or any right with regard thereto, must in no way be construed to be a waiver of the provision of the Agreement or to be an estoppel or novation or in any way to affect the validity of the Agreement. Any indulgence towards the Customer or the relaxing of the provisions of the Agreement must not prejudice the right of Telkom to insist on the strict compliance by the Customer of its undertakings and obligations in terms of the Agreement.

### 15.12 Intellectual property rights

Any intellectual property rights vesting in Telkom, whether by statute or common law, will remain vested in Telkom and the Customer agrees not to do anything or allow anything to be done that may infringe Telkom's rights and the Customer hereby **INDEMNIFIES** Telkom against any claims, actions and proceeding that may arise as a result of the Customer infringing or violating Telkom's intellectual property rights.

### 15.13 Applicable laws and Jurisdiction

This Agreement will be interpreted and governed by the Laws of South Africa.

## SCHEDULE A

### CHAPTER 7

#### DUTIES OF TELECOMMUNICATION SERVICE PROVIDER AND CUSTOMER (ss 39-41)

##### **Section 39: Information to be obtained and kept by certain telecommunication service providers**

- (1) *Before a telecommunication service provider, other than a telecommunication service provider who provides a mobile cellular telecommunication service, enters into a contract with any person for the provision of a telecommunication service to that person, he or she-*
- (a) *must, if that person is a natural person-*
- (i) *obtain from him or her-*
- (aa) *his or her full names, identity number, residential and business or postal address, whichever is applicable; and*
- (bb) *a certified photocopy of his or her identification document on which his or her photo, full names and identity number, whichever is applicable, appear;*
- (ii) *retain the photocopy obtained in terms of subparagraph (i) (bb); and*
- (iii) *verify the photo, full names and identity number, whichever is applicable, of that person with reference to his or her identification document; or*
- (b) *must, if that person is a juristic person-*
- (i) *obtain from the person representing that juristic person-*
- (aa) *his or her full names, identity number, residential and postal address, whichever is applicable;*
- (bb) *the business name and address and, if registered as such in terms of any law, the registration number of that juristic person;*
- (cc) *a certified photocopy of his or her identification document on which his or her photo, full names and identity number, whichever is applicable, appear; and*
- (dd) *a certified photocopy of the business letterhead of, or other similar document relating to, that juristic person;*
- (ii) *retain the photocopies obtained in terms of subparagraph (i) (cc) and (dd); and*
- (iii) *verify the-*
- (aa) *photo, full names and identity number, whichever is applicable, of that person with reference to his or her identification document; and*
- (bb) *name and registration number of that juristic person with reference to its business letterhead or other similar document; and*
- (c) *may obtain from such person any other information, which the telecommunication service provider deems necessary for purposes of this Act.*
- (2) *A telecommunication service provider referred to in subsection (1) must ensure that proper records are kept of-*

## TELKOM'S STANDARD TERMS AND CONDITIONS FOR THE PROVISION OF ELECTRONIC COMMUNICATIONS SERVICES & PRODUCTS

- (a) the information, including the photocopies, referred to in subsection (1) and, where applicable, any change in such information, which is brought to his or her attention;
  - (b) the telephone number or any other number allocated to the person concerned; and
  - (c) any other information in respect of the person concerned which the telecommunication service provider concerned may require in order to enable him or her to identify that person.
- (3) An applicant may, for purposes of making an application for the issuing of a direction, in writing request a telecommunication service provider referred to in subsection (1) to-
- (a) confirm that the person specified in the request is a customer of that telecommunication service provider concerned;
  - (b) provide the applicant with the telephone number or any other number allocated to that person by that telecommunication service provider; and
  - (c) furnish the applicant with a photocopy of the identification document of that person which is retained by that telecommunication service provider in terms of subsection (1) (a) (ii).
- (4) A telecommunication service provider who receives a request referred to in subsection (3) must immediately comply with that request if the person specified in the request is a customer of the telecommunication service provider concerned.

### **Section 40P: Information to be obtained and kept by electronic communication service provider who provides a mobile cellular electronic communications service**

- (1) (a) Subject to paragraph (b), an electronic communication service provider who provides a mobile cellular electronic communications service must not activate a SIM-card on its electronic communication system unless subsection (2) has been complied with.
- (b) Paragraph (a) does not apply to a customer of an electronic communication service provider who provides a mobile cellular electronic communications service outside the Republic who enters the geographical coverage area of a mobile cellular electronic communication service provider in the Republic and uses the electronic communication system of such provider to make, receive and send voice calls or data or access other services.
- (2) From the date of commencement of this section an electronic communication service provider must, subject to subsection (4), at own cost implement a process to record and store, and must record and store-
- (a) the Mobile Subscriber Integrated Service Digital Network number (MSISDN-number) of the SIM-card that is to be activated by an electronic communication service provider at the request of a person contemplated in paragraphs (b) and (c);
  - (b) in the case of a person who-
    - (i) is a South African citizen or is lawfully and permanently resident in the Republic, the full names and surname, identity number and at least one address of such person who requests that a SIM-card referred to in subsection (1) be activated on the electronic communication system of an electronic communication service provider; or
    - (ii) is not a South African citizen or who is not permanently resident in the Republic, and who requests that a SIM-card referred to in subsection (1) be activated on the electronic communication system of an electronic communication service provider, the full names and surname, identity number and at least one address of such person and the country where the passport was issued; or
  - (c) in the case of a juristic person-
    - (i) the full names, surname, identity number and an address of the authorised representative of the juristic person; and
    - (ii) the name and address of the juristic person and, where applicable, the registration number of the juristic person.
- (3) (a) For the purposes of subsection (2), an electronic communication service provider must, in the manner provided for in paragraph (b), verify-
- (i) the full names, surname, identity number and identity of the person contemplated in subsection (2) (b) and (c) and, where applicable, the country where the passport was issued;
  - (ii) the name and, where applicable, the registration number of the juristic person;
  - (iii) in the case of a person contemplated in subsection (2) (b) (i) and (c), the address; and
  - (iv) the authority of the representative of a juristic person.
- (b) An electronic communication service provider must verify-
- (i) the information contemplated in paragraph (a) (i) by means of an identification document;
  - (ii) the information contemplated in paragraph (a) (ii) by means of documentation, including a registration document, founding statement, document issued by the South African Revenue Service or any other similar document;
  - (iii) the address contemplated in paragraph (a) (iii) by means of documentation, including a bank statement, a municipal rates and taxes invoice, telephone or cellular phone account of not older than three months, or any other utility bill or an account of a retailer of not older than three months, or an existing lease, rental or credit sale agreement, insurance policy, a current television licence or a new motor vehicle licence document; and
  - (iv) the authority of the representative of the juristic person by means of a letter of authority or an affidavit.
- (4) (a) An electronic communication service provider must ensure that-
- (i) the process contemplated in subsection (2);
  - (ii) the information recorded and stored in terms of that subsection; and
  - (iii) the facility in or on which the information is recorded and stored, are secure and only accessible to persons specifically designated by that electronic communication service provider.
- (b) The Minister may, in consultation with the Cabinet member responsible for communications, by notice in the Gazette, determine security standards relating to the matters contemplated in paragraph (a).
- (5) From the date of commencement of this section, any customer who sells or in any manner provides an activated SIM-card to a person, other than a family member, and the person who is to receive the SIM-card must, immediately upon the sale or provision of the SIM-card, provide the relevant electronic communication service provider with-
- (a) the full names, surname and identity number of the customer; and
  - (b) all particulars as required in subsection (2) in respect of the person who is to receive the SIM-card.

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- (6) (a) An electronic communication service provider must, upon receipt of the information provided in terms of subsection (5)-
- (i) verify the full names, surname, identity number and identity of the persons with reference to the persons' identification documents;
  - (ii) verify the address, contemplated in subsection (3) (a) (iii), of the person who is to receive the SIM-card by means of the documents contemplated in subsection (3) (b) (iii); and
  - (iii) verify the particulars contemplated in subsection (2) (a).
- (b) An electronic communication service provider must, upon receipt of the information provided in terms of paragraph (a), immediately record and store the information as contemplated in subsection (2).
- (7) (a) An applicant may, for the purposes of making an application for the issuing of a direction, in writing, request an electronic communication service provider to-
- (i) confirm that the person specified in the request is or was a customer of that electronic communication service provider; and
  - (ii) provide the applicant with the information recorded and stored in terms of subsection (2).
- (b) An electronic communication service provider who receives a request referred to in paragraph (a) must immediately comply with that request if the person specified in the request is or was a customer of the electronic communication service provider concerned.
- (8) If an employee or agent of an electronic communication service provider knows or suspects that an identification document submitted for verification as contemplated in subsection (3) is false, he or she must, within 24 hours, report the matter to a police official at any police station.
- (9) An electronic communication service provider must, on its electronic communication system, record and store-
- (a) every MSISDN-number used with every IMEI-number; and
  - (b) every IMEI-number used with every MSISDN-number, which must, on production of a direction, be provided to an applicant within 12 hours.
- (10) The information recorded and stored in terms of subsections (2), (6) and (9) must be stored by an electronic communication service provider for a period of five years after-
- (a) a customer has cancelled his or her contract with the electronic communication service provider; or
  - (b) the electronic communication service provider has ended the electronic communications service provided to the customer.

[Date of commencement of s. 40: 1 July 2009.]

### Section 41: Loss, theft or destruction of cellular phone or SIM-card to be reported

- (1) Whenever a cellular phone or SIM-card is lost, stolen or destroyed, the owner of that cellular phone or SIM-card, or any other person who was in possession, or had control, thereof when it was so lost, stolen or destroyed, must within a reasonable time after having reasonably become aware of the loss, theft or destruction of the cellular phone or SIM-card, report such loss, theft or destruction in person or through a person authorised thereto by him or her, to a police official at any police station.
- (2) A police official who receives a report contemplated in subsection (1), must immediately provide the person who makes the report with written proof that the report has been made or, in the case of a telephonic report, with the official reference number of the report.
- (3) A record of every report made in terms of subsection (1) must be kept at the police station where such a report has been made.
- (4) (a) The Minister must, within three months after the fixed date and in consultation with the Cabinet member responsible for policing, issue directives prescribing the-
- (i) form and manner in which-
- (aa) a report contemplated in subsection (1) must be made; and
  - (bb) records contemplated in subsection (3) must be kept; and
- (ii) information to be contained in such a report or record.
- (b) Any directive issued under paragraph (a) may at any time in like manner be amended or withdrawn.
- (c) Any directive issued under paragraph (a) must, before the implementation thereof, be submitted to Parliament.

## SCHEDULE B

**GNR.774 of 24 July 2009 - Regulations setting out the minimum standards for end-user and subscriber service charters - (Government Gazette No. 32431)**  
**Published under GN R774 in GG 32431 of 24 July 2009 [with effect from 30 days from the date of publication] I, Paris Mashile, Chairperson of the Independent Communications Authority of South Africa ('the Authority'), hereby confirm that the Authority has approved the regulations in the schedule in terms of section 4 read with section 69(3) of the Electronic Communications Act, 2005 (Act 36 of 2005). PARIS MASHILE Chairperson SCHEDULE**

### 1 PURPOSE OF THE REGULATIONS

The purpose of these Regulations is to prescribe the minimum standards for end-user and subscriber service charters.

**2 SCOPE AND APPLICATION OF THE REGULATIONS** The regulations prescribe the minimum standards for end-user and subscriber service charters applicable to Electronic Communications Service (ECS) and Electronic Communications Network Service (ECNS) licensees.

**3 DEFINITIONS** In these Regulations, unless the context indicates otherwise, a word or expression to which a meaning has been assigned in the Act has the meaning so assigned: **'The Act'** means the Electronic Communications Act (36 of 2005) **'Connectivity'** means setting up and connecting the end user to the Electronic Communications network; **'Connectivity Failure'** means the inability of an electronic communications network system to initiate or maintain connection between end-users; **'Complaint'** means a communication lodged by an end-[User], by means of voice communication, personal visit (walk-in centres), post or by data messaging, expressing dissatisfaction with the service rendered by the licensee; **'Fault'** means a failure of performance so serious as to destroy the ability of a network or some elements of a network to function effectively; **'Fault Clearance'** means the resolution of a fault; **'Fault Report'** means the communication of a fault by the end-user; **'ICASA Act'** means the Independent Communications Authority of South Africa Act, 2000 (Act 13 of 2000) **'Installation'** means making available the network infrastructure on the customer interface side; **'Qualifying service applicant'** means an applicant for a licensee's service that meets certain preconditions as required by the licensee and can access these services within an area in which a licensee provides the required service and has coverage.

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### 4 ELECTRONIC COMMUNICATIONS SERVICE (ECS) AND ELECTRONIC COMMUNICATIONS NETWORK SERVICE (ECNS) LICENSEES

Licensees must cater for the following:

4.1 Availability of the ECN services All licensees must ensure that they achieve an average of 95 percent network service availability, over a period of six (6) months. 4.2 Availability of the EC services All licensees must ensure that they achieve an average of 95 percent service-availability within their specified area of coverage over a period of six (6) months 4.3 Average time to both install and activate service

(a) All ECS and ECNS licensees must attain 90 percent success rate within thirty (30) days in meeting requests for installing and activating of service, for qualifying service applicants within their specified area of coverage. (b) The remaining ten percent (10 percent) of requests for installation and activation must be met within forty (40) days of the request.

4.4 Average time to Activate service

(a) All ECS and ECNS licensees must attain 90 percent success rate within seven (7) days in meeting requests for activation of a service, for qualifying service applicants within their specified area of coverage. (b) The remaining ten percent (10 percent) of requests for activation must be met within fifteen (15) days of the request.

4.5 Licensees shall within 7 days upon receipt of a request notify and provide full reasons to qualifying service applicants where they are unable to provide service within the period specified in sub-regulations 4.1, 4.2, 4.3 and 4.4 above. 4.6 Connectivity Failure Rate (including dropped calls) The percentage of connectivity failure rate must not exceed an average of 3 percent of all connections, over a period of six (6) months, for all ECNS and ECS licensees. 4.7 Operator assisted calls response time The operator assisted calls must be answered within three (3) minutes averaged over twelve months. 4.8 ECN monitoring All licensees must monitor electronic communications network, 24 hours, seven (7) days a week. 4.9 Fault clearance rate/mean time to clear faults

(a) All ECNS and ECS licensees must maintain an average of 90 percent fault clearance rate for all faults reported within three (3) days. (b) The remaining ten percent (10 percent) of faults reported must be cleared within six (6) days of the reporting of the fault.

### 5 COMPLAINTS PROCEDURE 5.1 Complaints reported to the licensee

(a) Licensees must designate and publicise a point of entry for complaints to be lodged by the complainants. (b) Licensees must acknowledge receipt of the complaint through the allocation of a reference number within three (3) days upon receipt thereof. (c) Licensees may respond to the complaint in any manner or format which the licensee considers appropriate in the circumstances, including, without limitation, in writing, telephonically, by e-mail, via short message services or in person. (d) Licensees must formally resolve all complaints from the complainants within fourteen (14) days of receipt thereof.

5.2 Complaints escalated to the Authority by end-users and subscribers

(a) In the event that the complainant is not satisfied with the resolution of their complaint by the licensees, he/she may approach the Authority for the resolution of the complaint. (b) Licensees must formally resolve all complaints referred to them by the Authority within fourteen (14) days upon receipt thereof.

### 6 INFORMATION REQUIREMENTS

(a) Licensees must keep and maintain a record of all complaints received from end-users and subscribers. (b) Licensee must prepare six-monthly reports on complaints received and processed. Copies of such reports must be submitted to the Authority within one (1) month after the end of the licensee's financial year and every six (6) months thereafter. (c) Licensees must prepare and submit to the Authority six (6) monthly reports on the standards as prescribed in regulation 4. (d) The reports referred to in sub-regulations 6(b) and (c) of these Regulations must be in accordance with the format as may be determined by the Authority from time to time.

### 7 PENALTIES A licensee who is held to be non compliant by the Complaints and Compliance Committee (CCC) will be liable to a fine not exceeding:

(a) R500 000.00 for a contravention of regulation 4. (b) R150 000.00 for a contravention of regulations 5 and 6. (c) An additional R50 000.00 for every repeated offence.

### 8 REGULATIONS THAT ARE REPEALED

(a) The End-user and Subscriber Service Charter Regulations, published in Government Gazette 30792 dated 25 February, 2008 are hereby repealed. (b) The End-User and Subscriber Service Charter Regulations, published in Government Gazette 31556 dated 31 October, 2008 are hereby repealed.

**9 SHORT TITLE AND COMMENCEMENT** These Regulations are called End-User and Subscriber Service Charter Regulations 2009 and will come into operation within thirty (30) days from the date of publication in the Government Gazette.