



Telkom

**AGREEMENT ON OCCUPATIONAL HEALTH AND SAFETY
IN TERMS OF
SECTION 37(2) OF THE OCCUPATIONAL HEALTH AND SAFETY ACT 85 OF
1993 (AS AMENDED) between**

**TELKOM SA SOC LIMITED
(Registration number: 1991/005476/07)
("The Client")**

AND

**(NAME OF CONTRACTOR)
(Registration number: _____)
("The Contractor")**

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1. GENERAL

Whereas the Client has entered into a contract with the Contractor in terms of which the Contractor is to perform certain work and services for and on behalf of the Client, subject to the terms and conditions as contained in such contract.

AND WHEREAS pursuant to the provisions of the applicability of the Occupational Health and Safety Act 85 of 1993, as amended, and regulations thereto, the Client and the Contractor have entered into this Agreement, the terms and conditions of which are set out hereunder.

2. DEFINITIONS AND INTREPRETATIONS

2.1 Definitions

In this Agreement, unless the context indicates otherwise, the following terms and cognate expressions listed below shall have the following meanings assigned to them, namely:

- 2.1.1 **“Agreement”** means this document containing its terms and conditions as applicable to the Parties thereto;
- 2.1.2 **“OHS Act”** means the Occupational Health and Safety Act 85 of 1993, as amended, together with all the Regulations and Standards associated thereto.
- 2.1.3 **“Client”** means Telkom South Africa Limited, for whom Work is performed;
- 2.1.4 **“Employer”** means the Contractor who employs or provides Work for any person and remunerates any person or expressly or tacitly undertakes to remunerate him.
- 2.1.5 **“Employee”** means any person who is employed by or works for the Contractor and who receives or is entitled to receive any remuneration or works under the direction or supervision of the Contractor inclusive of all Sub-Contractors.
- 2.1.6 **“Competent”** means having the knowledge, skills, experience and qualifications specific to the Work or task being performed.
- 2.1.7 **“Contractor”** means any person or organisation that enters into a contractual agreement to perform wWork for or on behalf of the Client;
- 2.1.8 **“Sub-Contractor”** means any person or organisation who is appointed by the Contractor to perform Work on behalf of the Client.
- 2.1.9 The **“Parties”** mean the Client and the Contractor collectively;
- 2.1.10 **“Work”** shall mean any and all activities rendered or executed by the Contractor for the Client;
- 2.1.11 **“Workplace”** means all work areas, designated work sites and permanent or temporary premises of the Client, where the Contractor and the Employees perform work or render a service for or on behalf of the Client;
- 2.1.12 **“Responsible Person”** means a person who has a designated duty to ensure compliance to the OHS Act and other applicable legislation and / or regulations as an inherent part of all activities and operations carried out under his direction, instruction and supervision;
- 2.1.13 **“Standard”** means a documented measure of compliance and/or performance.

3. REPORTING

The Contractor and/or his/her designated person appointed in terms of Section 16(2) of the OHS Act shall report to the Health and Safety Manager and/or a representative designated by the Employer prior to commencing the Work at the premises

4. WARRANTY OF COMPLIANCE

- 4.1 In terms of this Agreement the Contractor warrants the familiarisation with the working environment and conditions of the Client, and agrees to the arrangements and procedures as prescribed by the Client, as provided for in the OHS Act.
- 4.2 The Contractor acknowledges that this Agreement also constitutes an agreement in terms of Sections 8, 13 and 14 of the OHS Act, whereby all responsibilities for health and safety matters relating to the Work that the Contractor and the Employees are to perform at the Workplace remains the obligation of the Contractor.
- 4.3 In accordance with the provisions of Section 10(4) of the OHS Act, the Contractor accepts liability for ensuring that the necessary steps are taken to ensure that any article or substance that is erected or installed at the Workplace or manufactured, sold or supplied to or for the Client, and which the Contractor uses at or for the Work, complies with all prescribed standards and requirements and will be safe and without risks to health and the environment when appropriately utilised.
- 4.4 The Contractor further warrants that it and/or the Employees undertake to maintain all necessary compliance with the OHS Act. Without derogating from the generality of the above, or from the provisions of this Agreement, the Contractor shall ensure that the clauses as hereunder described are at all times adhered to by it and the Employees.
- 4.5 The Contractor hereby undertakes and warrants that it would take all reasonable and practical measures to ensure that the health and safety of any other person at the Workplace is not endangered by its and/or its Employees acts or omissions whilst they are at the Workplace and rendering or executing the Work.

5. CONTRACTOR AND CLIENT

The Contractor shall be deemed to be an Employer in its own right whilst on the Client's premises. In terms of section 16(1) of the OHS Act, the Contractor shall accordingly ensure that it and-or its Chief Executive Officer comply with the requirements of the OHS Act.

6. APPOINTMENTS AND TRAINING

- 6.1 The Contractor shall appoint Competent persons as per section 16(2) of the OHS Act. Any such appointed person shall be trained on any occupational health and safety matter, and the OHS Act provisions pertinent to the Work that is to be performed under their responsibility.
- 6.2 The Contractor warrants that it has familiarised with the hazards associated with the Work being carried out. The Contractor shall further ensure that the Employees are trained on the Health and Safety aspects relating to the Work and that they understand the hazards associated with such Work being carried out. Without derogating from the foregoing, the Contractor shall, in particular, ensure that all its users or operators of any materials, machinery or equipment are properly trained in the use of such materials, machinery or equipment.

7. SUPERVISION, DISCIPLINE AND REPORTING

- 7.1 The Contractor shall ensure that all Work performed on the premises are done under strict supervision, and that no unsafe or unhealthy work practices are permitted. Discipline regarding health and safety matters shall be strictly enforced against any of its Employees regarding non-compliance by such Employee with any health safety matter.
- 7.2 The Contractor shall further ensure that the Employees report all unsafe or unhealthy Work situations immediately after they become aware of the same, and that the Contractor in turn immediately reports these in writing to the Employer or his representative.

8. WORK PROCEDURES

The Contractor shall implement and enforce safe work practices as prescribed by the Client, and shall ensure that its responsible persons and Employees are made aware of the contents of these practices and that they adhere to such procedures.

9. HEALTH AND SAFETY MEETINGS

If required in terms of the OHS Act, the Contractor shall establish its own health and safety committee(s) and ensure that the Employees, being the committee members, hold health and safety meetings as often as may be required, but not less than once every 3 (three) months.

10. COMPENSATION REGISTRATION

10.1 The Contractor shall ensure that he/she has a valid registration with the Compensation Commissioner, as required and defined in terms of the Compensation for Occupational Injuries and Diseases Act 130 of 1993, and that all payments owing to the Commissioner are up to date.

A letter of good standing must be made available at all times to the Client.

11. MEDICAL EXAMINATIONS

The Contractor shall ensure that all its Employees undergo routine medical examinations as per statutory requirements in terms of the working environment and associated risks to ensure the Employees are medically fit for the conditions and purposes of the Work required.

12. INCIDENT REPORTING AND INVESTIGATION

12.1 The Contractor shall implement and manage a Workplace incident book; which will include all reportable incidents, near misses and first aid treatment. All incidents referred to in Section 24 of the OHS Act and as further defined in the documentation of the Employer, shall be reported by the Contractor to the Department of Labour and to the Client. The Client shall further be provided with copies of any written documentation relating to any incident.

12.2 The Client retains an interest in the notification of any incident as described above, as well as in any formal investigation and/or enquiry conducted in terms of Section 31 and 32 of the OHS Act into such incidents.

13. SECURITY AND ACCESS

13.1 The Contractor and its Employee shall only enter and exit the premises through the main gate(s) and/or checkpoint(s) designated by the Client at all times and shall not permit any person or Employee who is not directly associated with the Work from entering the premises.

13.2 The Contractor and the Employees shall not enter into any area of the premises which is not directly associated with the Work

14. NO NUISANCE

The Contractor shall ensure that neither he/she nor the Employees undertake any activity which may cause environmental impairment, nor constitute any form of nuisance to the Employer and/or his surroundings.

15. INTOXICATION AND UNLAWFUL USE OF NON PRESCRIPTIVE CHEMICAL SUBSTANCES

No intoxicating or unlawful substance of any form shall be allowed at the Workplace. Any person and or Employee suspected of being intoxicated or under the influence of any unlawful substance shall be prohibited from the Workplace. In a case where a person and or Employee is taking medication, such person and or Employee is only allowed to perform duties at the Workplace if the side effects of such medicine do not constitute a threat to the health or safety to the person and or Employee concerned or other persons and or Employees at such a Workplace.

16. PERSONAL PROTECTIVE EQUIPMENT

- 16.1 The Contractor shall ensure that its Responsible Persons and the Employees are provided with adequate personal protective equipment (PPE) for the work they may perform, and in accordance with the requirements of General Safety regulations 2(1) of the OHS Act. 16.2
- 16.2 The Contractor shall further ensure that his/her Responsible Persons and the Employees wear the PPE issued to them at all times.

17. PLANT, MACHINERY AND EQUIPMENT

The Contractor shall ensure that all the plant, machinery and equipment and/or vehicles he/she may wish to utilise on the premises is/are at all times of sound order and fit for the purpose for which it is intended, and that it complies with the requirements of Section 10 of the OHS Act.

18. TRANSPORT

The Contractor shall ensure that all road vehicles, used on the premises are in a roadworthy condition, are licensed and insured. All drivers shall have relevant valid driving licenses and no vehicle shall carry passengers unless it is specifically designed to do so. All drivers shall adhere to the speed limits and road signs on the premises.

19. INDEMNITY BY CONTRACTOR

Notwithstanding the provisions of this Agreement, or any other contractual relationship as between the Client and the Contractor:

- 19.1 The Client, its respective directors, officers, agents, employees, members, subsidiaries and successors in interest (together the “Indemnified Persons”) shall not be responsible for any loss, damage, injury or death, caused by the Contractor, its Employees, Sub- Contractors and duly authorised agents, and the Contractor hereby indemnifies and holds harmless the Indemnified Persons against all and any claims, losses, demands, liability, costs and expenses of whatsoever nature, which the Indemnified Persons may, at any time sustain or incur arising out of the actions and or conduct of the Contractor, its Employees, Sub-Contractors and duly authorised agents.
- 19.2 The Contractor hereby assumes liability for any loss or damage which is caused by the negligence of the Contractor, its Employees, Sub- Contractors and duly authorised agents. Furthermore, the Contractor hereby indemnifies the Indemnified Persons for such loss or damage, whether the cause is by the Contractor’s breach of any of the terms of this Agreement, or otherwise.
- 19.3 The Contractor will be liable for all fines and penalties which it may contravene arising out of its and that of its Employees, Sub-Contractors or duly authorised agents acts or omissions in performing the Work. The Contractor will indemnify and hold harmless the Indemnified Persons against any such claims or actions.

20. DURATION OF AGREEMENT

- 21.1 This Agreement shall remain in force for the duration of the Work to be performed by the Contractor and / or its Sub- Contractors..

Signed at _____ on this _____ day of _____ 20

(Print name in block letters)

Duly authorized representative
on behalf of ("**Telkom**")

Signature

Designation

WITNESSES:

1.) _____
(Print name in block letters)

(Signature)

2.) _____
(Print name in block letters)

(Signature)

And

Signed at _____ on this _____ day of _____ 20

(Print name in block letters)

Duly authorized representative
on behalf of ["**Company Name**"]

Signature

Designation

WITNESSES:

1.) _____
(Print name in block letters)

(Signature)

2.) _____
(Print name in block letters)

(Signature)

APPENDIX A - CONTRACT OHS ACT LEGAL APPOINTMENTS

This serves to inform you as a Contractor that you have the following Occupational, Safety, Health and Environmental Legal Appointments and to supply the Health and Safety Department with all the relevant documentation before any work is to be commenced.

1 Section 16(2) Chief Executive Officer charged with certain duties

“Without derogating from his responsibility or liability in terms of subsection (1), a chief executive officer may assign any duty contemplated in the said subsection, to any person under his control, which person shall act subject to the control and directions of the chief executive officer.”

2 Section 8(2)(i) General duties of employers to their employees

“Ensuring that work is performed and that plant or machinery is used under the general supervision of a person trained to understand the hazards associated with it and who have the authority to ensure that precautionary measures taken by the employer are implemented.”

3 Section 17(1) Health and Safety Representatives

“Subject to the provisions of subsection (2), every employer who has more than 20 employees in his employment at any workplace, shall, within four months after the commencement of this Act or after commencing business, or from such time as the number of employees exceeds 20, as the case may be, designate in writing for a specified period health and safety representatives for such workplace, or for different sections thereof.”

4 GMR 4(3) Operation of Machinery

An employer or user of machinery shall ensure that any machinery which requires constant attention in order to avoid accidents is under the supervision of a shiftsman, who shall at all times be present on the workplace while such machinery is in operation, and no person shall attend to or operate such machinery, except under the general supervision of a shiftsman.

5 GSR 13(4) First Aid, emergency equipment and procedures

“Where more than 10 employees employed at a workplace, the employer of such employees shall take steps to ensure that every group of 50 employees at the workplace, or in the case of a shop or an office as contemplated in the basic conditions of employment Act, 1983 (Act No.3 of 1983), for every group of up to 100 employees, at least one person is readily available during normal working hours, who is in possession of a valid certificate of competency in first aid, issued by-(a) the S.A. Red Cross Society (b) the St. John Ambulance (c) the S.A. First Aid League; or (d) a Person or organisation approved by the chief inspector for purpose.”

Should the Contractor have any questions, please contact the person who has been assigned the responsibility of managing the work and/or tender or the Client’s Health and Safety department.