

**Telkom's Standard Terms and Conditions  
for the Provision of Electronic  
Communications Services & Products**

## FOREWORD

Telkom SA SOC Limited (hereinafter referred to as Telkom) is a provider of Electronic Communication Services in South Africa and is inter alia an Electronic Communications Services licensee, in terms of the Electronic Communications Act 36 of 2005 ("ECA"), under the auspices of which license Telkom provides its Subscribers with Services and/or Products which are subject to these Standard Terms and Conditions.

If a Subscriber cannot understand these general provisions, which are pre-conditions to the Standard Terms and Conditions for Electronic Communications Services and Products, the Subscriber must contact Telkom.

Please note that the Telkom Standard Terms and Conditions are there for the Subscriber to read and consider.

These Standard Terms and Conditions will become binding and apply to the Subscriber once Telkom has confirmed that it will provide the Service(s) and/or Product(s), which have been requested by the Subscriber.

Any Services and/or Products subscribed to, applied for or used by the Subscriber will also be subject to product specific terms and conditions. In the event of any ambiguity between these Standard Terms and Conditions and the product specific terms and conditions, the product specific terms and conditions shall prevail.

## EXCLUSION OR LIMITATION OF LIABILITY CLAUSES

*In terms of the requirements of section 49 of the Consumer Protection Act, 68 of 2008 ("CPA") Telkom has included certain clauses, which constitute an assumption of risk or liability by the consumer or impose an obligation on the consumer to indemnify Telkom under its Standard Terms and Conditions. For this purpose, certain clauses are highlighted for the Subscriber's attention and included under sections 4, 5, 6 and 9 of these Standard Terms and Conditions.*

*The Subscriber must before it concludes the Application, carefully consider those clauses which limit the risk or liability of Telkom and other third parties acting on behalf of Telkom.*

## APPLICATION FOR TELKOM SERVICES AND/OR PRODUCTS AND CONDITIONS APPLICABLE TO SUCH APPLICATION

A Subscriber wishing to obtain a Telkom Service and/or Product must apply for same by signing and completing an Application by means of any method as provided for by Telkom;

If:

- the Subscriber is unable to either afford the Service(s) and/or Product(s) applied for, or is in arrears on existing or closed Telkom accounts;
- the Subscriber has not paid a deposit where required;
- the Subscriber has been blacklisted or has an adverse credit rating as per the National Credit Act, 34 of 2005 (NCA);
- the Subscriber is under some form of legal incapacity, for example is under the age of 18, is insolvent or has been sequestered etc.;
- the Subscriber has not provided the required or correct information;
- Telkom in its sole discretion for whatever reason refused to approve the Application and/or provide the Service(s) and/or Product(s);
- Telkom is unable to provide the required Service(s) and/or Product(s) 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.

## AMENDMENTS OF THE TELKOM STANDARD TERMS AND CONDITIONS

Telkom reserves the right to amend these Standard Terms and Conditions from time to time, whereafter the revised document will be published on [https://www.telkom.co.za/about\\_us/download/telkomsstandardtermsandconditionsforthevisionofelec.pdf](https://www.telkom.co.za/about_us/download/telkomsstandardtermsandconditionsforthevisionofelec.pdf) and filed with the Independent Communications Authority of South Africa ("ICASA"), which amendment, from date of such filing, will be deemed to be incorporated into the Agreement.

## CREDIT REFERENCING

The Subscriber gives Telkom express permission to carry out general and specific credit reference enquiries about the Subscriber who has applied for Telkom Service(s) and/or Product(s). In addition, the Subscriber expressly gives Telkom permission to check the correctness of any of the information supplied by the Subscriber when applying for Service(s) and/or Product(s).

## WARRANTY BY SUBSCRIBER

THE SUBSCRIBER WARRANTS AND REPRESENTS THAT ALL INFORMATION SUPPLIED IN APPLYING FOR THE TELKOM SERVICE(S) AND/OR PRODUCT(S), IS TRUE, CORRECT AND COMPLETE AND INDEMNIFIES AND HOLDS TELKOM HARMLESS AGAINST ALL CLAIMS, OF WHATSOEVER NATURE THAT MAY ARISE, DIRECTLY OR INDIRECTLY, AS A RESULT OF THE SUBSCRIBER OR ANY AGENT OF THE SUBSCRIBER PROVIDING TELKOM WITH ANY INCORRECT INFORMATION.

## INFORMATION OBTAINED AND KEPT BY TELKOM

Telkom will use the Subscriber's information strictly in accordance with the Protection of Personal Information Act, 2013 ("POPIA") and the Regulations promulgated in terms of Section 69 of the ECA 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.

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## 1. MEANING 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 Subscriber to read and understand the contents of the Agreement, the Subscriber must first understand the meanings of these words and phrases.*

- 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 ECA and under Telkom's Individual Electronic Communications Services License, which ECA and related content can be viewed on the ICASA Website; <http://www.icasa.org.za/> under the heading "Legislation";
- 1.2. Words connoting the singular shall include the plural and vice versa;
- 1.3. Words which make reference to one gender shall include the other genders;
- 1.4. Words denoting persons shall include natural human beings, legal entities and unincorporated associations of persons, and vice versa;
- 1.5. The headings in these terms and conditions shall not affect their interpretation; and
- 1.6. In addition to the above provisions, unless inconsistent with the terms set out under the ECA 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:
  - 1.6.1. **"Abortive Costs"** has the meaning as set-out in clause 6.2.9;
  - 1.6.2. **"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 electronic communications industry and related sectors and the provision by them of certain electronic communications network services and electronic communication services.
  - 1.6.3. **"Active"** means in relation to a SIM, that the SIM concerned is shown by Telkom's systems as being Connected to the ECN and "Activates/Activation or Activated" shall bear a corresponding meaning;
  - 1.6.4. **"Agreement"** means these Standard Terms and Conditions together with the Application and/or any relevant schedules, appendices thereto, and the terms and conditions applicable to the specific Service(s) and Product(s) which the Subscriber applied for, together with any Renewal Addendum;
  - 1.6.5. **"Applicable Law"** means any of the following, to the extent it applies to the Subscriber, Telkom, or the Service(s) and/or Product(s):
    - (i) any statute, regulation, by-law, ordinance, subordinate or 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/or
    - (v) any applicable direction, rule, pronouncement, policy or order that is given by an authority (also known as regulator);
  - 1.6.6. **"Application"** means any method provided for by Telkom for the purpose of contracting, which method may include, but is not limited to, an application form and/or any other official Telkom agreement which is completed by the Subscriber in writing, electronically by means of WhatsApp, USSD, SMS or telephonically, which application will contain the Subscriber's details and the Subscriber's Order for Telkom to provide it with certain Telkom Service(s) and/or Product(s);
  - 1.6.7. **"Authority"** means the Independent Communications Authority of South Africa ("ICASA") established in terms of section 3 of the Independent Communications Authority of South Africa Act, 36 of 2000 and its successors which govern and oversee the electronic communications industry;
  - 1.6.8. **"Basic Telephone Service"** means an Electronic Communications Service comprising technical features, which are the minimum necessary to allow the establishment of a fixed line 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 the TECN;
  - 1.6.9. **"Business Day"** means Monday to Friday, excluding Saturday and Sunday and excluding any public holiday as defined under the Public Holidays Act, 36 of 1994;
  - 1.6.10. **"Business Hours"** means between 08h00 and 16h30 on Business Days;
  - 1.6.11. **"Charges"** means the amounts charged by Telkom in respect of the Services and/or Products purchased or rented from Telkom, which charges are set out under the Tariff List and/or Tariff Plan or any Products and/or Services specific terms and conditions or as notified by Telkom from time to time to the Subscriber, which Charges will reflect under the Invoice submitted to the Subscriber in terms of the Agreement;
  - 1.6.12. **"Commencement Date"** means the date when Telkom processes the Application and notifies the Subscriber that it has agreed to provide the Subscriber with the Telkom Services and/or Products;
  - 1.6.13. **"Commissioning"** or **"Commission"** or **"Commissioned"** means that the Service, the solution and/or any element thereof has been installed and is available for use by the Subscriber;
  - 1.6.14. **"Connection/Activation Date"** means either the date when Telkom installs the Connections at the Subscriber's premises where the Telkom Service will be used, or the date when Telkom activates the Subscriber's SIM card or Mobile Number to the Network (whichever is applicable given the type of Service applied for) which allows the Subscriber to utilise the Telkom Services and/or Products;
  - 1.6.15. **"Connections"** means the TECN Connections, installed by Telkom at the Subscriber's premises as reflected in the Application, which allows the Subscriber to use the Telkom fixed line Service, and **"Connected"** will have a similar meaning;

- 1.6.16. **“Consumer”** shall have the meaning as defined in the CPA;
- 1.6.17. **“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;
- 1.6.18. **“Credit Referencing Procedure”** means the procedure applied by Telkom to determine and monitor the creditworthiness of a Subscriber;
- 1.6.19. **“Detailed Billing”** means a detailed statement of account provided by Telkom to the Subscriber, upon Subscriber’s request 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/or Products;
- 1.6.20. **“Device(s)”** means a device used by a Subscriber to access the Service, excluding SE, on either a rental or outright purchase basis as selected under an Agreement;
- 1.6.21. **“Directory”** means an electronic directory service containing a classified listing of the names, addresses, and telephone numbers, of persons, groups, or firms requesting such service;
- 1.6.22. **“Due Date”** means the date on which any amounts owed by the Subscriber to Telkom in respect of the Telkom Services and/or Products, become due and payable, and which is reflected on the Invoice;
- 1.6.23. **“ECTA”** means the Electronic Communications and Transactions Act, 25 of 2002, as amended from time to time;
- 1.6.24. **“Electronic Communications”** shall have the meaning ascribed thereto in the ECA ;
- 1.6.25. **“Electronic Communications Network”** or **“ECN”** shall have the meaning ascribed thereto in the ECA;
- 1.6.26. **“Electronic Communications Network Service”** or **“ECNS”** means a service as defined under section 1 of the ECA, 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 ECA, and 'network services' is construed accordingly;
- 1.6.27. **“Electronic Communications Service”** or **“ECS”** means any service provided to the public, sections of the public, the State, or the Subscribers 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;
- 1.6.28. **“Exchange Connection”** means the line that connects a main fixed line 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;
- 1.6.29. **“Fixed Term Agreement”** means a rental Agreement concluded by Telkom with a Subscriber which is in excess of a one-month period, as selected by the Subscriber in the Application, together with any renewal period or term as requested by the Subscriber/Consumer in accordance with options granted by Telkom to the Consumer as per the provisions of section 14 of the CPA;
- 1.6.30. **“Hybrid Account”** means either a Fixed Term Agreement or a Month-to-Month Agreement concluded between Telkom and the Subscriber whereby the Subscriber is charged in advance for the Services and/or Products, known as the hybrid bundle of Products and Services provided by Telkom, which could include, without generalising, service Charges and/or fixed Charges for the phone number and account. After the depletion of any allocated elements the Subscriber will be required to recharge the account via prepaid (airtime and/or usage bundles) in order to continue the use of the Services and/or Products;
- 1.6.31. **“Individual Consumer”** means a Consumer who is a natural person;
- 1.6.32. **“Initial Period”** means the number of months which the Subscriber has selected in the Application under the line item “contract period” for which the Agreement will run, which period will start running on the date of the Subscriber’s first Invoice after the delivery and/or installation of the Ordered Services and/or Products;
- 1.6.33. **“Interest”** or **“Late Payment Fee”** means the interest levied on any outstanding amounts due to Telkom which rate will be determined by Telkom from time to time in its sole discretion but 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. (Also see clause 6.2.10 below);
- 1.6.34. **“International Roaming”** means the ability to use the mobile Device and mobile Services while in another country using the services of a foreign network outside of the geographic locale of Telkom’s mobile coverage BUT subject always to clause 5.13 below;
- 1.6.35. **“Invoice”** shall mean the notification of Charges sent to the Subscriber setting out all amounts due and owing to Telkom by the Subscriber in respect of the Telkom Services and/or Products;
- 1.6.36. **“Migration”** means the Subscriber’s request to make certain changes to the Telkom Services and/or Products received under the Agreement, which if accepted by Telkom, will give rise to a review and amendment of the conditions of the Agreement and the applicable Charges;
- 1.6.37. **“Minimum Service Standards”** means the Minimum Service Standards for end-users and subscribers set by the Authority (ICASA), as amended or replaced from time to time.
- 1.6.38. **“Mobile Number”** means the Mobile Subscriber Integrated Services Digital Network (MSISDN) mobile or cellular phone number, which is associated with the SIM card at the time of Activation;
- 1.6.39. **“Month-to-Month Agreement”** means the Agreement, which has been concluded between Telkom and the Subscriber, which will run on a month-to-month basis and which is capable of being terminated by either Party on written notice, which option the Subscriber has selected under the Application under the line item “contract period”, or being the default contract term once a Fixed Term Agreement between Telkom and the Subscriber has expired, which the Subscriber has failed to alert Telkom of its intention to renew/upgrade or cancel;
- 1.6.40. **“MSISDN”** means mobile station international subscriber directory number;

- 1.6.41. **"Offerings Schedule"** means various offerings, such as pamphlets, on-line offerings or any other form of advertising, setting out the various Products and/or Services with associated pricing made available by Telkom to the public, from time to time;
- 1.6.42. **"Office Hours"** means Telkom's normal business hours, as determined by Telkom from time to time;
- 1.6.43. **"Order"** means a Subscriber's request for certain Products and/or Services made available by Telkom from time to time, as set out under the Offerings Schedule, which Order will be vetted and approved by Telkom, and (**"Ordering"**) or (**"Ordered"**) shall have a similar meaning;
- 1.6.44. **"Parties"** means collectively, Telkom and the Subscriber;
- 1.6.45. **"Personal Information"** shall have the meaning ascribed thereto in the Protection of Personal Information, Act 4 of 2013 (**"POPIA"**);
- 1.6.46. **"Post-paid Services"** means Services provided in terms of an Agreement and where the usage is paid for in arrears by the Subscriber after the relevant Service and/or Product was used;
- 1.6.47. **"Pre-paid services"** means Services provided in terms of an Agreement and where the usage is paid for in advance by the Subscriber on a cash-in-advance basis;
- 1.6.48. **"Private branch exchange (PBX) switching unit"** means a telephone switching unit installed on the Subscriber's premises, or intended for such an installation, which 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;
- 1.6.49. **"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 ECA;
- 1.6.50. **"Products"** means products, offered to Subscribers from time to time, on either a rental or outright purchase basis including but not limited to stock and all other tangible products, such as but not limited to Devices, which allow access to and usage of the Services;
- 1.6.51. **"POPIA"** means The Protection of Personal Information, Act 4 of 2013"
- 1.6.52. **"Regulations"** means any regulations promulgated in terms of section 95 of the ECA ;
- 1.6.53. **"Renewal Addendum"** means the renewal agreement concluded by the Parties, which set out in the additional terms applicable to the Renewal Period;
- 1.6.54. **"Renewal Period"** means the additional number of months which the Parties have agreed to renew the Agreement for, as set out in the Renewal Addendum/Application Form, which period will start on the day following the last day of the Initial Period, where applicable;
- 1.6.55. **"RICA"** means the Regulation of Interception of Communication and Provision of Communication Regulated Information ECA 70 of 2002, as amended/replaced from time to time, and its related provisions, which apply to Telkom and to the Subscriber;
- 1.6.56. **"SE"** means in the case of an Application for a fixed line service; the equipment used by Subscribers to access, use or receive electronic communications services or the Telkom Services and as defined in section 1 of the ECA;
- 1.6.57. **"Selected SE"** means, in the case of an Application for a fixed line service, the equipment used by Subscribers to access, use or receive electronic communications services or the Telkom Services and as defined in section 1 of the ECA, which SE is rented or purchased by the Subscriber from Telkom in terms of the Agreement;
- 1.6.58. **"Service(s)"** means Telkom's Electronic Communications Service offerings on the Telkom ECN, provided to Subscribers pursuant to an Order, and consisting of Pre-paid Services, and Post-Paid Services, which if applicable, together with Products, will form the subject matter of this Agreement and may include but are not limited to fixed line and mobile services, selected SE, SIM cards and Devices;
- 1.6.59. **"SIM"** means a subscriber identification module, bearing a subscriber number, which when connected by Telkom on the mobile ECN enables the Subscriber access to the Services offered by the ECN when used in conjunction with compatible Devices;
- 1.6.60. **"SMS"** means short message service;
- 1.6.61. **"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;
- 1.6.62. **"Subscriber"** means current and/or future end-users, customers and persons who have applied for and to whom Telkom has agreed to provide the Services and/or Products, and who will be liable for the payment of the Charges and for compliance with the Agreement, and whose details are reflected on the Application whether captured on paper, or via electronic means such as voice recordings, computer generated and captured data or similar means. Subscriber will also include **"End-user"** as defined in section 1 of the ECA and **"Consumer"**;
- 1.6.63. **"Tariff List"** means the list of Charges applicable to fixed line services 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 by the Subscriber;
- 1.6.64. **"Tariff Plan"** means the Charges levied by Telkom in respect of mobile Services and/or Products, as amended from time to time, and payable to Telkom by the Subscriber, which is contained in the Offerings Schedule;
- 1.6.65. **"Telkom"** means Telkom SA SOC Limited, Registration number 1991/005476/30, a company incorporated in terms of the laws of the Republic of South Africa;

- 1.6.66. **“Telkom ECN” (“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;
  - 1.6.67. **“Terminal Connection Equipment”** or **“TCE”** means the electronic communications equipment and/or electronic communication facility on which Telkom terminates Electronic Communication Services;
  - 1.6.68. **“Usage Charges”** means the monthly Charges levied either monthly in advance or in arrears by Telkom, in respect of the use by Subscribers of the Services and/or Products. Usage Charges can include connection fees, airtime, out-of-bundle call/data/SMS Charges, bundled data/minute/SMS, VAS Charges and levies, taxes and interest, which Charges are set out under the Offerings Schedule and/or Tariff List;
  - 1.6.69. **“VAS”** means certain non-core, but value-added services offered and made available by Telkom in conjunction with certain mobile Services and/or Products.
- 1.7. The provisions of the Electronic Communications and Transactions Act, 25 of 2002 (“ECTA”) shall apply to this Agreement, the Parties expressly agreeing:
- 1.7.1. That where a provision of the Agreement requires that a document must be signed or initialled, that signing, or initialling may be affected 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 Subscriber’s electronic signature for any purpose other than the signing or initialling of the particular document that the Subscriber intended to sign or initial; and
  - 1.7.2. 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.
- 1.8. When a particular number of days is provided for between the occurrence of one event and another, the number of days must be calculated by:
- 1.8.1. excluding the day on which the first such event occurs;
  - 1.8.2. including the day on or by which the second event is to occur; and
  - 1.8.3. excluding any public holiday, Saturday or Sunday that falls on or between the days contemplated in clauses 1.8.1 and 1.8.2, respectively.

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

***This clause confirms that the Subscriber has applied for certain Services and/or Products as selected under the Application Form. Telkom’s acceptance of the Subscriber’s Application will be subject to the Subscriber’s compliance with the terms and conditions of this Agreement.***

- 2.1. The terms and conditions set out under the Agreement will become binding on the Subscriber on the Commencement Date.
- 2.2. Telkom reserves the right to amend these terms and conditions from time to time. Telkom will give written notice of such amendments, by means of a message printed on an ensuing Invoice, to each Subscriber 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, if required by law, which amendment will be deemed to be incorporated into the Agreement and bind the Subscriber from the date that the amendment has been filed with the Authority or published on Telkom’s website.
- 2.3. Where, as a result of any amendment anticipated under clause 2.2, a Consumer is of the reasonable objective view that such amendment is to its detriment, the Consumer may terminate the Agreement by giving Telkom written notice 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, PRODUCTS AND/OR DEVICES. 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 AND/OR DEVICES, 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 the Subscriber’s privacy and to this end their right not to have their Personal Information misused or distributed to other persons, the Subscriber has to comply with the provisions of RICA, which is a law which requires that bodies such as Telkom verify the details of a Subscriber before it is able to provide such a Subscriber with an electronic communication service or device. This clause sets out Telkom’s undertaking to protect and respect the Subscriber’s Personal Information and not to misuse it. It also sets out the Subscriber’s undertaking to comply with RICA.***

- 3.1. The Subscriber consents to Telkom processing their Personal Information to provide services to them in terms of these terms and conditions and in respect of any other Products and Services for which the Subscriber may apply, and to carry out statistical and other analyses to identify potential markets and trends, evaluate and improve its business.
- 3.2. Telkom at any time reserves the right to make general credit reference enquiries about the Subscriber and to check the correctness of the information that has been supplied. Telkom is also entitled to furnish any information relating to the Subscriber’s account and compliance with these conditions to any registered credit bureau.
- 3.3. **THE SUBSCRIBER 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. FURTHER, THE SUBSCRIBER UNDERTAKES TO PROVIDE TELKOM WITH THEIR UPDATED DETAIL, AS AND WHEN THEY CHANGE.**
- 3.4. Telkom will process the Subscriber’s Personal Information strictly in accordance with the POPIA and RICA. Telkom undertakes to process and use the Subscriber’s Personal Information 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 any other requirement which may be required by any applicable law in force in South Africa from time to time. Telkom furthermore will use the Subscriber's information strictly in accordance with the provisions contained under its Individual Electronic Communications Service License and POPIA.

- 3.5. RICA applies to the Telkom Services and/or Products, which the Subscriber has requested Telkom to provide under this Agreement, and the Subscriber must, where applicable, comply with the relevant requirements of RICA, including, without generalising undertaking:
- 3.5.1. to provide Telkom with all required Personal Information and other details which Telkom is required to obtain from the Subscriber, in terms of section 39 and 40 of RICA;
- 3.5.2. not to transfer the Telkom Service and/or Products to another person, other than a family member or dependant without requesting such transfer from Telkom; provide Telkom with the Personal Information and other details of the person who is taking over the Telkom Services and/or Products, which request will be subject to Telkom's approval;
- 3.5.3. to immediately report any loss, theft or destruction of the SIM card and/or the Mobile Device used in connection with the Mobile Services to the South African Police Service ("SAPS").
- 3.6. In the event that the Subscriber provides Telkom with Personal Information about or on behalf of another data subject, the Subscriber confirms that it is authorised to (a) provide Telkom with the personal information; (b) consent on behalf of such data subjects to the processing of their personal information; and (c) receive any privacy notices on behalf of such data subject(s).
- 3.7. **ANY NON-COMPLIANCE WITH THESE PROVISIONS BY THE SUBSCRIBER WILL AMOUNT TO A MATERIAL BREACH BY THE SUBSCRIBER OF THIS AGREEMENT AND WILL ENTITLE TELKOM TO TERMINATE THE AGREEMENT AND TO CLAIM DAMAGES AS A RESULT OF THE TERMINATION.**
- 3.8. In addition to clause 3.7 above, any non-compliance of clause 3.5 above by the Subscriber will constitute a breach of RICA and this will give rise to a possible criminal charge and sanction being imposed against the Subscriber as per the requirements of RICA.
- 3.9. The Subscriber understands that Telkom may need to send Personal Information to its affiliates, service providers, or subcontractors in order to perform its duties in terms of these terms and conditions and agrees that Telkom may send Personal Information to its affiliates, service providers, or subcontractors (if any). The Subscriber further agrees that Telkom can send personal information to its affiliates, service providers or subcontractors in other countries in order to provide these services (including but not limited to cloud services), should such transfer occur, Telkom will enter into appropriate confidentiality agreements with the relevant affiliate, service provider, and/or subcontractor (if any) to ensure that such transfer will be subject to an adequate level of protection as described in POPIA.

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

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

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

- 4.1.1. The Agreement will start on the Commencement Date and will continue for either the Initial Period or on a Month-to-Month basis, as selected by the Subscriber under the Application and for any Renewal Period, where renewed by the Subscriber, 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 below.
- 4.1.2. On expiration of the Initial Period, the Subscriber 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 will set out the Renewal Period, and the applicable terms and conditions pertaining to such renewal. Telkom will notify Individual Consumers, who have concluded a Fixed Term Agreement with Telkom, not more than eighty (80) nor less than forty (40) business days prior to the date of expiry of the Initial Period of the impending expiry of their Fixed Term Agreement as per Section 14(2) (c) of the CPA.
- 4.1.3. Should a Subscriber 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 except for the adjustment of the charges associated with the month-to-month term and in the case of a Fixed Line services subject always to any variations in accordance with the Tariff List or the product/service specific terms and conditions. Any Month-to-Month Agreement as envisaged in terms of this clause may be terminated at any time by either Party by giving written notice to the other Party.
- 4.1.4. Any promotional/free/discounted elements will be valid for either the duration of the promotional period or the duration of the Initial Period of such promotional offer, and any such elements will thus, on expiry of the promotional period/Initial Period be charged at the standard fee applicable to such Services and/or Products.

##### **4.2. Cancellation or variation of the Telkom fixed line Services and/or Products before the Connection Date**

*WHERE THE SUBSCRIBER, BEFORE THE CONNECTION DATE, CANCELS OR VARIES ANY OF THE TELKOM SERVICES AND/OR PRODUCTS AS SELECTED UNDER THE APPLICATION FORM, WHICH CANCELLATION IS NOT AS A RESULT OF ANY BREACH ON THE PART OF TELKOM IN WHOLE OR IN PART, TELKOM WILL HAVE THE RIGHT TO CHARGE THE SUBSCRIBER 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**

- 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 Individual Consumer gives Telkom written notice of its election to terminate the Agreement.
- 4.3.2. Should the Individual Consumer elect to terminate the Fixed Term Agreement prior to the expiry of the Initial Period, then on receipt of the written 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 AMOUNT OWING IN TERMS OF A REASONABLE CANCELLATION FEE, WHICH AMOUNT WILL BE DETERMINED AND CALCULATED AT THE TIME WHEN THE WRITTEN NOTICE FOR TERMINATION WAS GIVEN BY THE INDIVIDUAL CONSUMER, USING THE GUIDELINES SET-OUT UNDER SECTION 14 AND REGULATION 5(2) OF THE CPA.

- 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 such amounts.
- 4.3.4. Termination by a Subscriber, other than an Individual Consumer is dealt with in clause 11.7 below.

## 5. INSTALLATIONS AND PROVISION OF SERVICES AND/OR PRODUCTS

*This clause sets out the type and quality of Services and/or Products which Telkom has agreed to provide the Subscriber, who bears the risk of any misuse of the Services and/or Products, and what must happen when these Services are interrupted by incidents/events which are beyond Telkom's control. It also covers the Subscriber's rights to change the Services, known as a Migration, and the right to request an International Roaming service, and Telkom's right to vary the number or the Services where required by the Authority which is beyond Telkom's control and which it is compelled/obliged to comply with.*

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

- 5.1.1. Any Basic Telephone Service, is exclusive of any required SE, unless the Subscriber has expressly, under the Application Form, requested that Telkom provide it with the Selected SE. The Selected SE will either be rented or sold to the Subscriber at the prices, fees or rates set out under the Tariff List or as notified by Telkom to the Subscriber.
- 5.1.2. WHERE ANY SE IS REQUIRED FOR THE USE AND ENJOYMENT OF FIXED LINE SERVICES WHICH ARE NOT PROVIDED BY TELKOM, THE SUBSCRIBER WILL BE RESPONSIBLE FOR INSTALLING SUCH SE AT THEIR OWN RISK, COST AND EXPENSE.
- 5.1.3. Telkom shall install the Connections required for the use of the Telkom fixed line Services and, where applicable, the Selected SE at the Subscriber's premises as set out under the Application, as requested by the Subscriber, 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 Subscriber. 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 Subscriber, the Subscriber accepting that Telkom will install the Connections required for the use of the Telkom fixed line 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.
- 5.1.5. Telkom will give the Subscriber 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 a Telkom fixed line 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 Subscriber is able to receive, via the Selected SE, the Telkom Services.
- 5.1.8. Only SE that has been type approved by the Authority as required by the ECA may be used in conjunction with the Telkom Service.
- 5.1.9. If the Selected SE, SE and/or Device 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 BY THE SUBSCRIBER WITHOUT THE APPROVAL OF THE AUTHORITY IN TERMS OF SECTION 35 OF THE ECA HAS BEEN USED IN CONNECTION WITH THE TELKOM SERVICES OR WHERE THE SE HAS BEEN INCORRECTLY INSTALLED OR CONNECTED TO THE CONNECTIONS AND THE SUBSCRIBER INDEMNIFIES TELKOM AGAINST ANY LIABILITY, LOSS OR DAMAGE WHICH TELKOM AND/OR THE SUBSCRIBER MAY INCUR AS A RESULT OF THE UNLAWFUL OR INCORRECT USAGE OF SUCH SE OR THE INCORRECT INSTALLATION OF THE SE BY THE SUBSCRIBER, WHAT EVER THE CASE MAY BE.
- 5.1.11. 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.
- 5.1.12. Where the Subscriber 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 Subscriber is responsible, at their 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 Subscriber may request Telkom to provide the full circuit on a one-stop-shop basis, at the rates quoted to the Subscriber on a case-by-case basis.
- 5.1.13. If the Subscriber is not the owner of the premises where the Service and/or where applicable the Selected SE is to be installed, the Subscriber 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 SUBSCRIBER 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.

5.1.14. The Subscriber must at their 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.

5.2. THE SUBSCRIBER MUST AT THEIR 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.

### 5.3. Directory service

5.3.1. Where the Service is a fixed line voice service provided by Telkom, the Subscriber has the option to have their information listed in the Directory. Telkom shall, at the Subscriber's election provide, an entry in the relevant Directory for the area in which the fixed line Service is provided, which shall comprise in an abbreviated format, the Subscriber's name, address and service number.

5.3.2. If the Subscriber indicates in their Order that their 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.

### 5.4. Use of the Telkom Services and/or Products

5.4.1. The provision of any Services and/or Products to the Subscriber does not confer on the Subscriber any right to use the Services and/or Products 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 Subscriber 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.

5.4.2. The Subscriber must, when using the Services and/or Products approved by the Authority, comply with all relevant legislation applicable to the use of the Services and/or Products including, without limitation, any licence or licence exemption that may be required in terms of the Act, and may only use the Services and/or Products 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.

5.4.3. The Subscriber will ensure and warrants that the TECN, the Telkom Services and/or Products shall not be used for improper, immoral or unlawful purposes.

5.4.4. The Subscriber shall not resell capacity on any communications facility obtained from Telkom including the Services and/or Products or cede or assign their rights to use the aforementioned Services and/or Products, and equipment or any element thereof or otherwise part control of them, without Telkom's written consent.

5.4.5. The Subscriber 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.

5.4.6. The Subscriber must at all times whilst this Agreement is in place:

5.4.6.1. comply with any instructions issued by Telkom which concern the Subscriber's use of the Telkom Services and/or Products, the SE, Telkom's facilities or matters related thereto, and which may be required to ensure the satisfactory provision of the Telkom Services and/or Products as a whole, or to protect the integrity of the TECN, or to deal with emergencies;

5.4.6.2. provide Telkom with all information relating to the Subscriber's use of the Telkom Services and/or Products, SE, the Telkom facilities or facilities or premises where the Telkom Services and/or Products 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 Services and/or Products, to protect the integrity of the TECN, or to deal with emergencies; and

5.4.6.3. allow Telkom free access to their premises during reasonable hours to install, inspect, maintain, or remove the Connection, SE or Selected SE.

5.4.7. Where an Exchange Connection or group of Exchange Connections rented by the Subscriber 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 Subscriber in writing of the need to increase the number of Exchange Connections by a specified number. Where the Subscriber fails to allow the installation of the additional Exchange Connections indicated in the notification, Telkom may suspend the Telkom Services, until such time as the Subscriber has contacted Telkom and has made arrangements for the installation of additional Exchange Connections. **TELKOM TAKES NO RESPONSIBILITY FOR THE QUALITY OF THE TELKOM SERVICES, WHICH MAY RESULT FROM ANY CIRCUMSTANCES AS ENVISAGED IN TERMS OF THIS CLAUSE.**

5.4.8. Where the Subscriber rents an ECS for the purpose of a PECN, such service may only be used to:

5.4.8.1. provide communications between two SE's (Selected or otherwise) within that PECN; or

5.4.8.2. receive communications from outside the PECN onto any SE (Selected or otherwise) within the PECN (break-in); or

5.4.8.3. 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).

5.4.9. 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 Subscriber has an appropriate licence or licence exemption that permits such switching via a PECN.

5.4.10. Subscribers 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.

5.4.11. If, in any building where Telkom must install the Telkom Services, no conduit-pipes are available for Telkom's use, Telkom may, at its discretion:

5.4.11.1. refuse to provide the Telkom Services in that building or in any part thereof until such conduit-pipes or other facilities have been so installed; or

- 5.4.11.2. quote an installation cost in respect of the required conduit-pipes, and if accepted by the Subscriber, install at the Subscriber's cost the required conduit-pipes or other facilities.

**5.5. Failure and unavailability of the Telkom Services and/or Products or Selected SE**

- 5.5.1. WHILST TELKOM OPERATES THE TECN/NETWORK, TELKOM HEREBY EXPRESSLY ADVISES THE SUBSCRIBER 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, ALLOW 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 SUBSCRIBER ACCEPTS AND ACKNOWLEDGES THIS FACT.
- 5.5.2. WHILST TELKOM WILL COMPLY WITH AND MEET THE MINIMUM SERVICE STANDARDS AND USE ITS BEST ENDEAVOURS TO ENSURE THAT THE TELKOM SERVICES AND/OR PRODUCTS AND ANY SELECTED SE ARE OPERATIONAL AT ALL TIMES, TELKOM DOES NOT WARRANT THAT THE TELKOM SERVICES AND/OR PRODUCTS WILL BE OPERATIONAL ON A TWENTY FOUR (24) HOUR THREE HUNDRED AND SIXTY FIVE (365) 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.
- 5.5.3. Telkom will endeavour to notify the Subscriber in advance of any failure of, or interruption to the Telkom Services and/or Products/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.
- 5.5.4. CERTAIN SELECTED SE AND/OR DEVICES ARE NOT MANUFACTURED BY TELKOM BUT ARE MANUFACTURED BY THIRD PARTIES. IN MOST CASES, DUE TO THE PROVISIONS OF THE ECA READ, TOGETHER WITH THE AUTHORITY CODE OF PRACTICE AND GUIDELINES, TELKOM WILL NOT BE IN A POSITION TO OPEN CERTAIN SELECTED SE AND/OR DEVICES OR TO TEST OR OPERATE THE SELECTED SE AND/OR DEVICES BEFORE THEY ARE HANDED TO THE SUBSCRIBER IN ORDER TO ENSURE THAT THEY ARE FIT FOR PURPOSE AND/OR ARE INTACT.
- 5.5.5. IN LIGHT OF THE DISCLOSURES CONTAINED UNDER CLAUSES 5.5.1 - 5.5.4 TELKOM EXPRESSLY STIPULATES THAT IT CANNOT WARRANT OR GUARANTEE THAT THE TELKOM SERVICES AND/OR PRODUCTS WILL:
- 5.5.5.1. AT ALL TIMES BE FREE OF ERRORS OR INTERRUPTIONS;
- 5.5.5.2. ALWAYS ARE AVAILABLE;
- 5.5.5.3. BE FIT FOR ANY PURPOSE;
- 5.5.5.4. NOT INFRINGE ON ANY THIRD-PARTY RIGHTS;
- 5.5.5.5. BE SECURE AND RELIABLE,
- SAVE WHERE THE TELKOM SERVICES AND/OR PRODUCTS, 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 AND 56 OF THE CPA, WHERE APPLICABLE.
- 5.5.6. Notwithstanding the provisions of clause 5.5.5 above, Telkom will endeavour to notify the Subscriber in advance of any failure of, or interruption to the Telkom Services and/or Products, 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.
- 5.5.7. TELKOM AND THE SUBSCRIBER AND MORE IN PARTICULAR THE CONSUMER CONFIRM THAT THE PROVISIONS CONTAINED UNDER CLAUSE 5.5 EXPRESSLY SET OUT THAT THE SELECTED SE, DEVICES 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) OR 55 (6) OF THE CPA, THE SUBSCRIBER AND MORE IN PARTICULAR THE CONSUMER, ACKNOWLEDGES THAT IT WILL NOT BE ALLOWED TO:
- 5.5.7.1. withhold any amounts due and owing to Telkom; or
- 5.5.7.2. deduct any monies,
- in respect of "dropped" or discontinued calls and/or connections or any temporarily unavailability of the Telkom Services and/or Products, 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 Subscriber's remedies will be limited, at the Subscriber'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 and/or Products which have not been performed or which have not been available, having regard to the extent of the failure.
- 5.5.8. Furthermore, where the Connections or the Selected SE and/or Devices are defective, or faulty, then in such an event the Consumer's rights will be limited to those set out under clause 8.

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

- 5.6.1. Notwithstanding anything to the contrary contained in the Agreement, the Subscriber does not own the telephone/mobile number that is allocated to it in respect of the Telkom Services and/or Products which number is owned by the Authority and which has been allocated to Telkom as per the provisions of the ECA.
- 5.6.2. 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 and/or Products, the Selected SE, Devices 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 Subscriber 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 Subscriber of the number change, the reasons therefore and the new number.

- 5.6.3. TELKOM WILL NOT BE LIABLE TO THE SUBSCRIBER 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 5.6.1 AND CLAUSE 5.6.2.

**5.7. Subscriber's right to request an outdoor transfer of the Telkom fixed line Services or Selected SE**

- 5.7.1. Where the Subscriber requests an outdoor transfer of an existing Telkom fixed line Service to a different building or premises, such application will be treated as:

- 5.7.1.1. an order to terminate the Services at the existing building or premises subject to the payment of the unexpired portion of the Fixed Term Agreement in the case of a Subscriber who is not an Individual Consumer and where the Subscriber is an Individual Consumer a cancellation fee determined in accordance with section 14 read together with Regulation 5 of the CPA; and
- 5.7.1.2. 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.

**5.8. Subscriber's right to a Migration of Selected Telkom Services and/or Products**

- 5.8.1. The Subscriber has the right to request an amendment and/or variation of the Telkom Services and/or Products, which they are receiving under the Agreement, which election, where accepted by Telkom is known as a "Migration".

- 5.8.2. Any request by a Subscriber to migrate, will be subject to the following conditions:

- 5.8.3. ANY MIGRATION WILL BE AT TELKOM'S SOLE DISCRETION AND WHERE SUCH MIGRATION HAS BEEN PERMITTED, THIS WILL BE SUBJECT TO THE PRODUCT SPECIFIC TERMS AND CONDITIONS, WHICH MAY ATTRACT AN APPLICABLE MIGRATION CHARGE, WHICH CHARGES WILL BE ADVISED TO THE SUBSCRIBER BY TELKOM;

- 5.8.3.1. any Migration will be subject to the customer signing a new Agreement; and

**5.9. Bundled service offering**

- 5.9.1. Should the Telkom Services and/or Products incorporate bundled elements including, but not limited to, voice minutes/seconds, data usage capacity), messaging (SMS/MMS) as well as bonus elements such as bonus voice minutes/seconds, bonus data usage capacity, bonus messaging (SMS/MMS) as selected by the Subscriber, the following conditions shall apply to such bundled elements:

- 5.9.1.1. 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/or Tariff Plan; and

- 5.9.1.2. specific conditions pertaining to the carryover of unused elements shall be explained separately for each individual product in the Tariff List and/or Tariff Plan.

- 5.9.2. In the event of the Services and/or Products being subject to a Fixed Term Agreement, such agreement will, upon expiry of the fixed term, continue on a month-to-month basis subject to any applicable variation in price. Bonus or free elements such as data/voice/special elements or discounts on promotional deals are subject to promotional terms and conditions. This is valid for the specified promotional period or for the Fixed Term Agreement. On expiration of the promotional period/Fixed Term Agreement those bonus/free/discount elements will expire, and the Subscriber will be charged the standard price for the Services and/or Products. The Subscriber will continue on a month-to-month basis at the standard price which may differ from the original fixed term and/or promotional price/offer.

**5.10. Risk in, Theft and Loss of Telkom Connections, Devices, SIM cards or Selected SE**

- 5.10.1. Whenever any Connection, Device, SIM card or Selected SE is lost, stolen or destroyed, the Subscriber must immediately notify Telkom in writing of such instance and also report the matter to the SAPS.

- 5.10.2. RISK IN AND TO THE USE OF THE TELKOM SERVICES AND/OR PRODUCTS, WILL PASS TO THE SUBSCRIBER ON THE DATE OF CONNECTION/ACTIVATION OR DELIVERY WHICHEVER IS APPLICABLE. TELKOM RESERVES THE RIGHT TO HOLD THE SUBSCRIBER LIABLE FOR THE COST TO REPLACE THE SERVICES AND/OR PRODUCTS REGARDLESS OF THE CAUSE OF ANY SUCH LOSS OR DESTRUCTION, UNLESS SAME IS CAUSED BY TELKOM AND/OR IT'S SUBCONTRACTORS.

**5.11. Maintenance of the Telkom fixed line Services and Selected SE**

- 5.11.1. The Telkom fixed line Service, any Connection or Selected SE used by the Subscriber will be deemed to be in good working order until Telkom is advised otherwise.

- 5.11.2. Unless clauses 5.11.5 or 5.11.6 apply, or save where expressly stated to the contrary, the costs in respect of any repair and/or maintenance of the Connections and Telkom fixed line Services, will be incurred and covered by Telkom and will be deemed to be included in the Charges levied in respect of the Telkom Services.

- 5.11.3. Telkom will attend to fixed line faults reported by the Subscriber during Office Hours and will apply its reasonable endeavours to have the affected Connections and/or Telkom Services restored in the shortest possible time, and in line with the standards set down under the Minimum Service Standards. The Subscriber 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 5.11.5.

- 5.11.4. The Subscriber is responsible for maintaining all Selected SE or SE, used in connection with the Telkom fixed line Services, 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.

- 5.11.5. IF THE SUBSCRIBER REQUESTS THAT A FAULT BE ATTENDED TO IMMEDIATELY, AND WHERE TELKOM IS IN A POSITION TO DO SO, AND IF THE WORK NEEDED TO REPAIR IS TO 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.

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

## 5.12. SIM Card and Associated costs

- 5.12.1. Telkom will provide the Subscriber with the Services and/or Products; it will not have any control over the use of the Services and/or Products. Therefore, the risk and related liability in respect of the availability and use of the Services and/or Products will pass to the Subscriber on delivery of the Services and/or Products. Accordingly, the Subscriber will be liable for all Charges in respect of the use of the Services and/or Products including all costs and Charges associated with the SIM card used in any of the Services and/or Products, as the case may be including all Charges generated by the SIM card:

- 5.12.1.1. irrespective of whether or not such SIM card has been used by the Subscriber or another user with or without the permission of the Subscriber;
- 5.12.1.2. irrespective of the place or area where the Services and/or Products, Device or SIM card, as the case may be, is used including all calls made or received, SMS's and MMS's sent, or data connections established, as the case may be using the SIM card within or to and/or from or, roaming within international destinations or networks;
- 5.12.1.3. regardless of any call barring/alerting Services (with or without a limit) which have been requested by the Subscriber and form part of the Services and/or Products and associated Tariff Plan,

The Subscriber acknowledging that the transfer of such risk is fair under the circumstances.

- 5.12.2. Whenever a Device and the associated SIM-card is lost, stolen, or destroyed:
- 5.12.2.1. the Subscriber must immediately notify Telkom and any police official at any police station in writing that the Device and SIM card has been lost, stolen, misplaced or destroyed as per section 41 of RICA; and
- 5.12.2.2. the Subscriber is liable for the cost to replace the Device and SIM card, regardless of the cause of any such loss or destruction.

## 5.13. International Roaming for mobile Services

The following conditions apply to International Roaming Services for mobile services provided by Telkom:

- 5.13.1. International Roaming is an optional feature available on request by the Subscriber;
- 5.13.2. International Roaming is available in certain countries and operators which are specified under the following website <https://www.telkom.co.za/campaign/international-roaming> which list may change from time to time;
- 5.13.3. International Roaming will be permitted at Telkom's sole discretion and may be subject to the payment of a deposit, which will be determined in Telkom's sole discretion, for the Activation of the feature;
- 5.13.4. Bundled Services as described in clause 5.9.1 cannot be utilised as deductible elements by Post-Paid Accounts while utilising Services during International Roaming;
- 5.13.5. Notwithstanding clause 5.13.4 holders of any Hybrid and Pre-paid accounts will be permitted to utilise accumulated airtime in the form of monetary value (Rand & Cents) as deductible elements while utilising Services during International Roaming;
- 5.13.6. loyalty awards and bonus minutes/SMS and/or data are not deductible elements for use when roaming internationally; and
- 5.13.7. while roaming, Charges will be levied and will apply in respect of the following scenarios:
- i) receiving calls while abroad;
  - ii) making calls while abroad;
  - iii) sending SMS (Short Message Service) while abroad;
  - iv) receiving MMS (Multimedia Message Service) while abroad;
  - v) sending MMS (Multimedia Message Service) while abroad;
  - vi) Use of data Services including without limitation features like GPRS, EDGE, 3G, HSDPA, HSUPA or HSPA+, VoLTE; and
  - vii) any other usage of the Network of the foreign operator, which rates can be viewed at <https://www.telkom.co.za/campaign/international-roaming>.

## 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/or Products which the Subscriber has Ordered, and its right to ask for a deposit and set credit limits and how the Invoice will be paid by the Subscriber.*

- 6.1. In return for the supply of and access to the Telkom Services and/or Products, the Subscriber must pay to Telkom the Charges as per the Tariff List and/or Tariff Plan or as advised by Telkom and as set out under the Invoice.
- 6.2. For the avoidance of doubt any Invoice submitted to the Subscriber by Telkom, will set out and detail the following Charges, where applicable:
- 6.2.1. **installation charge:** the installation charge applicable to fixed line services, 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. **connection charge:** the Connection charge, the SIM card 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 selected mobile Services;
- 6.2.3. **reconnection charge:** levied, where the Subscriber's right to use the Telkom Services and/or Products is suspended due to non-payment, and which fee is in respect of any restoration of the Telkom Services (after the full outstanding amount has been paid) together with any outstanding amounts which are due to Telkom and any deposit which Telkom requests to be paid;
- 6.2.4. **service charges:** levied on each occasion for the provision of miscellaneous services requested by the Subscriber;
- 6.2.5. **subscription/rental charges:** levied periodically, usually on a monthly basis, in respect of the use and availability of the Telkom Services and/or Products and subject to a minimum subscription/rental period of one calendar month. Subscription/rental charges are charged in advance for the first and any subsequent rental period, with effect from the date of the Subscriber's first Invoice of the Ordered Services and/or Products. In the event of an upgrade, the new subscription/rental charge will only commence on expiry of the Initial Period of the previously ordered Services and/or Products;
- 6.2.6. **maintenance charges:** levied periodically, usually on a monthly basis, or on performance, depending on the type of maintenance contract, for maintenance of the Telkom fixed line Services and or Selected SE that Telkom has contracted to provide to the Subscriber and which are not covered by the subscription 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;
- 6.2.7. **cancellation fee:** levied to recover any costs incurred by Telkom in respect of the Subscriber electing to terminate the Agreement as per the provisions of clauses 4.2, 4.3 and 5.7 where applicable;
- 6.2.8. **call/usage charges:** levied on the use of the Telkom Services 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 Subscriber at the end of each billing period and are payable on the Due Date of the Invoice;
- 6.2.9. **Abortive Costs:** levied to recover abortive costs incurred by Telkom in relation to the provision and/or maintenance of electronic communication 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 Services and/or Products are provided, and/or for work to repair faults caused by non-Telkom equipment. Abortive Costs are billed to the Subscriber at the end of the billing period in which they are incurred and are payable on the Due Date of the Invoice;
- 6.2.10. **interest on overdue amounts:** any amount due by the Subscriber to Telkom not paid on or before the Due Date indicated on the Invoice, shall bear Interest, compounded monthly, calculated from the date of issue of the Invoice until date of actual payment thereof;
- 6.2.11. **migration costs:** levied in respect of any agreement reached by the Parties in respect of a Migration by the Subscriber;
- 6.2.12. **VAT:** value added tax levied on the Charges as required under the Value Added Tax Act 89 of 1991;
- 6.2.13. **debit order rejection charge:** levied in respect of a debit order being rejected by the Bank as set out in clause 6.5.5 below.

### 6.3. Deposits, set off and unpaid accounts

- 6.3.1. An Application for Telkom Services and/or Products will be subject to Telkom's Credit Referencing Procedure, in terms of which Telkom shall be entitled to levy and collect from the Subscriber a security which could be either the payment of a deposit, surety or a bank guarantee, as determined by Telkom in its sole discretion, and communicated to the Subscriber when Telkom accepts the Subscriber's application and agrees to provide the Subscriber with the Telkom Services and/or Products, where applicable, which will be a pre-condition for providing the Telkom Services and/or Products. The deposit is to serve as security for payment of any amounts set out under the Invoice which are due to Telkom by the Subscriber, but not paid on Due Date.
- 6.3.2. Where any amounts due to Telkom by the Subscriber, are not paid on Due Date, Telkom shall have the right, without prejudice to any of its rights, to:
- 6.3.2.1. charge Interest on such outstanding amount from the Invoice date to the date that Telkom receives the money in its bank account;
- 6.3.2.2. suspend the Telkom Services and/or Products, and give the Subscriber reasonable notice to pay all arrears/outstanding amounts which suspension will stay in place until the Subscriber has paid all arrears amounts and Interest in full;
- 6.3.2.3. use the deposit (where one has been paid) to settle any amount due to Telkom by the Subscriber together with interest thereon at the Interest rate, and
- 6.3.2.4. demand from the Subscriber:
- 6.3.2.4.1 the payment of a deposit where none has been paid;
- 6.3.4.1.2. payment of an additional or an increased deposit;
- 6.3.4.2.3. payment of a reconnection charge; and
- 6.3.4.2.4. payment of a debit order rejection charge (if applicable) as determined by Telkom as a pre-condition for restoring the Telkom Services.

### 6.4. Billing

- 6.4.1. Telkom will periodically provide the Subscriber, usually on a monthly basis, with an account, which constitutes a statement in respect of the Telkom Services and/or Products where applicable, and an Invoice for the

amounts payable by the Subscriber. The Invoice will be sent by electronic means (email/MMS/etc.) at no charge to the Subscriber.

- 6.4.2. Detailed Billing is available to the Subscriber and will be provided on request against the payment of the applicable service charge set out under the Tariff List/Tariff Plan.
- 6.4.3. Where Telkom notices that there is a significant increase in call/usage charges since the Subscriber's last Invoice, Telkom may, at its own discretion issue to the Subscriber an Invoice outside the normal billing cycle, an/or demand immediate payment of any amounts due by the Subscriber in respect of such Invoice.
- 6.4.4. Telkom reserves the right to round a fraction of 1c (one cent) up 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 Subscriber is on the face of it, and until the contrary is proved, (prima facie) proof of the amount due by the Subscriber to Telkom. The Subscriber 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 Subscriber's next Invoice. Should Telkom, however, determine and inform the Subscriber 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 Subscriber 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 Subscriber to Telkom shall be paid by way of a mandatory debit order, free of deduction or set-off.
- 6.5.3. Non-receipt of an Invoice by the Subscriber shall not be considered as a valid reason for late or non-payment.
- 6.5.4. The Subscriber shall be liable and responsible for payment until payment has been received into Telkom's bank account.
- 6.5.5. Telkom may, in terms of the Payment Association of South Africa (PASA), affect any debit order payment by means of Debi Check. The Subscriber shall be in breach of the Agreement by cancelling any debit order without the prior written consent of Telkom or where any debit order payment is returned unpaid or stopped or should any charge card account or credit card account of the Subscriber be rejected. In such case Telkom will have the right to suspend the Subscriber's account until such arrears amounts together with Interest thereon have been received and paid in full. Telkom reserves the right to levy a debit order rejection charge in the event of a debit order payment being returned unpaid by the Bank and the Subscriber will, in addition to the debit order rejection charge, also be liable for a reconnection charge should the Subscriber's Telkom Services be suspended because of the non-payment.
- 6.5.6. Where more than one Telkom Service is provided to the Subscriber and the Subscriber 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 to adjust the Charges levied to a Subscriber from time-to-time as determined by Telkom, which adjustment may also be applicable to any Fixed Term Agreement entered into by the Subscriber.
- 6.6.2. Any increase as per clause 6.6.1 will be given to the Subscriber in writing, which may include a data message as provided for in the ECA Whilst Telkom shall use its best endeavours to give the Subscriber timeous notice of any such changes, any such increase or decrease will be displayed on the Telkom Website with effect from the date of such increase or decrease.
- 6.6.3. Any promotional/free/discounted elements will be valid for either the duration of the promotional period or the duration of the Initial Period of such promotional offer, and any such elements will thus, on expiry of the promotional period/Initial Period be charged at the standard fee applicable to such Services and/or Products.
- 6.6.4. 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 written notice of its election to cancel the Agreement. **WHERE A CONSUMER TERMINATES THE AGREEMENT AS PER THEIR RIGHTS UNDER THIS CLAUSE 6.6.4 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 PRIOR TO SUCH TERMINATION.**

#### 6.7. Credit Limit and Spend Limit

- 6.7.1. Telkom will, based on the Subscriber's credit profile, impose a monetary credit limit. Should the Subscriber exceed such credit limit Telkom shall be entitled to, after the Subscriber has been given notice of such overspend, and which the Subscriber has not responded to, suspend the Telkom Services and/or Products.
- 6.7.2. In addition to the credit limited set-out in clause 6.7.1 above, the Subscriber and/or Telkom may also allocate a monetary spend limit on the total value of Usage Charges levied per month, per Service. Such a spend limit cannot exceed the credit limit allocated according to the Subscriber's credit profile.
- 6.7.3. However, such credit/spend limits are rendered by Telkom in an effort to assist Subscribers with the management of their accounts, and Telkom gives no undertaking in so far as the reliability of the services are

concerned, whether such credit limit and/or spend limit was exceeded arising from either fraud and/or spend. The Subscriber will remain liable for any charges incurred which exceeds the imposed credit limit and/or spend limit as certain charges, such as but not limited to, interconnect charges and roaming charges, do not register in real time.

## 7. DELIVERY, RISK AND OWNERSHIP

***This section sets out how the Services and/or Products will be delivered to the Subscriber. It also details when risk and ownership in the Devices and Selected SE will pass to the Subscriber.***

- 7.1. Telkom shall deliver the Services and/or Products to the Subscriber, within a reasonable period and by no later than the periods set out under the Minimum Service Standards once it has processed the Application and agreed to provide the Subscriber with the Services and/or Products.
- 7.2. Delivery of the Device(s) and/or (where applicable) Selected SE will be made by Telkom, at its election and as communicated to the Subscriber, at either,
  - 7.2.1. the Telkom offices set out on the Application;
  - 7.2.2. the offices of an authorised and appointed reseller or dealer of Telkom and/or the respective branches and/or retail outlets of the said reseller or dealer; or
  - 7.2.3. the Subscriber's premises set out under the Application using the Services of a Telkom appointed courier.
- 7.3. The risk of loss or damage in and to the Devices, Selected SE and/or Products will pass to the Subscriber on delivery thereof to the Subscriber, including without limitation the risk of loss, theft, destruction, or damage, unless same is caused by Telkom. Notwithstanding the passing of risk, the ownership of the Devices/Products and/or Selected SE provided by Telkom shall remain vested in Telkom unless the Subscriber has bought and paid in full (outright purchased) such Devices or on expiry of the Initial Period as set-out in the relevant Application.
- 7.4. Should the Subscriber terminate the Services and/or Products prior to the expiry of the Initial Period, ownership of any associated Products/Devices and/or Selected SE rented in terms of an Agreement will pass to the Subscriber only after the early termination fee as set out in clauses 4.3.2 or 11.7 has been settled in full.
- 7.5. Notwithstanding clause 7.4 above, Telkom may in its sole discretion, in instances where the Subscriber has rented for an Initial Period, and not outright purchased, the Products/Devices and/or Selected SE elect to abandon ownership of such Products/Devices and/or Selected SE, in which case the ownership will vest with the Subscriber.
- 7.6. Notwithstanding that the Subscriber has purchased or leased the Services and/or Products from Telkom or from any third party, should the Devices, Selected SE and/or the SIM card be damaged, lost, stolen, be or become un-operational or undergo repair, the Subscriber agrees that this Agreement is not conditional upon the availability or operation of the aforementioned Devices, Selected SE and/or SIM card and this Agreement will continue in full force and effect and the Subscriber must continue to pay all amounts due in terms of this Agreement as per the applicable Tariff Plan as reflected in the Monthly Invoice.

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

***The section details what Subscribers need to do if a Device and/or Selected SE is defective and how it will have to be returned to Telkom and the circumstances when Telkom will replace such device and whether or when Subscribers will receive a refund.***

### 8.1. Consumer's Implied Warranty on Mobile Devices

- 8.1.1. "7 day out of box failure"
  - 8.1.1.1. Where the Mobile Device is returned by the Subscriber within seven (7) days after delivery, because it is allegedly defective or faulty then Telkom, once it has concluded that the Device is in fact faulty or defective, it will replace the Device on behalf of the manufacturer or supplier whatever the case may be with an equivalent Device, provided such Device is accompanied with proof of purchase indicating that such Device has in fact been purchased from Telkom.
  - 8.1.2. Where the Devices are not replaced under a seven (7) day out of box failure contemplated under clause 8.1.1.1 above and in light of the disclosures contained in clause 5 and more in particular clause 5.5.4, Telkom expressly stipulates and the Subscriber acknowledges that Telkom provides the Devices "as available, when available and as is".
 

In other words because Telkom is not the manufacturer of the Devices and because it is unable to open the sealed package and inspect the Devices, Telkom cannot warrant or guarantee that the Devices will at all times be suitable for the intended purpose, are of good quality and in good working order and free of defects, free of errors or interruptions, will always be available, are fit for any purpose, do not infringe on any third party rights, or that they are secure and reliable.
  - 8.1.3. Notwithstanding the above disclaimer, should the Devices, including the software and battery used in connection with the Products, fall short of the standards set out under section 55(2) of the CPA, and such defect or fault becomes apparent within six (6) months of delivery of the Devices, the Consumer (which right is not available to the Subscriber) must immediately notify Telkom of the defect and/or failure and bring the Devices to a nominated Telkom repair centre together with the Consumer's proof of purchase.
  - 8.1.4. No return will be accepted by Telkom unless the Consumer:
    - 8.1.4.1. Can provide proof of purchase, which must be in the form of a sales record or Invoice; and
    - 8.1.4.2. Returns the complete unit of the Goods including packaging, accessories (including but not limited to CD's containing software, manuals, AC Adapter (charger) and any other inclusive part of the Device(s)).
  - 8.1.5. On return of the Devices, the Consumer must:
    - 8.1.5.1. describe what caused the Devices to malfunction or to stop functioning; and
    - 8.1.5.2. allow the Telkom representative to inspect the Devices for physical damage and/or signs of liquid damage.

- 8.1.6. In addition to clause 8.1.4, the acceptance of any returned Devices by Telkom from a Consumer is subject to the following terms and conditions:
- 8.1.6.1. the Devices will be sent to the Telkom technical centre for further examination, and analysis, which will take no longer than ten (10) Business Days or such longer period as notified by Telkom, subject always to the provisions contained in the Minimum Service Standards;
  - 8.1.6.2. acceptance of the Devices 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 Devices are defective or that it is not in accordance with the standards as set out in section 55(2) of the CPA;
  - 8.1.6.3. Telkom will notify the Consumer as soon as is reasonably possible and within the prescribed period set out under sub clause 8.1.6.1 of the results of any inspection and/or analysis and the cause of the defect and/or failure and whether the manufacturer accepts responsibility or not for such defect and or failure.
- 8.1.7. Where on inspection it has been found that the Devices are not in accordance with the standards set out in section 55(2) of the CPA as the case may be, and Telkom has discussed the matter with the manufacturer or supplier who has then agreed to accept responsibility for the ascertained defect, then Telkom, on behalf of the supplier and/or manufacturer will either, at the option of the Consumer:
- 8.1.7.1. Repair or replace the failed, unsafe or defective part of the Devices; or
  - 8.1.7.2. Instead, at the election of the Consumer, refund to the Consumer the price paid by the Consumer, for the returned Devices, less any reasonable Usage Charges, as defined under clause 1 of the Agreement.
- 8.1.8. Where any returned Devices are found to fall outside of the minimum warranty period set out under section 55(2) of the CPA or where such warranty set out under section 55(2) of the CPA is not applicable, then the supplier, manufacturer and in particular Telkom will have no further responsibility or liability in relation to the returned Devices, save that it has the right to offer to repair, at the Consumer/Subscriber's cost, the Devices and subject further to the following conditions:
- 8.1.8.1. any acceptance of the Devices 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 Devices; and
  - 8.1.8.2. Telkom will not be liable for any loss, damage, destruction, theft or negligent workmanship howsoever or by whomsoever caused to the Devices whilst under the manufacturer or local supplier's control who is performing the repair or maintenance work; and
  - 8.1.8.3. 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/Subscriber, be for the Consumer/Subscriber's account.

## **8.2. Consumer's Implied Warranty on Selected SE**

- 8.2.1. In light of the disclosures contained under clauses 5.5, Telkom expressly stipulates 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.
- 8.2.2. 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 six (6) 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.
- 8.2.3. 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.
- 8.2.4. On return of the Selected SE, the Consumer must:
- 8.2.4.1. describe what caused the Selected SE to malfunction or to stop functioning; and
  - 8.2.4.2. allow the Telkom representative to inspect the Selected SE for physical damage and/or signs of liquid damage.
- 8.2.5. Further to clause 8.3, the acceptance of the returned SE by Telkom is subject to the following terms and conditions:
- 8.2.5.1. the Selected SE will be sent to the Telkom technical centre for further examination, and analysis, which will take no longer than three (3) weeks or such a longer period as notified by Telkom;
  - 8.2.5.2. 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;
  - 8.2.5.3. Telkom will notify the Consumer as soon as is reasonably possible and within the prescribed period set out under sub clause 8.1.6 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.
- 8.2.6. 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:
- 8.2.6.1. repair or replace the failed, unsafe or defective part of the Selected SE; or

8.2.6.2. 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.

8.2.7. 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:

8.2.7.1. 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

8.2.7.2. 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

8.2.7.3. 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's account.

### **8.3. Subscriber's warranty on Devices and/or Selected SE**

8.3.1. Where clauses 8.1 and 8.2 does not apply, because the Subscriber is not a Consumer, as defined, and where the Subscriber is of the view that the Devices and/or Selected SE is faulty, then the Subscriber must immediately notify Telkom of the extent of the defect and/or failure.

8.3.2. Upon receipt of the complaint Telkom will notify the Subscriber where to take the faulty Devices and/or Selected SE for the purposes of inspection.

8.3.3. The acceptance of any returned goods by Telkom in terms of this clause 8.3, is subject to the following terms and conditions:

8.3.3.1. the faulty goods will be sent to the Telkom technical centre for further examination, and analysis, which will take no longer than three (3) weeks or such a longer period as notified by Telkom;

8.3.3.2. acceptance of the faulty Devices 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 Devices are defective;

8.3.3.3. Telkom will notify the Subscriber as soon as is reasonably possible and within the prescribed period set out under sub clause 8.3.3.1 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;

8.3.3.4. 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 Subscriber to the supplier and/or manufacturer the defective Selected SE for repair and/or replacement as per the standard manufacturer's warranty;

8.3.3.5. 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.

### **8.4. Suspension and Withdrawal of selected Telkom Services and/or Products**

8.4.1. Telkom may from time to time, and on notice where this is possible, or without notice where this is not possible, suspend the Telkom Services and/or Products including VAS and where applicable the right to use the Devices and/or Selected SE's, or in its discretion disconnect the Devices and/or Selected SE's from the TECN in any of the following circumstances:

8.4.1.1. for modifications to, or planned maintenance of the TECN;

8.4.1.2. for routine maintenance of international facilities;

8.4.1.3. if the Subscriber has failed to pay any amounts due to Telkom by Due Date as reflected in the Invoice;

8.4.1.4. where the Telkom Services are suspended or discontinued as a result of third parties experiencing problems on their infrastructure which has affected or disrupted the Telkom Service;

8.4.1.5. where certain Telkom Services and/or Products (including VAS) are being abused by the Subscriber or by Subscribers in general; and/or

8.4.1.6. where the Telkom Services and/or Product(s) are found to contain a security risk or shortcoming which enables the Subscriber to exploit the Services and/or Products to the detriment of Telkom.

8.4.2. The Subscriber accepts that the rights to suspend the Telkom Services and/or Product(s) are necessary in order to protect the interest of both the Subscriber and/or 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 8.4.1.3, 8.4.1.5, or 8.4.1.6 remain liable for all Charges due and set out under any Invoice which may be levied by Telkom during the period of suspension.

8.4.3. No interruption of the Telkom Services referred to under clause 8.4.1 shall be deemed to have occurred during any modifications and/or maintenance window or any authorised suspension of a service and the Subscriber acknowledges that it shall have no claim against Telkom in respect of all or any of the interruptions described under clause 8.4.1, save that the Subscriber will in the case of the circumstances set out under clauses 8.4.1.1, 8.4.1.2, and 8.4.1.4 and in instances where such interruption has lasted for more than twenty-four (24) hours, 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.

8.4.4. 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 Services and/or Products and where applicable the right to

use the Devices and/or Selected SE, or in its discretion disconnect the Devices and/or Selected SE's from the TECN in any of the following circumstances:

- 8.4.4.1. where the Telkom Services and/or Products are found to contain a defect which enables the Subscriber to exploit the Telkom Services to the detriment of Telkom;
  - 8.4.4.2. where the Telkom Services and/or Products (including VAS) have reached the end of their lifespan and are uneconomical to maintain or continue;
  - 8.4.4.3. where it is unduly burdensome and/or unfeasible for Telkom to provide such Services;
  - 8.4.4.4. where there has been an insignificant interest in the use of particular Telkom Services and/or Products (including VAS) or Selected SE;
  - 8.4.4.5. in response to an instruction from the Authority or in terms of the Act or some other law or body the Telkom Services and/or Products (including VAS), Devices, Selected SE or SE is discontinued;
  - 8.4.4.6. where the Subscriber uses Devices or SE's that are not approved by the Authority for such use;
  - 8.4.4.7. if the Subscriber has received the Telkom Services and/or Products, Devices or Selected SE's as a result of fraud or misrepresentation;
  - 8.4.4.8. if the Subscriber uses in connection with the Telkom Services, SE that belongs to Telkom but which the Subscriber has obtained illegally;
  - 8.4.4.9. if the Subscriber makes or offers to make any arrangement or composition with its creditors or commits any act of insolvency in terms of the Insolvency Act, 24 of 1936 or any other applicable legislation;
  - 8.4.4.10. if the Subscriber 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 Services and/or Products or the TECN;
  - 8.4.4.11. if the Subscriber is using, or permitting the use of the Telkom Services and/or Products or any element thereof for any illegal purpose or in contravention of the act of Parliament;
  - 8.4.4.12. if Telkom has been instructed to do so by any authority competent to issue such instruction;
  - 8.4.4.13. where the Telkom Services are 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;
  - 8.4.4.14. for any other reason incidental to 8.4.4.1 - 8.4.4.14 inclusive.
- 8.4.5. The Subscriber accepts that the rights to terminate or discontinue the Services and/or Products, Devices and/or Selected SE are necessary in order to protect the interest of both the Subscriber and Telkom and that where any such Services and/or Products, Devices or Selected SE are discontinued that the Subscriber will be entitled to receive a reduction of the Charge levied by Telkom pro rata to such discontinuation or termination.
- 8.4.6. Where Telkom Services and/or Products (including VAS, Devices or Selected SE are discontinued or suspended, as per this clause 8.4 then the Subscriber agrees that it will not:
- 8.4.6.1. withhold any amounts which are, or which may become due and owing to Telkom;
  - 8.4.6.2. deduct any monies from the Charges, save for the amounts which Telkom may agree to as per the provisions of clauses 8.4.2 and 8.4.3 above; and/or
  - 8.4.6.3. 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 and/or Products, the Selected SE or the SE.*

- 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 Subscriber as a result of any entry, incorrect entry or omission of an entry in the Directory.
- 9.3. LIABILITY FOR DAMAGES CAUSED BY TELKOM WHICH ARISE OR OCCUR AS A RESULT OF THE USE, INSTALLATION, MAINTENANCE OR REMOVAL OF THE TELKOM CONNECTIONS, PRODUCTS, DEVICES, AND/OR SELECTED SE WILL BE SUBJECT TO THE PROVISIONS OF SECTION 61 OF THE CPA.
- 9.4. THE CONSUMER IN THIS CASE WILL BE ALLOWED TO AVAIL ITSELF TO THE PROVISIONS CONTAINED UNDER SECTION 61 OF THE CPA SO LONG AS THE CONSUMER IS ABLE TO SHOW THAT THE TELKOM CONNECTIONS, SERVICES, AND/OR PRODUCTS, DEVICES, SELECTED SE WERE OR ARE DEFECTIVE AND THAT SUCH DEFECT GAVE RISE TO THE LOSS OR DAMAGE BUT SUBJECT ALWAYS TO THE DEFENSES PERMISSIBLE AND AVAILABLE TO TELKOM AND ITS SERVICE PROVIDERS UNDER SECTION 61 OF THE CPA.
- 9.5. SUBJECT TO THE PROVISIONS OF CLAUSE 9.3 ABOVE, TELKOM SHALL NOT BE LIABLE TO THE SUBSCRIBER OR ANY OTHER PERSON WHOMSOEVER, UNDER ANY CIRCUMSTANCES WHATSOEVER, OR INCUR ANY LIABILITY FOR ANY LOSS OR DAMAGES TO THE SUBSCRIBER OR ANY OTHER PERSON OR USER, WHICH ARISES OR OCCURS AS A RESULT OF THE USE OF, OR ARISING OUT OF THE PROVISION OF, THE CONNECTIONS; THE TELKOM SERVICES AND/OR PRODUCTS, DEVICES, THE SELECTED SE; THE SE; AND/OR THE INSTALLATION, MAINTENANCE OR REMOVAL OF THE CONNECTION, THE TELKOM SERVICES AND/OR PRODUCTS, DEVICES, SELECTED SE OR SE, AND WHETHER SUCH CLAIM, ACTION OR DAMAGE IS DIRECT OR INDIRECT, CONSEQUENTIAL OR CONTINGENT. IN PARTICULAR, TELKOM SHALL NOT BE LIABLE FOR ANY:
  - 9.5.1. LOSS OF LIFE,
  - 9.5.2. INJURY,

- 9.5.3. MEDICAL EXPENSES,
- 9.5.4. SUPPORT,
- 9.5.5. FINANCIAL LOSS OR FINANCIAL SUPPORT,
- 9.5.6. LOSS OF EARNINGS,
- 9.5.7. LOSS OF PROFIT AND/OR INCOME,
- 9.5.8. LOSS OF REVENUE,
- 9.5.9. LOSS OF BUSINESS OR GOODWILL,
- 9.5.10. LOSS OF SAVINGS,
- 9.5.11. LOSS OF USE, INTERRUPTIONS OF BUSINESS, AND/OR
- 9.5.12. ANY OTHER SPECIAL DAMAGES,

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

- 9.6. 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 Subscriber 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 Subscriber 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.
- 9.7. 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 website ([www.telkomsa.net](http://www.telkomsa.net)).
- 9.8. The Subscriber 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 Subscriber's network or other breaches of the Subscriber's network security.
- 9.9. The limitation on liability set out above is in addition to any limitation of liability set out elsewhere under the Agreement:
  - 9.9.1. defamation, or infringement of copyright from or in connection with the transmission of communications hereunder,
  - 9.9.2. any claim arising out of any act or omission of the customer or any other entity furnishing services or equipment for use in conjunction with the Services and/or Products provided hereunder,
  - 9.9.3. any unlawful or unauthorised use of the Services and/or Products provided hereunder by the Customer, and/or its employees,
  - 9.9.4. any claim arising out of a breach in the privacy or security of communications transmitted over the facilities or other property of Telkom, unless to the extent of losses attributable to Telkom's negligence or wilful default.

## 10. SUBSCRIBER ASSISTANCE, COMPLAINTS AND DISPUTES

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

- 10.1. Telkom provides customer care to all Subscribers during Office hours, excluding times when it is unable to assist due to reasons beyond its reasonable control.
- 10.2. The Subscriber must, once they experience any trouble with any of the Telkom Services and/or Products 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 Subscriber 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, the resolution of 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 Subscriber is of the view that the matter has not been resolved to the satisfaction of the Subscriber, the Subscriber 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 a court of competent jurisdiction.

## 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 without prejudice.***

- 11.1. Should the Subscriber breach any term of this Agreement, then Telkom shall give the Subscriber twenty (20) Business Days' notice to rectify the breach. Should the Subscriber neglect or fail to rectify the breach within the twenty (20) Business Days' notice period, then Telkom will have the right to either suspend or to cancel the Agreement, without prejudice (meaning to preserve their 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 Subscriber will have the right to provide Telkom with a letter requiring Telkom to rectify the breach within a period of twenty (20) Business Days. Should Telkom neglect or fail to rectify such breach within the twenty (20) Business Days' notice period, then the Subscriber may cancel the Agreement, which will be without prejudice (meaning to preserve the respective rights and positions) to the Subscriber's rights to claim any damages which he / she may have incurred in consequence of Telkom's breach.
- 11.3. Should the Subscriber be sequestered or liquidated, Telkom shall be entitled to immediately cancel this Agreement upon notice to the Subscriber.
- 11.4. The Subscriber 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 Subscriber 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 Subscriber in terms of this Agreement and in the case of a Consumer, subject to the provisions contained under Regulation 44(3)(aa) of the CPA.**
- 11.6. Without prejudice to any other claims or remedies which Telkom may have against the Subscriber in terms of this Agreement or in law, Telkom may on twenty (20) Business Days' notice terminate the Agreement if the Subscriber has delayed the installation of the Selected Telkom Services for longer than three (3) months and hold the Subscriber liable for all and any Abortive Costs incurred by Telkom in this regard.
- 11.7. Should the Subscriber, other than an Individual Consumer, request Telkom to terminate the Services and/or Products prior to the expiry of the Initial Period, for any reason other than breach by Telkom, the Subscriber will be liable for any of the following or a combination thereof:
  - 11.7.1. the monthly subscription fee applicable to the Services and/or Products for the remainder of the then current Initial Period and/or Renewal Period;
  - 11.7.2. any outstanding amounts due and payable at the time of termination;
  - 11.7.3. all Usage Charges applicable to and including the date of termination;
  - 11.7.4. the balance of the value of any Devices/Products and or Selected SE not recovered by the time of termination; and
  - 11.7.5. an early termination fee as set out in the product specific terms and conditions.
- 11.8. For termination by an Individual Consumer see clause 4.3 above.

## 12. CONSEQUENCES OF ANY TERMINATION

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

- 12.1. After termination of the Agreement for whatever reason,
  - 12.1.1. Telkom may delete any entries of the Subscriber set out in the Directory;
  - 12.1.2. Telkom may, on reasonable notice and in the Subscriber's presence enter the Subscriber's premises to remove the Services and/or Products, Devices, Selected SE and/or Connections, owned by Telkom; and
  - 12.1.3. the Subscriber will remain liable for and 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 SOC Limited at: 61 Oak Avenue, Centurion, and
  - 13.1.2. the Subscriber 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 Telkom requires a person to provide a surety, where the Subscriber 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 Subscriber fail to pay these amounts. This is known as a surety undertaking.***

If the Subscriber 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 Subscriber warrants that they are duly authorised to enter into this Agreement on behalf of the Subscriber and, if applicable, to sign the debit authorisation on the Subscriber's bank account. Telkom may require a surety by a person representing a company, close corporation, trust or a division or any other entity with

juristic personality if the Subscriber's credit assessment requires such surety and in such case the person signing will bind himself / herself as co-principal debtor for the Subscriber in favour of Telkom for the fulfilment of all of the Subscriber'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 CPA, certain rights have been granted to a Subscriber 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 Subscriber 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 the Subscriber is an Individual Consumer. Where the Subscriber 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 Subscriber has unlawfully taken advantage of.

### **15.2. Subscriber details and changes thereto**

The Subscriber will 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 and legal service address referred to under clause 13 must be brought to the immediate attention of Telkom by the Subscriber 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 Subscriber reasonable notice of this fact. The Subscriber 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 needs not be proved.

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

The Subscriber 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/her right to dispute the authenticity of the scanned version.

### **15.8. Unsolicited marketing and right to opt out**

In terms of section 45 of the Electronic Communications and Transactions Act and the Protection of Personal Information Act the Subscriber and in terms of the provisions of the CPA in the case of a Consumer, the Consumer or the Subscriber 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. Force Majeure**

Except as specifically provided under the Agreement, Telkom shall not be liable to the Subscriber 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 national, or international, 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 Subscriber or the relaxing of

the provisions of the Agreement must not prejudice the right of Telkom to insist on the strict compliance by the Subscriber 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 Subscriber will not do anything or allow anything to be done that may infringe Telkom's rights and the Subscriber hereby INDEMNIFIES Telkom against any claims, actions and proceedings that may arise as a result of the Subscriber 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.