

## **Terms for DNS, Email Solution and Shared Web Hosting**

The terms and conditions set out in this document, read together with the customer details, as set out or provided in the customer's application which was accepted by Telkom SA, govern the relationship between Telkom SA and the customer of Telkom *Internet*.

### **A. ACCEPTANCE OF ORDER**

1. The agreement and the provision of service, will only come into being between Telkom SA and a customer when the customer has agreed to the terms and conditions contained herein. If the credit status of the customer was not accepted by Telkom SA on activation of the service, subject thereto the service may be terminated.

### **B. PROVISION OF THE SERVICE**

1. Commencing on the date of this application ("the commencement date") and for the duration of this agreement thereafter, Telkom SA shall make reasonable efforts to make available a continuous, uninterrupted, expedient and error-free service to the customer, subject to the terms and conditions set out herein.

2. Notwithstanding the provisions of B1, the customer acknowledges that in the normal course of provision of service(s), temporary interruptions may occur for whatever reason. In the circumstances, Telkom SA shall not be held liable for any damages whatsoever (economical or otherwise) which the customer may suffer as a result of such interruption of service(s).

3. The customer shall solely be responsible, unless otherwise stated in this agreement, for provisioning, configuration and maintenance of all equipment on its premises, including (without limitation) computer hardware equipment, telecommunication equipment and modems necessary and required by the customer to exercise its rights and enjoy the services provided herein.

### **C. PAYMENT**

1. The customer shall pay to Telkom SA all applicable charges, tariffs, fees and other amounts ("charges") as may be set out in this agreement, in respect of the provision of the services to the customer.

2. Telkom SA will be entitled to adjust any of its charges, including without limitation tariff increases as on the 1st of January, at any time by giving the customer a 30 day electronic notification of such adjustments.

3. All access charges that entitle the customer to obtain access to the services subscribed for, shall be payable in the manner as set out in this agreement and where such charge is indicated as-

**3.1 Rental charges:** levied periodically, usually on a monthly basis, and subject to a minimum rental period of one calendar month or as determined by Telkom from time to time for each Service or service promotion. Rental charges are payable in advance for the first and any subsequent rental period, as from the date on which the Service is established. Where the Customer requests the termination of a Service the rental amount, if any, paid for a period after the official date of termination will be credited to the Customer. If the Customer requests that a

Service be terminated prior to the expiry of the minimum rental period, the non-expired part of the rental period will stay in force. In such cases the Customer shall remain liable for the rental for the non-expired part of the rental period.

**3.2** Any payment due to Telkom SA not made on the due date thereof shall bear interest at a rate of 20% (twenty per centum) above the prime bank overdraft rate as charged by Telkom's bankers from time to time, calculated from the date payment was due until date of actual payment in full, capitalised monthly in arrears.

**4.** The customer shall, on demand, pay to Telkom SA all costs and expenses incurred by Telkom SA in enforcing the terms of this agreement, including without limitation legal costs on an attorney and own client basis.

**5.** Should the bank dishonour any payment offered by the customer to Telkom SA, Telkom SA shall be entitled, over and above the dishonoured payment as well as bank charges, to charge and the customer shall be obliged to pay a reasonable administration fee.

**6.** Any upgrades or changes to another service / product, may be subject to additional charges or separate agreement.

#### **D. INSTALLATION AND CONNECTION**

**1.** The customer acknowledges that any installation date or connection date furnished by Telkom SA is provisional only and, should installation or connection, as the case may be, not be effected by such provisional date-

**1.1.** Telkom SA shall not be responsible for any consequences of such delay or be liable for any damages, costs or expenses whatsoever incurred or suffered by the customer or any third party, and the customer shall not be entitled, as a result of such delay, to terminate this agreement or withhold any payment.

#### **E. LIABILITY**

**1.** This clause E specifies the entire liability of Telkom SA, including, without limitation, liability for negligence. In particular (but without limitation) all statutory, expressed, implied or collateral terms, conditions or warranties are excluded.

**2.** Telkom SA shall under no circumstances be liable (including liability for negligence) for any loss, damage or injury that the customer or any third party may suffer, no matter when or how arising, specifically including (but without limitation) refunds of fees, loss of profits, financial loss, loss of contracts, loss of income, loss of anticipated business, cost of replacement services, savings use, goodwill or any other form of consequential loss.

**3.** Any service(s) provided herein is provided on an "as-is" basis and Telkom SA makes no express or implied warranties or representations of whatsoever nature with respect to any such service.

**4.** The customer shall and hereby does indemnify Telkom SA-

**4.1.** against any damage, loss or liability (excluding liability for Telkom SA's wilful misconduct) arising from the provision of services to the customer, its employees, directors, agents and / or representatives;

**4.2.** against any damage, loss or liability of whatsoever nature arising from a breach of Telkom SA's security measures, any misuse of Telkom SA's facilities or services and / or any act or omission of any other customer of Telkom SA;

**4.3.** from any claim by any third party arising directly or indirectly out of or related to the customer's access to or use of services rendered by Telkom SA or any information or data obtained through such access or use; and

**4.4.** its holding company, affiliates and subsidiaries, for all loss, damage, cost or liability that may be incurred by any one or more of them in the event that the customer's use of the service and/or the products supplied hereunder -

**4.4.1.** constitutes a violation of any law, regulation or tariff;

**4.4.2.** is defamatory, fraudulent or deceptive;

**4.4.3.** is intended to threaten, harass or intimidate; or

**4.4.4.** interferes with the use or enjoyment of other customers of the services and products provided by Telkom SA.

**5.** Under no circumstances whatsoever will Telkom SA's liability, if any and whether in contract or otherwise, exceed the aggregate of the amounts actually paid by the customer to Telkom SA.

## **F. USE LIMITATIONS**

The customer hereby agrees -

**1.** that it is aware and will stay aware of and shall at all times comply with all statutory or other regulatory provisions and rules applicable to the provision and use of the services from time to time;

**2.** that it shall make use of the services in a responsible, prudent, lawful and honest manner;

**3.** that it shall comply with any directions, instructions and limitations issued or notified by Telkom SA from time to time in connection with the services;

**4.** that it shall not use any service in a manner which -

**4.1.** constitutes a violation of any law, regulation or tariff that may be in force in South Africa or elsewhere. In particular the customer undertakes to familiarise itself and ensure that it is kept continuously appraised of all such laws, regulations and tariffs in force from time to time which may have any bearing on the services rendered and products provided by Telkom SA and/or the customer's access to or use thereof;

**4.2.** constitutes an act or omission that is generally unacceptable or offensive to internet users in general, to the public at large or as same may be determined by Telkom SA from time to time in its sole and absolute discretion, specifically including (but not limited to) the hosting or distribution of pornographic material, spamming, hacking, unsolicited mailing etc.;

**4.3.** contravenes any Telkom SA policy, as such document may be published, updated and amended by Telkom SA from time to time;

**4.4.** is defamatory, fraudulent or deceptive;

**4.5.** is intended to threaten, harass, nuke or intimidate;

**4.6.** tends to damage the name or reputation of Telkom SA, its holding company, affiliates and or

subsidiaries or;

**4.7.** interferes with the use and enjoyment of Internet related services of customers of Telkom SA;

**5.** that the services to be rendered to the customer shall be as defined and subject to such limitations as may be notified from time to time by Telkom SA;

**6.** that the customer is aware of the limitations of all relevant services and that service quality and coverage available shall be limited to that supported by the infrastructure of Telkom SA, its network providers and Telkom and that service may from time to time be adversely affected by a number of different causes:

**7.** that it shall not commit any act or omission which may have an adverse technical effect on the integrity or functionality of the network infrastructure of Telkom SA or that provided or made available to the customer by or through Telkom SA. If any act or omission of the customer has such an adverse technical effect the customer shall, on receiving notification to that effect from Telkom SA, forthwith take such steps as may be necessary to rectify the situation at his own cost and expense, failing which Telkom SA shall be entitled, without prejudice to its other rights in terms hereof or at law, to forthwith suspend the service and/or terminate this agreement;

**8.** that unless otherwise agreed by Telkom SA in writing, it shall not resell or make available to third parties, in any manner whatsoever and whether directly or indirectly, the services provided to it by Telkom SA;

**9.** that it shall take whatever steps may be necessary to ensure the safekeeping and confidentiality of all identification codes and passwords furnished by Telkom SA for use by the customer and shall specifically not disclose same to any third party without Telkom SA's prior written consent.

**10.** to comply with the rules and regulations applicable to any network that is accessed through Telkom SA;

**11.** that where it is outside the Republic of South Africa and wishes to connect to the internet, such connection may be subject to the terms and conditions of a Global Service Provider ("GSP"). The customer has been informed of and acknowledges that the GSP is not affiliated to Telkom SA.

## **G. SUSPENSION OF SERVICE**

**1.** Telkom SA may from time to time and without notice suspend the services in any of the following circumstances-

**1.1.** during any technical failure, modification or maintenance either of the service or the equipment by means of which the service is provided;

**1.2.** if the customer -

**1.2.1.** fails to comply with any of the terms and conditions of this agreement (including failure to pay any charges due) until the breach (if capable of remedy) is remedied; or

**1.2.2** does or allows to be done anything which, in Telkom SA's reasonable opinion, may have

the effect of negatively affecting the operation of the Telkom SA network or the provision of services to the customer or to any other customer(s) of Telkom SA.

**1.2.3** If the customer uses the service in contravention of any act or regulation.

**2.** Notwithstanding any suspension of service under this clause G, the customer shall remain liable for all charges due hereunder throughout the period of suspension unless Telkom SA, in its sole discretion, determines otherwise.

## **H. TERMINATION**

**1.** Notwithstanding anything to the contrary contained in this agreement, Telkom SA shall at any time be entitled to terminate this agreement on not less than 30 (days) notice to such effect to the customer, Telkom SA making due refunds. In the case of a month to month agreement the customer shall give Telkom SA one calendar month notice of termination.

**2.** Without prejudice to any other rights or remedies which Telkom SA may have in terms hereof or at law, Telkom SA shall be entitled to forthwith cancel this agreement and discontinue the service if the customer fails to comply with any of the terms or conditions of this agreement or any other agreement made between Telkom SA and the customer.

**3.** Upon termination of this agreement Telkom SA shall disconnect the customer from the networks of Telkom SA and all its network providers.

**4.** After disconnection of the customer upon termination of this agreement, the customer shall on demand pay all charges outstanding at the time of disconnection, including any disconnection fee, which may be charged by Telkom SA.

**5.** Upon termination due to any breach of this agreement by the customer, Telkom SA shall be entitled to claim damages.

## **I. EXCUSABLE EVENTS**

Telkom SA shall not be liable to the customer for any breach of this agreement or failure on its part to perform any obligation as a result any circumstances outside Telkom SA's reasonable control, including without limitation, of technical problems relating to the network, or any one of them, acts of God, government control, restrictions or prohibitions or any government act or omission, whether local, national or international, act or default of any supplier, agent or sub-contractor, industrial disputes of any kind or any other cause.

## **J. ALTERATION**

Telkom SA reserves the right and shall be entitled-

**1.** to alter any name, code or number allocated by Telkom SA for use in connection with the services and the customer hereby indemnifies Telkom SA against any cost to the customer, loss or liability arising from such alteration.

## **K. SUPPORT SERVICE**

**1.** Telkom SA shall, as and when specifically requested to do so by the customer in writing,

render such consultation and support services to the customer pertaining to the identification and, if possible, solution of problems encountered by the customer in the Telkom SA services rendered to it or with his Internet related services in general as the customer may request, subject to the payment by the customer of all hourly tariffs, distance charges and other related fees payable in respect thereof.

2. Telkom SA shall, as part of such service, identify the customer's problem, but does not give any warranty, guarantee or any other similar undertaking that it will be able to rectify all or any of the problems so identified.

3. The customer shall-

3.1. supply all software, hardware and all related documentation required by Telkom SA to identify and solve any problem encountered by the customer. Failure to do so will result in Telkom SA not being able to assist customer any further, whilst the customer shall remain liable for the payment of any and all amounts referred to in K1;

3.2. render to Telkom SA, its agents, representatives and employees all necessary assistance to identify, locate and solve any problem encountered by the customer; and

3.3. ensure the safety of all agents, representatives and employees of Telkom SA present at the customer's premises and shall and hereby does assume responsibility and liability for any cost, expense, loss or damage incurred or suffered by Telkom SA or any of its representatives, agents or employees as a result of any injury to or the death of any such person whilst present at the customer's premises, from whatsoever cause arising.

4. Telkom SA does and shall not accept any responsibility or liability for any existing data on the customer's equipment and shall specifically not be required to back-up any data before commencing any work. The customer hereby indemnifies and holds Telkom SA harmless against any cost, liability, loss or damage incurred or suffered by the customer or by Telkom SA as a result of the loss of any such data, whether occasioned by any act or omission of Telkom SA, its representatives, agents or employees or otherwise.

5. Consultation time charged for will commence when the relevant Telkom SA agent, representative or employee leaves the Telkom SA office and will end when he returns to the Telkom SA office. The customer will be charged should the consultant for any reason whatsoever not be able to obtain access to the customer's premises or equipment.

## **L. GENERAL**

1. The customer shall not cede, assign, transfer, encumber or delegate any of his rights or obligations in terms of this agreement to any third party. Notwithstanding anything to the contrary contained herein, Telkom SA shall be entitled to cede its rights and delegate its obligations in terms of this agreement to any of its affiliate companies, provided that reasonable guarantees will be given to the customer.

2. The terms and conditions as set out herein, constitute the entire agreement between Telkom SA and the customer and supersede all representations made to the customer, all amendments effected by the customer to any application form or other similar document submitted by him

and all communications between Telkom SA and the customer relating to the subject matter hereof.

3. The customer chooses, as his domicilium citandi et executandi, the physical address set out in "Customer Details" in this agreement.
4. Telkom SA reserves the right to amend these terms and conditions from time to time and shall notify the customer of such amendments.
5. This agreement shall be governed by and construed and interpreted in accordance with the law of the Republic of South Africa.
6. The clause headings in this agreement are for the purpose of convenience only and shall not be taken into account in the interpretation of nor modify the terms of this agreement. Unless inconsistent with or a contrary intention clearly appears from the context words importing any reference to a gender includes the other genders, any reference to the singular includes the plural and vice versa, and any reference to natural persons includes legal persons and vice versa.
7. If any clause or clauses of the terms and conditions of this agreement is found by any court of competent jurisdiction to be invalid or unenforceable, the remainder of the terms and conditions of this agreement shall remain valid and enforceable.
8. The customer shall protect all username & passwords for Telkom Internet services & Telkom SA accepts no liability whatsoever for any misuse or abuse of the customer's service as a result of disclosure of a customer's username & password. The customer will immediately notify Telkom SA, when it becomes apparent that his/her username & password has been compromised, until such notification is received & accepted by Telkom SA, the customer remain liable for any usage charges incurred or outstanding on the customer's account. Telkom SA accepts no responsibility or liability for the breach of security in the distribution of a username & password in accordance with the customer's instructions.

## **M. INTELLECTUAL PROPERTY**

1. The intellectual property rights including (without limitation) copyrights and the trade and service marks utilised by Telkom SA during the term of this Agreement, shall remain the property of Telkom SA or Telkom SA's licensors and, save as provided herein, nothing contained in this Agreement shall be construed to confer on the customer any rights or licenses in such intellectual property rights.
2. Should Telkom SA be required to develop any computer code, data, documents, presentations, solutions design, web site or any application ("the work"), then all intellectual property rights in and to such work shall vest exclusively in Telkom SA. To the extent that intellectual property rights in the work vests, for whatever reason, in the customer, the customer hereby agrees to assign all such intellectual property rights to Telkom SA, which hereby accepts such assignment.

**3.** Save as provided for in this agreement, any license granted to the customer in terms of this agreement shall be for singular user only. The customer shall be obliged to pay a license fee for multiple use.

**4.** The customer shall not modify or use any software, computer code, data, documents, presentations, solutions design, web site or any application licensed to it in terms of this agreement, to create a derivative work.

## **N. PRODUCT SPECIFIC: DOMAIN NAME SERVICES**

**1.** Notwithstanding the provision of B1, the customer acknowledges that in the normal course of the provision of service(s), temporary interruptions may occur for whatever reason. In the circumstances, Telkom SA shall not be held liable for any damages (economical or otherwise) which the customer may suffer as a result of such interruption of services.

**2.** Telkom SA shall under no circumstances be liable (including liability for negligence) for any loss, damage or injury that the customer or any third party may suffer, no matter when or how arising, specifically including (but without limitation) refunds of fees, loss of profits, financial loss, loss of contracts, loss of income, loss of anticipated business, cost of replacement services, savings user, goodwill or any other form of consequential loss.

**3.** Any service(s) provided herein is provided on an "as-is" basis and Telkom SA makes no express or implied warranties or representations of whatsoever nature with respect to any such service.

**4.** That the customer is aware of the limitations of all relevant services and that service quality and coverage available shall be limited to that supported by the infrastructure of Telkom SA, its network providers and Telkom and that service may from time to time be adversely affected by a number of different causes.

**5.** Notwithstanding any suspension of service under this clause G, the customer shall remain liable for all charges due hereunder throughout the period of suspension unless Telkom SA, in its sole discretion, determines otherwise.