

Telkom Mobile SUBSCRIBER TERMS AND CONDITIONS

FOREWORD

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

If you cannot understand these general provisions, which are pre-conditions to the standard Telkom Mobile terms and conditions, please contact your Telkom Mobile service provider. Please note that the Telkom Mobile standard terms and conditions are attached for you to read and consider.

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

EXCLUSION OR LIMITATION OF LIABILITY CLAUSES

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

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

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

Telkom Mobile has housed certain clauses, which contain certain limitations, under its standard terms and conditions and the Agreement. These clauses are highlighted in red capital letters and include:

- 4.2.1 Termination of a Fixed Term Agreement by an Individual Consumer for no cause** – if you as a Consumer, conclude a Fixed Term Agreement with Telkom Mobile, you will have the right to terminate the Fixed Term Agreement, for no particular reason or cause, at any time, on 20 (Twenty) Business days written notice, which termination will be subject to payment of a reasonable cancellation fee, determined using the guidelines set out under section 14 and Regulation 5(2) of the CPA.
- 5.5 Migration-** Any request by you to migrate, will be subject to certain conditions, including the payment of any additional Migration charges, levied by Telkom Mobile, which charges are detailed under the Tariff List or as advised by Telkom Mobile and the signing of a new Agreement.
- 6. Charges and payment-** Telkom Mobile will levy certain charges in respect of the use by you of the Mobile Services and Mobile Goods. Telkom Mobile also has the right to ask for a deposit and set credit limits and levy interest on unpaid charges and ask for legal costs in the case of a matter been handed to attorneys.
- 5.4 Change in numbers due to reasons beyond Telkom Mobile's control** -Telkom Mobile may be forced to change your number by a regulator, and if this occurs Telkom Mobile will not be liable to you or to any other person for any loss, damage or costs (direct, consequential or otherwise) which may be incurred in consequence of any change to the number.
- 5 & 9 Limited liability and indemnity** - Telkom Mobile, under certain circumstances will not be responsible for certain damages or losses which may be incurred as a result of the purchase and/or use of the Mobile Services and / or Mobile Goods.

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

APPLICATION OF STANDARD TERMS AND CONDITIONS

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

The Subscriber accepts and agrees that these terms and conditions become binding on it once Telkom Mobile has processed the Subscriber's Application and agreed to provide the Subscriber with the Telkom Mobile Selected Mobile Services and /or Selected Mobile Goods.

Telkom Mobile will notify the Subscriber of its acceptance or non-acceptance and where applicable the deposit which it may require in order to secure the Selected Mobile Services and /or Selected Mobile Goods.

APPLICATION FOR MOBILE SERVICES & MOBILE GOODS AND CONDITIONS APPLICABLE TO SUCH APPLICATION

Persons wishing to obtain an Telkom Mobile Service or Mobile Goods must apply for the Mobile Service and / or Mobile Goods either by completing and signing the standard Telkom Mobile Application Form, which can be downloaded from the Telkom Mobile Website or obtained on request from Telkom Mobile's customer service branches or apply following any other method determined by Telkom Mobile from time to time.

If:

- the Applicant is unable to either afford the goods or service applied for, or is in arrears on existing or closed Telkom fixed line or Telkom Mobile accounts;
- the Applicant has not paid a deposit where required;
- the Applicant has been blacklisted or has an adverse credit rating as per the National Credit Act, 34 of 2005;
- the Applicant is under some form of legal disability, for example is under the age of 18, is insolvent or has been sequestered or is insane;
- the Applicant has not provided the required or correct information;
- Telkom Mobile is unable to provide the required services or goods due to unavailability of infrastructure or infrastructure limitations; or
- there is an unavailability of coverage in a specific area,

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

AMENDMENT OF Telkom Mobile STANDARD TERMS AND CONDITIONS

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

Telkom Mobile will place the amended terms and conditions on the Telkom Mobile website www.Telkommobile.com and file such amended terms and conditions with ICASA, and the National Consumer Commission, which amendment, from date of such filing, will thereafter be deemed to be incorporated into the Agreement.

CREDIT REFERENCING

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

WARRANTY BY APPLICANT

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

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

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

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

ADDITIONAL COPIES

Additional copies of the Telkom Mobile standard terms and conditions can be obtained on request from Telkom Mobile's customer service branches or downloaded from the Telkom Mobile website at www.Telkommobile.com

TABLE OF CONTENTS		
APPLICATION OF STANDARD TERMS AND CONDITIONS		1
1.	MEANINGS OF CERTAIN WORDS AND PHRASES	3
2.	AGREEMENT TO CONTRACT AND APPLICATION OF THESE TERMS AND CONDITIONS	5
3.	PROCESSING OF PERSONAL INFORMATION, RIGHTS TO PRIVACY AND RICA	6
4.	DURATION, RENEWAL AND TERMINATION FOR NO CAUSE	6
4.1	Duration of the Agreement and renewal rights	6
4.2	Termination of a Fixed Term Agreement by an Individual Consumer for no cause	6
5.	PROVISION OF NETWORK SERVICES	6
5.1	Use of the Services	7
5.2	Dropped calls and unavailability of networks and condition of the Selected Mobile Goods	7
5.3	Suspension or withdrawal of services by Telkom Mobile due to reasons beyond its control	8
5.4	Change in Mobile numbers due to reasons beyond Telkom Mobile's control	8
5.5	Subscriber's right to a Migration of Mobile Goods and Mobile Services	9
5.6	Bundled service offerings	9
5.7	SIM Card and Associated costs	9
5.8	International Roaming	9

6.	CHARGES AND PAYMENT	10
6.3	Deposits, set off and unpaid accounts	10
6.4	Billing	10
6.5	Payments	10
6.6	Changes to Charges	11
6.7	Credit Limit and extraordinary billing	11
7.	DELIVERY, RISK AND OWNERSHIP	11
8.	DEFECTS, LIABILITY, WARRANTIES AND REPAIRS AND SUSPENSION OF THE Telkom Mobile SERVICE	11
8.2	Consumer's Implied warranty on Selected Mobile Goods	11
9.	LIMITED LIABILITY AND INDEMNITY	12
10.	SUBSCRIBER ASSISTANCE, COMPLAINTS AND DISPUTES	13
11.	BREACH AND TERMINATION	13
12.	LEGAL ADDRESS FOR SERVICE (DOMICILIUM AND NOTICES)	13
13.	UNDERTAKING AS A SURETY AND CO-PRINCIPAL DEBTOR	13
14.	GENERAL	13
	<u>SCHEDULE A</u>	14

1. MEANINGS OF CERTAIN WORDS AND PHRASES

To enable the Subscriber to read and understand the terms of this Agreement, which it is to be concluded with Telkom SA Limited operating through its mobile division, hereinafter referred to as "Telkom Mobile", the Subscriber must understand the meanings of certain words and phrases which are referred to throughout the Agreement.

1.1 The words and phrases listed below must have the meaning set out next to the corresponding word or phrase unless the context indicates otherwise:

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

"**Activates**" means the connection of the Subscriber SIM card or Mobile number to the Network;

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

"**Agreement**" means the Application form, the Tariff Plan, and these terms and conditions, which apply to the Subscriber, in respect of the Selected Mobile Services and Selected Mobile Goods, together with any Renewal Addendum, where applicable;

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

- (i) any statute, regulation, by-law, ordinance or subordinate legislation in force from time to time;
- (ii) the common law and the law of equity;
- (iii) any binding court order, judgment or decree;
- (iv) any applicable industry code, policy or standard enforceable by law; and
- (v) any applicable direction, rule, pronouncement, policy or order that is given by a regulator.

"**Application Form**" means the document completed by the Applicant, whether completed in writing, electronically or telephonically, which houses the Applicant's details and the Subscribers request that Telkom Mobile provide it with certain Selected Mobile Services and/or Selected Mobile Goods;

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

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

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

"**Connection date**" means the date when Telkom Mobile activates the Subscribers SIM card or Mobile number to the Network, allowing the Subscriber to utilise the Selected Mobile Services and Selected Mobile Goods;

“**Consumer**” means an Applicant/Subscriber who is a “consumer” as defined under section 1, section 6 and Regulation GN 294 of 2011 of the CPA;

“**CPA**” means the Consumer Protection Act, 68 of 2008, as amended, from time to time, together with its regulations, as amended or replaced from time to time;”

“**Charges**” means the amounts charged by Telkom Mobile in respect of the Selected Mobile Services and Selected Mobile Goods, **used by the Subscriber during the previous month, such as the cost** of the Selected Mobile devices and ancillary goods, connection fees, call and bundled data charges, levies, taxes and interest, which charges are set out under the Telkom Mobile Offerings Schedule and / or Tariff Plan, and which Charges will be set out under the Invoice which will be submitted to the Subscriber in terms of the Agreement;

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

“**Due date**” means the date on which any amounts owed by Subscriber to Telkom Mobile in respect of the Selected Mobile Services and the Selected Mobile Goods become due and payable, which date is printed on the Monthly invoice;

“**ECTA**” means the Electronic Communications and Transactions Act, 25 of 2002, as amended from time to time;

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

“**Hybrid Account**” means a Fixed Term Agreement or a Month to Month Agreement concluded between Telkom Mobile and the Subscriber whereby the Subscriber is charged in advance for the Selected Mobile Services and the Selected Mobile Goods, known as the hybrid bundle of Mobile Goods and Mobile Services, which could include, without generalizing, service charges and/or fixed charges for the phone number and account, and where upon the depletion of any allocated elements the Subscriber will be required to recharge the account in order to continue the use of the Selected Mobile Services and Selected Mobile Goods;

“**Initial Period**” means the number of months for which the Agreement will endure, which the Subscriber has selected under the Application Form under the line item “contract period” which period will commence/start running on the Commencement date;

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

“**International Roaming**” means the ability to make use of the Mobile Device and Mobile Services while in another country using the services of a foreign network outside of the geographic locale of Telkom Mobile’s coverage BUT subject always to clause 5.8 of the Agreement;

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

“**Migration**” means Subscriber’s election to change the Selected Mobile Services received under the Agreement to another, which if accepted by Telkom Mobile will give rise to a change to the Usage charges;

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

“**Mobile Device(s)**” means a mobile terminal, including without generalising, a cellular phone or handset, data device, module, computer or PC, and accessories that can be used by Subscriber to make and/or receive Mobile Device calls, and/or to send and/or receive Mobile Device messages (SMS) and / or the use of data services that are carried via the Network and/or to access the Network for the purpose of using the Selected Mobile Goods and the Selected Mobile Services;

“**Mobile Goods**” means the Mobile Devices, which are offered for sale or rental by Telkom Mobile from time to time, as set out under the Telkom Mobile Offerings Schedule;

“**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;

“**Mobile Number Portability**” means the Subscriber’s ability to move its Mobile number from one mobile network operator to another without having to change its Mobile number;

“**Mobile Services**” means the mobile services made available through the Network by Telkom Mobile from time to time, as set out under the Telkom Mobile Offerings Schedule;

“**Monthly invoice**” means the detailed notification of charges sent on a monthly basis to the Subscriber in a computerized format setting out all amounts due and owing to Telkom Mobile by the Subscriber in respect of the Selected Mobile Services and/or the Selected Mobile Goods;

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

“**Network**” means the electronic communications network which is operated by Telkom Mobile to make its Mobile Services available to the Subscriber and its other customers and subscribers;

“**Non Core Services**” means Value Added Services, which a Subscriber may opt to add on to an existing package or Tariff Plan to enhance the Selected Mobile Services and / or the Selected Mobile Goods used by the Subscriber;

“**Office hours**” means Telkom Mobile’s normal business hours, as determined by Telkom Mobile from time to time, currently being, 9h00 to 15h30 on Business Days;

“**Parties**” means collectively, Telkom Mobile and the Subscriber;

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

“**Post-paid Account**” means a Fixed Term Agreement concluded between Telkom Mobile and the Subscriber where the Subscriber is charged rental for the use of the Selected Mobile Goods in advance and Usage Charges in arrears for the Selected Mobile Services, known as the bundle of Mobile Goods and Services, which could include, without generalizing, service charges and/or fixed charges for the phone number and account, usage charges (for a voice service, per text/pic/multimedia message sent or received and per megabyte of data service used), alternatively a flat fee for Unlimited Voice, Messaging and Data services;

“**Pre-Paid Account**” means an agreement concluded between Telkom Mobile and the Subscriber where the Subscriber is allowed from time to time to purchase in advance a predetermined value of airtime, enabling the Subscriber to utilize the Selected Mobile Services until such airtime is depleted or expired. If there is no available airtime then access to the requested service is denied by Telkom Mobile. Subscribers are able to top up their airtime at any time using a variety of payment mechanisms;

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

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

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

“**RICA**” means the Regulation of Interception of Communication and Provision of Communication Regulated Information Act 70 of 2002, together with the regulations as amended/replaced from time to time;

“**Selected Mobile Goods**” means the Mobile Device(s) which the Subscriber has asked Telkom Mobile to provide it with in terms of this Agreement, where applicable in order that the Subscriber may make use of the Selected Mobile Services;

“**Selected Mobile Services**” means the Mobile Services which the Subscriber has asked Telkom Mobile to provide it with, which forms the subject matter of this Agreement and which is accessed using the SIM card and the Selected Mobile Goods, Mobile Number and /or the Mobile Device(s);

“**SIM card**” means the subscriber identity module card incorporating the allocated Mobile number, allocated to the Subscriber by Telkom Mobile to enable the Subscriber to gain access to the Network and make use of the Selected Mobile Goods and the Selected Mobile Services;

“**Subscriber**” means the person who Telkom Mobile has agreed to provide the Selected Mobile Services and/or the Selected Mobile Goods to, as listed in the Application Form and who will be liable for the payment of the Charges and compliance with the Agreement;

“**Telkom Mobile Offerings Schedule**” means the document setting out the various Mobile Services and Mobile Goods and associated Tariff Plan, offered and made available by Telkom Mobile to the public, from time to time;

“**Tariff Plan**” means the charges levied by Telkom Mobile in respect of the Selected Mobile Goods and the Selected Mobile Services, as amended from time to time, and payable to Telkom Mobile by the Subscriber, which is housed under the Telkom Mobile Offerings Schedule;

“**Telkom SA Limited**” or “**Telkom Mobile**” means Telkom SA Limited a public company duly incorporated under the company laws of South Africa with its registered office at Telkom Towers North, 152 Proes Street, Pretoria with registration number 1 9 9 1 /005476/06;

“**Telkom Mobile**” means Telkom SA Limited;

“**Usage Charges**” means the monthly charges levied either monthly in advance or in arrears by Telkom Mobile, in respect of the use by Subscriber of the Selected Mobile Services and the Selected Mobile Goods;

“**VAS**” means certain non-core but value added mobile services offered by Telkom Mobile, as listed under the Telkom Mobile Offerings Schedule, which services, at Telkom Mobile’s discretion, will vary from time to time.

- 1.2 The Subscriber is to note that where applicable, and depending on the context:
 - 1.2.1 words which make reference to the singular shall include a reference to the plural and *vice versa*; and
 - 1.2.2 words which make reference to one gender shall include the other genders; and
 - 1.2.3 any reference to a person shall include a company, body corporate, firm or association and *vice versa*.
- 1.3 The Subscriber acknowledges that the provisions of ECTA apply to the Agreement, the Parties expressly agreeing:
 - 1.3.1 that where a provision of the Agreement requires that a document must be signed or initialled, that signing or initialling may be effected in any manner recognised by law, including the use of an electronic signature, as defined in ECTA. Telkom Mobile in this regard will take reasonable measures to prevent the use of the Consumer’s electronic signature for any purpose other than the signing or initialling of the particular document that the consumer intended to sign or initial; and
 - 1.3.2 that where anything is required to be in writing, unless expressly stipulated to the contrary by Telkom Mobile, any electronic communication, including an SMS, voice mail, telephonic call or electronic message such as an email, exchanged between the Parties, will meet this requirement.
- 1.4 The Subscriber is to note that when a particular number of days is provided for between the happening of one event and another, the number of days must be calculated by:-
 - 1.4.1 excluding the day on which the first such event occurs;
 - 1.4.2 including the day on or by which the second event is to occur; and
 - 1.4.3 excluding any public holiday, Saturday or Sunday that falls on or between the days contemplated in clauses 1.4.1 and 1.4.2, respectively.

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

This clause confirms that you, the Subscriber, have asked Telkom Mobile to provide you with certain Mobile Services and/or Mobile Goods which you selected when you completed the Application Form, which services and goods are described on the Telkom Mobile Offerings Schedule and which must be provided at the prices set out under the Tariff Plan, and that Telkom Mobile has agreed to provide you with the selected services and goods, on condition that you comply with the terms and conditions set out under this Agreement.

- 2.1 The Subscriber accepts and agrees that these terms and conditions will become binding on it once on the Commencement Date, that is, once Telkom Mobile has processed the Application Form and agreed to provide the Subscriber with the Selected Mobile Services and the Selected Mobile Goods., which is known as the Commencement date. In other words the Agreement will commence on the Commencement date.
- 2.2 Where any amendment is made to the Act, CPA, RICA and /or to the regulations housed under these acts, the regulations, or to any Telecommunications Code of Practice, regulated tariffs or fees and/ or to any other law pertaining to the telecommunications Industry, or where any directive or guideline is issued by the Authority, which impacts on the Selected Mobile Services and/or the Selected Mobile Goods and which necessitates an amendment to these terms and conditions or the Agreement, then in such an event Telkom Mobile will give the Subscriber written notice of the amendment and place the amended terms and conditions and/or the Agreement on the Telkom Mobile website, which amendment will be incorporated into the Agreement and which amendment will be effective and bind the Subscriber on the date that it is published on the Telkom Mobile website.
- 2.3 Where, as a result of any amendment anticipated under clause 2.2, a **Consumer** is of the view that such amendment is to its detriment, the **Consumer** may terminate the Agreement provided that it gives Telkom Mobile twenty (20) Business days notice in writing of its election to terminate the Agreement. Where a Consumer terminates the Agreement as per his rights under this clause 2.3, such termination will be **without penalty, save where the Consumer has been given or has purchased but not yet paid for, Selected Mobile Goods. IN SUCH A CASE THE CONSUMER WILL HAVE A LEGAL DUTY AND Telkom Mobile WILL HAVE A LEGAL RIGHT TO DEMAND FROM THE CONSUMER, FULL PAYMENT IN RESPECT OF THE SELECTED MOBILE GOODS, LESS ANY AMOUNTS THAT HAVE ALREADY BEEN PAID TO Telkom Mobile IN RESPECT THEREOF PRIOR TO SUCH TERMINATION.**

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

Although Telkom Mobile respects you, the Subscriber’s privacy and to this end your right not to have your personal data misused or distributed to

other persons, you, the Subscriber have to comply with the provisions of RICA, which is a law which requires that bodies such as Telkom Mobile verify your details before they are able to provide you with a cell phone, mobile data device or communication service. This clause sets out Telkom Mobile's undertaking to protect and respect your personal data and not to misuse it. It also sets out your undertaking to comply with RICA.

- 3.1 Telkom Mobile undertakes to process and use Subscriber Personal Data only for the purpose for which it has been collected and undertakes that this processing must be carried out in accordance with any notice, consent or other requirement which may be required by any applicable law in force in South Africa from time to time.
- 3.2 The Subscriber accepts that RICA applies to the Selected Mobile Goods and Selected Mobile Services, which the Subscriber has requested Telkom Mobile to provide it with under this Agreement, and agrees that it must, where applicable, comply with the relevant requirements of RICA, including, without generalising:
 - 3.2.1 to provide Telkom Mobile with all required Personal Data and other details which Telkom Mobile is required to obtain from the Subscriber, in terms of section 40 of RICA. An extract of these sections is attached as Schedule "A";
 - 3.2.2 not to Activate the SIM card until all the Subscriber's details as required by RICA, have been registered with Telkom Mobile;
 - 3.2.3 to immediately report any loss, theft or destruction of the SIM card and/or the Mobile Device used in connection with the Selected Mobile Services to the police; and
 - 3.2.4 not to transfer the SIM card to another person, other than a family member or dependant without providing Telkom Mobile with the Personal Data and other details of the person who is taking over the SIM card.
- 3.3 The Subscriber acknowledges and accepts that where it does not comply with these provisions set out under clause 3.2, **THAT THIS WILL AMOUNT TO A MATERIAL BREACH BY THE SUBSCRIBER OF THIS AGREEMENT WHICH WILL ALLOW Telkom Mobile TO CANCEL THE AGREEMENT AND TO CLAIM DAMAGES AS A RESULT OF THE CANCELLATION.**
- 3.4 The Subscriber also acknowledges and accepts that where it does not comply with these provisions set out under clause 3.2, that this will be 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.

4. DURATION, RENEWAL AND TERMINATION FOR NO CAUSE

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

- 4.1 **Duration of the Agreement and renewal rights**
 - 4.1.1 Notwithstanding the Connection date, the Agreement will start on the Commencement date and will carry on for either the Initial Period or on a Month to Month basis, as selected by the Subscriber under the Application Form and for any Renewal Period, where renewed by the Subscriber, save for where the Agreement is terminated by the **Consumer** in terms of its right to terminate as set out under clause 4.2 and/or by either of the Parties as per their respective rights to terminate in accordance with clause 11 of the Agreement.
 - 4.1.2 On expiration of the Initial Period, the Subscriber will have the right to either confirm the termination of the Agreement by giving Telkom Mobile written notice of its election to terminate the Agreement or agree to enter into a Renewal Addendum or complete a new Application Form, which Renewal Addendum or Application Form will set out the Renewal Period, and the applicable terms and conditions pertaining to such renewal.
 - 4.1.3 Should the Subscriber fail to notify Telkom Mobile of its election to terminate or renew the Agreement, and more in particular where a **Consumer** fails to notify Telkom Mobile of its election to either terminate or renew the Agreement as permitted under section 14 of the CPA, then the Agreement will continue on a month to month basis on the same terms and conditions as contained under the Agreement and subject always to any variations in accordance with the Tariff List.
 - 4.1.4 Any Month to Month Agreement as envisaged in terms of clause 4.1.1 or 4.1.3 may be terminated by either party by giving one (1) months written notice to the other party.
- 4.2 **Termination of a Fixed Term Agreement by a Consumer for no cause**
 - 4.2.1 Where an **Individual Consumer** has concluded a Fixed Term Agreement, the **Individual Consumer** will have the right to terminate the Fixed Term Agreement, for no particular reason or cause, at any time, provided the Consumer gives Telkom Mobile at least Twenty (20) Business days written notice of its election to terminate the Agreement, **WHICH TERMINATION WILL BE SUBJECT TO PAYMENT OF A REASONABLE CANCELLATION FEE, WHICH WILL BE DETERMINED AND CALCULATED BY Telkom Mobile AT THE TIME WHEN THE NOTICE TO TERMINATE IS GIVEN BY THE CONSUMER, USING THE GUIDELINES SET OUT UNDER SECTION 14 AND REGULATION 5(2) OF THE CPA.**
 - 4.2.2 Should the **Individual Consumer** elect to terminate the Agreement earlier than anticipated, as envisaged and permitted under clause 4.2.1, i.e. before the expiration of the initial period, then on receipt of the termination notice, Telkom Mobile will advise the **Individual Consumer** within 15 (fifteen) Business days of receipt of the termination notice of the amounts which are still owed to it, namely all the arrears amounts owing to Telkom Mobile in terms of the Agreement up to date of termination; and the cancellation fee, as determined by Telkom Mobile as per the provisions of clause 4.2.1.
 - 4.2.3 The **Individual Consumer** will pay Telkom Mobile the amounts referred to under clause 4.2.2 within five (5) days of receipt of the final Invoice setting out the arrears amounts and the cancellation fee.
 - 4.2.4 On receipt of the amounts set out under clause 4.2.2 above, Telkom Mobile will then accept and confirm the termination.

5. PROVISION OF NETWORK SERVICES

This clause sets out the type and quality of services which Telkom Mobile has agreed to provide, you, the Subscriber with, who bears the risk of any misuse of the Services or SIM card, and what must happen when these services are interrupted by incidents/events which is beyond Telkom Mobile's control. It also covers your right to change the service, known as a migration and your right to request an international roaming service, and Telkom Mobile's right to vary your number or the Selected Mobile

Services where required by ICASA, (the Authority) which is beyond Telkom Mobile's control and which it is forced to comply with.

5.1 Use of the Services

- 5.1.1 The Subscriber agrees to only use the Selected Mobile Services and Selected Mobile Goods or Mobile Devices approved by the Authority and to comply with all relevant legislation applicable to the use of the Selected Mobile Services, Selected Mobile Goods and Mobile Devices, including the Act, its Regulations and any notices or directives issued by the Authority from time to time.
- 5.1.2 The Subscriber must ensure and warrants that the Network, the Selected Mobile Goods, the Selected Mobile Services and/or the Mobile Devices must not be used for improper, immoral or unlawful purposes.

5.2 Dropped calls and unavailability of networks and condition of the Selected Mobile Goods

5.2.1 WHILST TELKOM MOBILE OPERATES THE NETWORK, THE SUBSCRIBER IS AWARE AND ACKNOWLEDGES THAT TELKOM MOBILE DOES NOT OPERATE IN ISOLATION BUT INSTEAD RELIES ON FUNCTIONALITIES WHICH ARE PROVIDED BY A NUMBER OF SERVICE PROVIDERS WHO PROVIDE SEPARATE BUT INTERRELATED AND CONNECTED SERVICES WHICH AS A WHOLE, ALLOWS THE NETWORK, THE MOBILE SERVICES, THE MOBILE GOODS, SELECTED MOBILE GOODS, SELECTED MOBILE SERVICES AND MOBILE DEVICES TO FUNCTION. THESE SERVICE PROVIDERS OPERATE AS INDEPENDENT SERVICE PROVIDERS WHO ARE NOT NECESSARILY CONTROLLED AND / OR CONTRACTED BY TELKOM MOBILE.

5.2.2 WHILST TELKOM MOBILE WILL COMPLY WITH AND MEET THE MINIMUM SERVICE STANDARDS AND USE ITS BEST ENDEAVOURS TO ENSURE THAT THE SELECTED MOBILE SERVICES ARE OPERATIONAL AT ALL TIMES, TELKOM MOBILE DOES NOT WARRANT THAT THE SELECTED MOBILE SERVICES WILL BE OPERATIONAL ON A 24 (TWENTY FOUR) HOUR 365 (THREE HUNDRED AND SIXTY FIVE) DAYS PER YEAR BASIS, THIS BEING DUE TO THE NATURE OF THE TELECOMMUNICATIONS INDUSTRY AND THE NETWORK, WHICH IS DEPENDENT ON A NUMBER OF INDEPENDENT SERVICE PROVIDERS WHOM TELKOM MOBILE HAS NO DIRECT CONTROL OVER.

5.2.3 THE SUBSCRIBER ACKNOWLEDGES AND ACCEPTS THAT THE SELECTED MOBILE GOODS ARE NOT MANUFACTURED BY TELKOM MOBILE, BUT ARE MANUFACTURED BY THIRD PARTIES. IN MOST CASES, DUE TO THE PROVISIONS OF THE ACT READ TOGETHER WITH THE AUTHORITY CODE OF PRACTICE AND GUIDELINES, TELKOM MOBILE WILL NOT BE IN A POSITION TO OPEN THE SELECTED MOBILE GOODS OR TO TEST OR OPERATE THE SELECTED MOBILE GOODS BEFORE THEY ARE HANDED TO THE SUBSCRIBER IN ORDER TO ENSURE THAT THEY ARE FIT FOR PURPOSE AND / OR ARE INTACT.

5.2.4 IN LIGHT OF THE DISCLOSURES HOUSED UNDER CLAUSES 5.2.1 TO 5.2.3, AND SUBJECT ALWAYS TO THE PROVISIONS HOUSED UNDER THE MINIMUM SERVICE STANDARDS, TELKOM MOBILE EXPRESSLY STIPULATES AND THE SUBSCRIBER ACKNOWLEDGES THAT TELKOM MOBILE CANNOT WARRANT OR GUARANTEE THAT THE SELECTED MOBILE SERVICES AND THE SELECTED MOBILE GOODS WILL:

5.2.4.1 AT ALL TIMES BE FREE OF ERRORS OR INTERRUPTIONS;

5.2.4.2 ALWAYS BE AVAILABLE;

5.2.4.3 BE FIT FOR ANY PURPOSE;

5.2.4.4 NOT INFRINGE ON ANY THIRD PARTY RIGHTS;

5.2.4.5 BE SECURE AND RELIABLE,

save where the Selected Mobile Goods or Selected Mobile Services are found to be defective and such defect has been solely caused by Telkom Mobile as anticipated under sections 54¹, 55² and 56³ of the CPA, where applicable.

¹ **54. Consumer's rights to demand quality service**

- 1) When a supplier undertakes to perform any services for or on behalf of a consumer, the consumer has a right to—
- (a) the timely performance and completion of those services, and timely notice of any unavoidable delay in the performance of the services;
 - (b) the performance of the services in a manner and quality that persons are generally entitled to expect;
 - (c) the use, delivery or installation of goods that are free of defects and of a quality that persons are generally entitled to expect, if any such goods are required for performance of the services; and
 - (d) the return of any property or control over any property of the consumer in at least as good a condition as it was when the consumer made it available to the supplier for the purpose of performing such services,
- having regard to the circumstances of the supply, and any specific criteria or conditions agreed between the supplier and the consumer before or during the performance of the services.
- (2) If a supplier fails to perform a service to the standards contemplated in subsection (1), the consumer may require the supplier to either—
- (a) remedy any defect in the quality of the services performed or goods supplied; or
 - (b) refund to the consumer a reasonable portion of the price paid for the services performed and goods supplied, having regard to the extent of the failure.

² **55. Consumer's rights to safe, good quality goods**

- 1) This section does not apply to goods bought at an auction, as contemplated in section 45.
- (2) Except to the extent contemplated in subsection (6), every consumer has a right to receive goods that—
- (a) are reasonably suitable for the purposes for which they are generally intended;
 - (b) are of good quality, in good working order and free of any defects;
 - (c) will be useable and durable for a reasonable period of time, having regard to the use to which they would normally be put and to all the surrounding circumstances of their supply; and
 - (d) comply with any applicable standards set under the Standards Act, 1993 (Act No. 29 of 1993), or any other public regulation.
- (3) In addition to the right set out in subsection (2)(a), if a consumer has specifically informed the supplier of the particular purpose for which the consumer wishes to acquire any goods, or the use to which the consumer intends to apply those goods, and the supplier—
- (a) ordinarily offers to supply such goods; or
 - (b) acts in a manner consistent with being knowledgeable about the use of those goods,
- the consumer has a right to expect that the goods are reasonably suitable for the specific purpose that the consumer has indicated.
- (4) In determining whether any particular goods satisfied the requirements of subsection (2) or (3), all of the circumstances of the supply of those goods must be considered, including but not limited to—
- (a) the manner in which, and the purposes for which, the goods were marketed, packaged and displayed, the use of any trade description or mark, any instructions for, or warnings with respect to the use of the goods;
 - (b) the range of things that might reasonably be anticipated to be done with or in relation to the goods; and
 - (c) the time when the goods were produced and supplied.

- 5.2.5 Notwithstanding the provisions of clause 5.2.4 above, Telkom Mobile will use its best endeavours to notify the Subscriber in advance of any failure of, or interruption to the Connections, the Selected Mobile Services and / or the Selected Mobile Goods and where applicable any required maintenance and repairs which may result from such failure, interruption or unavailability, where Telkom Mobile is in a position to do so.
- 5.2.6 Telkom Mobile and the Subscriber and more in particular the Consumer confirm that the provisions housed under clause 5.2 expressly set out that the Mobile Goods and Mobile Services are sold or offered in a specific condition.
- 5.2.7 In light of the above disclosures, which are permitted under section 54(1) or 55 (6) of the CPA, the Subscriber acknowledges that it will not be allowed to:
- 5.2.7.1 withhold any amounts due and owing to Telkom Mobile; or
- 5.2.7.2 deduct any monies,
- 5.2.8 Furthermore, where the Selected Mobile Goods are defective, or faulty, then in such an event the Consumer's rights will be limited to those set out under clause 9.
- 5.3 Suspension or withdrawal of services by Telkom Mobile due to reasons beyond its control**
- 5.3.1 Telkom Mobile expressly advises and the Subscriber acknowledges and accepts that Telkom Mobile may from time to time, due to reasons beyond its control, have to suspend or withdraw certain of the Mobile Services including any VAS.
- 5.3.2 Telkom Mobile however undertakes to give reasonable notice to the Subscriber of any such withdrawal or suspension and the reasons therefore as well as any anticipated down time where applicable.
- 5.3.3 Some of the reasons for a withdrawal or suspension must include without generalising:
- 5.3.3.1 suspension or discontinuation of the services by 3rd parties due to problems on their infrastructure;
- 5.3.3.2 where certain VAS are being abused by the Subscriber or by subscribers in general;
- 5.3.3.3 where the Mobile Services are found to contain a defect which enables a subscriber to exploit the service to the detriment of Telkom Mobile;
- 5.3.3.4 where the Mobile Service or VAS has reached the end of its lifespan and is uneconomical to maintain or continue;
- 5.3.3.5 where there has been an insignificant interest in the use of the Mobile Service or VAS; and / or
- 5.3.3.6 in response to an instruction from the Authority or in terms of the Act or some other law or body the Mobile Service or VAS is discontinued.
- 5.3.4 Where any Mobile Service or VAS is withdrawn or discontinued by Telkom Mobile, then in such an event, and where applicable, Telkom Mobile shall stop levying the fee or Charge in respect of the discontinued Mobile Service and the Subscriber's Monthly invoice and selected Tariff must be adjusted accordingly.
- 5.3.5 Where a Mobile Service or VAS is discontinued or suspended, as per clause 5.3 then the Subscriber accepts and agrees that it must not:
- 5.3.5.1 withhold any amounts which are owed to or which may become due and owing to Telkom Mobile;
- 5.3.5.2 deduct any monies from the Usage charges, save for the amounts which Telkom Mobile may agree to as per the provisions of clause 5.3.4 above; and/or
- 5.3.5.3 demand any refund, or bring any action for damages or otherwise against Telkom Mobile, in respect of any discontinued service.
- 5.4 Change in Mobile numbers due to reasons beyond Telkom Mobile's control**
- 5.4.1 Notwithstanding anything to the contrary contained in this Agreement, the Subscriber acknowledges that it does not own the Mobile number that is allocated to the SIM card which Mobile number is owned by the Authority and which has been allocated to Telkom Mobile as per the provisions of the Act.

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

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

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

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

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

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

4 56. Implied warranty of quality

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

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

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

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

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

(a) replace the goods; or

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

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

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

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

- 5.4.2 **Telkom Mobile WILL BE ENTITLED TO ALTER ANY CODE OR MOBILE NUMBER WHICH HAS BEEN ALLOCATED TO THE SUBSCRIBER FOR THE MOBILE GOODS OR MOBILE DEVICE AND / OR THE SIM CARD, WHICH CHANGE HAS BEEN NECESSITATED BY THE AUTHORITY WHO OWNS THE NUMBER RANGE AND/OR WHERE Telkom Mobile MAY HAVE TO CHANGE THE AFOREMENTIONED NUMBERS IF IT CHANGES ITS TECHNOLOGY 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.**
- 5.5 **Subscriber's right to a Migration of Mobile Goods and Mobile Services**
- 5.5.1 The Subscriber has the right to request an amendment and/or variation to the Mobile Goods and Mobile Services, which he is receiving under the Agreement, which election, where accepted by Telkom Mobile is known as a "Migration".
- 5.5.2 Any request by a Subscriber to migrate, must be subject to the following conditions:
- 5.5.2.1 any Migration will be at Telkom Mobile's sole discretion and where such Migration has been permitted, this **WILL BE SUBJECT TO THE PAYMENT BY THE SUBSCRIBER OF ANY APPLICABLE MIGRATION CHARGES, LEVIED BY Telkom Mobile, WHICH CHARGES ARE DETAILED UNDER THE Telkom Mobile OFFERINGS SCHEDULE AND THE TARIFF PLAN;**
- 5.5.2.2 any Migration will not have the effect of creating a new agreement, save that the parties will conclude an amendment to the Agreement which details the revised Mobile Goods and Mobile Services and the associated Tariff Plan, selected by the Subscriber; and
- 5.5.2.3 any migration will take effect at the end of the calendar month following the conclusion of the required amendment to the Agreement and payment of the Migration charges, whichever comes later;
- 5.6 **Bundled service offerings**
- 5.6.1 Should the selected Mobile Services and associated Tariff Plan incorporate bundled elements, as selected by the Subscriber, including, but not limited to, voice minutes/seconds, data capacity (MegaBytes/GigaBytes), messaging (SMS/MMS) as well as bonus elements such as bonus voice minutes/seconds, bonus data capacity (MegaBytes/GigaBytes), bonus messaging (SMS/MMS), the following conditions will apply to such bundled elements:
- 5.6.1.1 all elements used after the depletion of the bundled elements will be charged out at the current out of bundle rate as set out in the Telkom Mobile Offerings Schedule and Tariff Plan; and
- 5.6.1.2 specific conditions pertaining to the carryover of unused elements will be explained separately for each individual product in the Telkom Mobile Offerings Schedule and made available on the Telkom Mobile website at www.telkommobile.co.za
- 5.7 **SIM Card and Associated costs**
- 5.7.1 The Subscriber acknowledges that whilst Telkom Mobile will provide the Subscriber with the Selected Mobile Services and the Selected Mobile Goods it will not have any control over the use of the Selected Mobile Services and the Selected Mobile Goods. Therefore the risk and related liability in respect of the availability and use of the Selected Mobile Services and the Selected Mobile Goods will pass to the Subscriber on delivery of the Selected Mobile Services and the Selected Mobile Goods. Accordingly, the Subscriber will be liable for all Charges in respect of the use of the Selected Mobile Goods and Selected Mobile Services including all costs and charges associated with the SIM card used in the Selected Mobile Goods or Mobile Device, as the case may be including all Usage charges generated by the SIM card,
- 5.7.1.1 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;
- 5.7.1.2 irrespective of the place or area where the Selected mobile Goods or Mobile 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;
- 5.7.1.3 regardless of any call barring/alerting services (with or without a limit) which have been requested by the Subscriber and form part of the Selected Mobile Services and the Selected Mobile Goods and associated Tariff Plan,
- the Subscriber acknowledging that the transfer of such risk is fair under the circumstances.
- 5.7.2 Whenever a Mobile Device and the associated SIM-card is lost, stolen or destroyed,
- 5.7.2.1 the Subscriber must immediately notify Telkom Mobile and any police official at any police station in writing that the Selected Mobile Goods or Mobile Device and SIM card has been lost, stolen, misplaced or destroyed as per section 41 of RICA; and
- 5.7.2.2 the Subscriber is liable for the cost to replace the Selected Mobile Goods, the Mobile Device and SIM card, regardless of the cause of any such loss or destruction.
- 5.8 **International Roaming**
- The following conditions apply to International Roaming services provided by Telkom Mobile:
- 5.8.1 International Roaming is an optional feature available on request by the Subscriber;
- 5.8.2 International Roaming is only available in certain countries which are specified under the following website www.telkommobile.co.za, which list may change from time to time;
- 5.8.3 International Roaming will be permitted at Telkom Mobile's sole discretion and may be subject to the payment of a deposit, which will be determined at Telkom Mobile's sole discretion, for the activation of the feature;
- 5.8.4 Bundled services as described in clause 5.6.1 cannot be utilized as deductible elements by post paid accounts while utilizing services during International Roaming;
- 5.8.5 notwithstanding clause 5.8.4 holders of any Hybrid and Pre-paid accounts will be permitted to utilize accumulated airtime in the form of monetary value (Rand & Cents) as deductible elements while utilizing services during International Roaming;
- 5.8.6 loyalty awards and bonus minutes / SMS and / or data are not deductible elements for use when roaming internationally; and
- 5.8.7 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 BlackBerry®, CSD, GPRS, EDGE, 3G, HSDPA, HSUPA or HSPA+; and
- vii) any other usage of the Network of the foreign operator,

which rates can be viewed at www.telkmobile.co.za/coverage/internationalroaming

6. CHARGES AND PAYMENT

This clause sets out the charges which Telkom Mobile is entitled to levy in respect of the use of the Selected Mobile Services which you the Subscriber have asked Telkom Mobile to provide you with, Telkom Mobile's right to ask for a deposit and set credit limits and how the monthly account will be paid by yourself once you receive it.

- 6.1 In return for the supply of and access to the Selected Mobile Services, and where applicable the Selected Mobile Goods, the Subscriber agrees and undertakes to pay to Telkom Mobile the Charges levied by Telkom Mobile as per the Tariff Plan, on receipt of the Monthly invoice.
- 6.2 For avoidance of doubt the Monthly invoice, which must be submitted to the Subscriber, must set out and detail the following Charges, where applicable:
 - 6.2.1 **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;
 - 6.2.2 **reconnection charge:** levied, where the Subscriber's right to use the Selected Mobile Services and Selected Mobile Goods is suspended due to non payment, and which fee is in respect of any restoration of the disconnected Selected Mobile Service;
 - 6.2.3 **Usage Charge:** the Usage charges as per the Tariff Plan, which Charges are due and payable monthly in advance in respect of the subscription by the Subscriber or any of his agents, of the Selected Mobile Services, with additional Usage charges billable in arrears with respect to usage;
 - 6.2.4 **maintenance charges:** levied periodically, usually on a monthly basis, or on performance, depending on the type of maintenance contract, for maintenance of the Selected Mobile Goods that Telkom Mobile has agreed to provide to the Subscriber that are not covered by the Usage 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;
 - 6.2.5 **cancellation fee:** levied to recover any costs incurred by Telkom Mobile in respect of the Subscriber electing to terminate the Agreement before the expiration of the Initial period or any subsequent Renewal period as per the provisions of clause 4.2, where applicable;
 - 6.2.6 **migration costs:** levied in respect of any agreement reached by the Parties in respect of the migration by the Subscriber from one Tariff Plan to another, where applicable;
 - 6.2.7 **VAT:** value added tax levied on the Charges as required under the Value Added Act 89 of 1991; and
 - 6.2.8 **VAS:** any charges for VAS as selected under the Application Form and Tariff Plan.
- 6.3 **Deposits, set off and unpaid accounts**
 - 6.3.1 Telkom Mobile will be entitled to levy and collect from any Applicant the payment of a deposit, as determined by Telkom Mobile in its sole discretion, as a pre-condition for providing the Selected Mobile Services and/ or the Selected Mobile Goods. The deposit is to serve as security for payment of any amounts set out under the Monthly invoice which are due to Telkom Mobile by the Subscriber, but not paid on due date.
 - 6.3.2 Where any amounts due to Telkom Mobile by the Subscriber, are not paid by the due date, Telkom Mobile will have the right, without prejudice to any of its rights, to:
 - 6.3.2.1 suspend the Selected Mobile Services and/or use of the Selected Mobile Goods;
 - 6.3.2.2 to use the deposit (where one has been paid) to settle any amount due together with interest thereon at the Interest rate levied by Telkom Mobile to the Subscriber, and
 - 6.3.2.3 demand from the Subscriber:
 - 6.3.2.3.1 the payment of a deposit where none has been paid,
 - 6.3.2.3.2 payment of an additional or an increased deposit,
 - 6.3.2.3.3 payment of a reconnection charge,
- 6.3.2.3.3 as determined by Telkom Mobile as a pre-condition for restoring the Selected Mobile Services and/or Selected Mobile Goods.
- 6.4 **Billing**
 - 6.4.1 Telkom Mobile must provide the Subscriber on a monthly basis, with a computerized Monthly invoice, which constitutes a VAT invoice and/or Sales record in respect of all and any Charges due and owing in terms of the Agreement by the Subscriber to Telkom Mobile. The invoice will at the Subscriber's election be sent by email or by mail and at no charge to the Subscriber.
 - 6.4.2 Detailed billing is available to the Subscriber under the VAS offerings and will be provided on request against the payment of the applicable service charge, as set out under the Telkom Mobile Offerings Schedule.
 - 6.4.3 Telkom Mobile reserves the right to round a fraction of 1c (one cent) off to the nearest cent.
- 6.5 **Payments**
 - 6.5.1 The Subscriber is liable for the payment of all Charges as reflected in the Monthly invoice.
 - 6.5.2 All monies payable by the Subscriber to Telkom Mobile must be paid by way of monthly debit order, timeously on due date, free of deduction or set-off to Telkom Mobile at its principal place of business or to Telkom Mobile's bankers, which details are stated under the Monthly invoice. Non-receipt of an invoice by the Subscriber must not be considered as a valid reason for late or non-payment.
 - 6.5.3 The Subscriber is liable and responsible for payment until payment has been received into Telkom Mobile's bank account.
 - 6.5.4 The Subscriber is in breach of this Agreement by cancelling the debit order without the prior written consent of Telkom Mobile.

6.5.5 Should any debit order be returned unpaid or stopped or rejected, Telkom Mobile will have the right to suspend the Subscriber's account until such arrears amounts have been received and paid in full.

6.6 Changes to Charges

6.6.1 Telkom Mobile will be entitled to increase and/or reduce any of the amounts reflected under the Telkom Mobile Offerings Schedule and in consequence the Tariff Plan, as a result of any increase or decrease which is imposed on it in terms of the Act. Telkom Mobile will use its best endeavours to give the Subscriber timeous notice of any such changes, which notice will be in writing and also placed on the Telkom Mobile website, at www.telkommobile.co.za

6.6.2 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 Mobile 20 (Twenty) Business days notice of its election to cancel the Agreement. **WHERE A CONSUMER TERMINATES THE AGREEMENT AS PER HIS RIGHTS UNDER THIS CLAUSE 6.6.2, SUCH TERMINATION WILL BE WITHOUT PENALTY, SAVE WHERE THE CONSUMER HAS BEEN GIVEN OR HAS PURCHASED BUT NOT YET PAID FOR, SELECTED MOBILE GOODS. IN SUCH A CASE THE CONSUMER WILL HAVE A LEGAL DUTY AND Telkom Mobile WILL HAVE A LEGAL RIGHT TO DEMAND FROM THE CONSUMER, FULL PAYMENT IN RESPECT OF THE SELECTED MOBILE GOODS, LESS ANY AMOUNTS THAT HAVE ALREADY BEEN PAID TO Telkom Mobile IN RESPECT THEREOF PRIOR TO SUCH TERMINATION.**

6.7 Credit Limit and extraordinary billing

6.7.1 Telkom Mobile reserves the right to impose a monetary limit on the maximum value of Charges incurred by the Subscriber during each billing period and Telkom Mobile will be entitled to suspend the Selected Mobile Services and Selected Mobile Goods should the Subscriber exceed the maximum amount set.

6.7.2 Where Telkom Mobile notices that there is a significant increase in Usage charges since the Subscriber's last Invoice, Telkom Mobile may, at its own discretion, issue to the Subscriber an Invoice outside the normal billing cycle, and/or demand immediate payment of any amounts due by the Subscriber in respect of such Invoice and Telkom Mobile will be entitled to suspend the Selected Mobile Services and use of the Selected Mobile Goods, until the Subscriber has paid the invoice in full.

7. DELIVERY, RISK AND OWNERSHIP

This section sets out how the Selected Mobile Services and Selected Mobile Goods will be delivered to you, the Subscriber. It also details when risk and ownership in the goods and services will pass to you.

7.1 Telkom Mobile shall deliver the Selected Mobile Services and where applicable the Selected Mobile Goods 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 Form and agreed to provide the Subscriber with the Selected Mobile Services and where applicable, the Selected Mobile Goods.

7.2 Delivery of the Selected Mobile Goods will be made by Telkom Mobile, at its election and as communicated to the Subscriber, at either,

7.2.1 the Telkom Mobile offices set out on the Application Form;

7.2.2 the offices of an authorized and appointed reseller or dealer of Telkom Mobile 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 Form using the services of an Telkom Mobile appointed courier.

7.3 The risk of loss or damage in and to the Selected Mobile Goods will pass to the Subscriber on delivery thereof to the Subscriber, including without limitation the risk of loss, theft, destruction or damage. Notwithstanding the passing of risk, ownership in the Selected Mobile Goods will pass to the Subscriber on delivery to the Subscriber, save where any Selected Mobile Goods are leased or rented from Telkom Mobile, where ownership in such Mobile Goods will remain vested in Telkom Mobile for the duration of the lease period

7.4 For the avoidance of doubt, and notwithstanding that the Subscriber has purchased or leased the Selected Mobile Goods from Telkom Mobile, where as part of the Selected Mobile Goods, the Subscriber has purchased a Mobile Device at a discounted price from Telkom Mobile, or alternatively has received a Mobile Goods, free of charge from Telkom Mobile, risk of loss, theft, destruction or damage to the Selected Mobile Goods referred to above, will pass immediately to the Subscriber upon delivery thereof to the Subscriber.

7.5 Notwithstanding that the Subscriber has purchased or leased the Selected Mobile Goods from Telkom Mobile or any Mobile Device from any third party, should the Selected Mobile Goods or Mobile Devices 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 Selected Mobile Goods, Mobile devices 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 AND REPAIRS AND SUSPENSION OF THE Telkom Mobile SERVICE

The section details what you need to do if the Selected Mobile Goods are defective and how they have to be returned to Telkom Mobile and the circumstances when Telkom Mobile will replace them and / or when you will receive a refund/ or the Selected Mobile Goods will be sent in for repairs.

8.1 "7 day out of box failure"

8.1.1 Where the Selected Mobile Goods are returned by the Subscriber within Seven (7) days after delivery, because they allegedly are defective or faulty then Telkom Mobile, once it has concluded that the Selected Mobile Goods are in fact faulty or defective, will replace on behalf of the manufacturer or supplier whatever the case may be, the Selected Mobile Goods with equivalent goods, provided such goods are accompanied with proof of purchase indicating that such goods have in fact been purchase from Telkom Mobile.

8.2 Consumer's Implied warranty on Selected Mobile Goods

8.2.1 Where the Selected Mobile Goods are not replaced under a seven (7) day out of box failure contemplated under clause 8.1 above and in light of the disclosures housed under clause 5 and more in particular clause 5.2, Telkom Mobile expressly stipulates and the Subscriber acknowledges that Telkom Mobile provides the Selected Mobile Goods "as available, when available and as is". In other words because Telkom Mobile is not the manufacturer of the goods and because it is unable to open the sealed package and inspect the goods, Telkom Mobile cannot warrant or guarantee that the Selected Mobile Goods 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.

8.2.2 Notwithstanding the above disclaimer, should the Selected Mobile Goods including the software and battery used in connection with the Selected Mobile Goods, fall short of the standards set out under section 55(2) of the CPA, and such defect or fault becomes apparent within 6 (six) months of delivery of the Selected Mobile Goods, the Consumer (which right is not available to the Subscriber/Customer) ~ must immediately notify Telkom Mobile of the defect and /or failure and bring the Selected Mobile Goods to a nominated Telkom Mobile repair centre together with the **Consumer's** proof of purchase.

8.2.3 No return will be accepted by Telkom Mobile unless the **Consumer**:

- 8.2.3.1 can provide proof of purchase, which must be in the form of a sales record or Invoice; and
- 8.2.3.2 returns the complete unit of the Selected Mobile Goods including packaging, accessories (including but not limited to CD's containing software, manuals, AC Adapter (charger) and any other inclusive part of the Selected Mobile Goods).
- 8.2.4 On return of the Selected Mobile Goods, the **Consumer** must:
 - 8.2.4.1 describe what caused the Selected Mobile Goods to malfunction or to stop functioning; and
 - 8.2.4.2 allow the Telkom Mobile representative to inspect the Selected Mobile Goods for physical damage and/ or signs of liquid damage.
- 8.2.5 In addition to clause 8.1.3, the acceptance of any returned Selected Mobile Goods by Telkom Mobile from a **Consumer** is subject to the following terms and conditions:
 - 8.2.5.1 the Selected Mobile Goods will be sent to the Telkom Mobile technical centre for further examination, and analysis, which will take no longer than 3 (Three) weeks or such longer period as notified by Telkom Mobile, subject always to the provisions housed under the Minimum Service Standards;
 - 8.2.5.2 acceptance of the Selected Mobile Goods is on behalf of the manufacturer and is not an admission of liability by Telkom Mobile, or Telkom Mobile acting on behalf of its suppliers or manufacturers, that the Selected Mobile Goods are 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 Mobile will notify the **Consumer** as soon as is reasonably possible and within the prescribed period set out under sub clause 8.1.5 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.
- 8.2.6 Where on inspection it has been found that the Selected Mobile Goods are not in accordance with the standards set out in section 55(2) of the CPA as the case may be, and Telkom Mobile has discussed the matter with the manufacturer or supplier who has then agreed to accept responsibility for the ascertained defect, then Telkom Mobile, on behalf of the supplier and / or manufacturer will either, at the option of the Consumer
 - 8.2.6.1 repair or replace the failed, unsafe or defective part of the Selected Mobile Goods; 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 Mobile Goods, less any reasonable Usage charges, as defined under clause 1 of the Agreement.
- 8.2.7 Where any returned Selected Mobile Goods 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 Mobile will have no further responsibility or liability in relation to the returned Selected Mobile Goods, save that it has the right to offer to repair, at the **Consumer's** cost, the Selected Mobile Goods and subject further to the following conditions:
 - 8.2.7.1 any acceptance of the Selected Mobile Goods for repairs and maintenance will be done on or under the condition that Telkom Mobile is acting as an agent on behalf of the manufacturer or local supplier of the Selected Mobile Goods; and
 - 8.2.7.2 Telkom Mobile will not be liable for any loss, damage, destruction, theft or negligent workmanship howsoever or by whomsoever caused to the Selected Mobile Goods 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/ Subscriber, be for the Subscriber/ Consumer's account.

9. LIMITED LIABILITY AND INDEMNITY

This section sets out Telkom Mobile's liability in respect of the Selected Mobile services and Selected Mobile Goods, which you, the Subscriber should take careful note of.

- 9.1 **SUBJECT TO THE PROVISIONS OF CLAUSE 9.2 BELOW, Telkom Mobile 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 OF THE MOBILE SERVICES OR MOBILE GOODS, WHICH ARISES OR OCCURS AS A RESULT OF THE USE OF, OR ARISING OUT OF THE PROVISION OF, THE MOBILE GOODS OR THE MOBILE SERVICES AND WHETHER SUCH CLAIM, ACTION OR DAMAGE IS DIRECT OR INDIRECT, CONSEQUENTIAL OR CONTINGENT AND IN PARTICULAR Telkom Mobile SHALL NOT BE LIABLE FOR ANY:**

- 9.1.1 **LOSS OF LIFE,**
- 9.1.2 **INJURY,**
- 9.1.3 **MEDICAL EXPENSES,**
- 9.1.4 **SUPPORT,**
- 9.1.5 **FINANCIAL LOSS OR FINANCIAL SUPPORT,**
- 9.1.6 **LOSS OF EARNINGS,**
- 9.1.7 **LOSS OF PROFIT AND/OR INCOME,**
- 9.1.8 **LOSS OF REVENUE,**
- 9.1.9 **LOSS OF BUSINESS OR GOODWILL, OR**
- 9.1.10 **ANY OTHER SPECIAL DAMAGES,**

INCURRED BY THE SUBSCRIBER, USER OR ANY OTHER PERSON WHO MAY BE USING OR HOLDING THE MOBILE GOODS OR MOBILE SERVICES, HOWSOEVER ARISING, AND THE SUBSCRIBER INDEMNIFIES Telkom Mobile AGAINST ANY CLAIM OR ACTION, AS DESCRIBED ABOVE, WHICH MAY BE BROUGHT BY ANY PERSON IN THIS REGARD.

- 9.2 **WHERE A CONSUMER SUFFERS ANY LOSS OR DAMAGES AS A RESULT OF THE USE OF THE Telkom Mobile SERVICES OR MOBILE GOODS, THE CONSUMER IN THIS CASE WILL BE ALLOWED TO AVAIL ITSELF TO THE PROVISIONS HOUSED UNDER SECTION 61 OF THE CPA SO LONG AS THE CONSUMER IS ABLE TO SHOW THAT THE MOBILE SERVICES OR MOBILE GOODS 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 Mobile AND ITS SERVICE PROVIDERS UNDER SECTION 61 OF THE CPA.**

9.3 Telkom Mobile assumes no responsibility for the integrity, correctness, retention or content of information transported via the Network.

9.4 The limitation on liability set out above is addition to any limitation of liability set out elsewhere under this Agreement.

10. SUBSCRIBER ASSISTANCE, COMPLAINTS AND DISPUTES

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

- 10.1 Telkom Mobile provides customer care to all Subscribers at all times, on a 24/7/365 basis, excluding times when it is unable to assist due to reasons beyond its reasonable control.
- 10.2 The Subscriber must, once it experiences any trouble with any of the Selected Mobile Goods and/or Selected Mobile Services bring the suspected problem to Telkom Mobile's attention by contacting the relevant customer care office at the number listed on the Telkom Mobile Monthly 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 Mobile will use its best endeavours to attend to the complaint as soon as it is possible, which will depend on the complexity and nature of the suspected problem, as logged.
- 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 consumers@icasa.org.za
- 10.5 The above rights set out under clauses 10.1 to 10.4 is without prejudice to both Parties' respective rights to pursue a complaint or action in any other forum which has jurisdiction over the matter including the rights to submit the complaint, dispute or action to the National Consumer Commission or to arbitration.

11. BREACH AND TERMINATION

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

- 11.1 Should the Subscriber breach any term of this Agreement including any failure to pay Telkom Mobile any monies on due date, then Telkom Mobile must give the Subscriber 20 (Twenty) Business Days notice to rectify the breach. Should the Subscriber neglect or fail to rectify the breach within the 20 (Twenty) Business Days notice period, then Telkom Mobile will have the right to cancel the Agreement, *without prejudice* (meaning to preserve your respective rights and positions,) to Telkom Mobile's rights to claim all and any damages which Telkom Mobile has incurred in consequence of such breach.
- 11.2 Should Telkom Mobile breach any material term of this Agreement, then the Subscriber will have the right to provide Telkom Mobile with a letter requiring Telkom Mobile to rectify the breach. Should Telkom Mobile neglect or fail to rectify such breach within the 20 (Twenty) Business Days notice period, then the Subscriber may cancel the Agreement, which will be *without prejudice* (meaning to preserve your respective rights and positions,) to the Subscriber's rights to claim any damages which it may have incurred in consequence of Telkom Mobile's breach.
- 11.3 Without contradicting the provisions of clause 10.5 above, both parties agree to the jurisdiction of the Magistrate's Court in relation to any court proceedings which may be brought and arising in consequence of the Agreement.
- 11.4 Should the Subscriber be sequestrated, liquidated or placed under judicial management, Telkom Mobile will be entitled to immediately cancel this Agreement upon notice to the Subscriber
- 11.5 The Subscriber agrees that Telkom Mobile may register the details of the manner in which payments have been conducted by the Subscriber and or its agent, with any registered credit bureau.
- 11.6 Telkom Mobile will be liable for all costs on an attorney and client scale that the **Consumer** incurs as a result of Telkom Mobile's breach of any of the terms and conditions of this Agreement.
- 11.7 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 Customer in terms of this Agreement and in the case of a Consumer, subject to the provisions housed under Regulation 44 (3) (aa) of the CPA.

12. 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.

- 12.1 The parties choose the addresses set out below as their chosen place to receive legal notices (*domicilium citandi et executandi*)
- 12.1.1 Telkom Mobile at:
- 152 Proes Street, Pretoria;
and
- 12.1.2 the Subscriber at the physical or residential address specified in the Application Form.
- 12.2 All notices given in terms of this Agreement must be in writing.

13. UNDERTAKING AS A SURETY AND CO-PRINCIPAL DEBTOR

This section states that 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 must be held responsible for the payment of all amounts due to Telkom Mobile, 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 he is duly authorised to enter into this Agreement on behalf of the Subscriber and, if applicable, to sign the debit authorization on the Subscriber's bank account. By his signature, the signatory also agrees to binds himself as co-principal debtor for the Subscriber in favour of Telkom Mobile for the fulfillment of all of the Subscribers obligations to Telkom Mobile arising out of this Agreement including the payment of all charges, fees, penalties and liquidated damages.

14. GENERAL

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

- 14.1 Consumer status
-

In consequence of the recently released CPA, certain rights have been granted to a Subscriber who is a **Consumer**, as defined under the CPA. Telkom Mobile reserves the right to withhold any of these rights and / or resultant benefits until such time as the Subscriber, in the case where it claims it is a **Consumer**, is able to prove to Telkom Mobile which proof may be in the form of a set of Financial statements or an identity document, that it is a **Consumer** / and or in the case of a right which it is wanting to exercise under section 14 of the CPA, that it is an **Individual Consumer**.

Where the Subscriber is unable to show that it is a **Consumer or Individual Consumer**, in such an event Telkom Mobile reserves the right to reverse or call for restitution (a refund) of any rights or benefits permitted under the CPA, which the Subscriber has unlawfully taken advantage of and which are not applicable to the Subscriber.

14.2 **Subscriber details and changes thereto**

The Subscriber agrees to supply Telkom Mobile with such information, documentation and signatures that Telkom Mobile may reasonably require at the time that this Agreement is concluded, in order to give effect to the payment arrangements of this Agreement. Any subsequent changes that affect the information supplied to Telkom Mobile such as bank account, legal service address referred to under clause 12 and credit card details must be brought by the Subscriber in writing to the immediate attention of Telkom Mobile.

14.3 **Cession**

Telkom Mobile will be entitled to cede its rights and/or to delegate its obligations arising from this Agreement and/or assign this Agreement, wholly or partly, to any third party, but it must give the Subscriber reasonable notice of this fact. The Subscriber is not allowed to cede, assign, encumber or delegate his obligations arising out of this Agreement without receiving the prior written consent of Telkom Mobile, which may not be unreasonably withheld.

14.4 **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.

14.5 **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 is bound by any express or implied term, representation, warranty, promise or the like not recorded in this Agreement, save where it is 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, will in any way prejudice the grantor or preclude the grantor from exercising any of its rights in the future.

14.6 **Authority**

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

14.7 **Duplicate and scanned version in place of original**

The Subscriber agrees that this Agreement may be scanned and the paper version destroyed, and agrees to the scanned version and waives his right to dispute the authenticity of the scanned version.

14.8 **Unsolicited marketing and right to opt out**

The Subscriber understands that, in terms of section 45 of ECTA, read together with the provisions of the CPA, that the Subscriber has the option to request Telkom Mobile to remove the relevant contact particulars for unsolicited commercial and/or marketing communications by Telkom Mobile.

14.9 **Severability**

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

14.10 **Events outside control of Telkom Mobile**

Except as specifically provided under this Agreement, Telkom Mobile will 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 control) event, including but not limited to technical problems relating to the Network, acts of God, Government controls, restrictions or prohibitions or any other Government act or omission, whether local or national, any act or default of any supplier, agent or sub-contractor, industrial disputes, strikes or work stoppages of any kind or any other similar or dissimilar cause.

14.11 **Indulgence and relaxing**

The failure of Telkom Mobile 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 Mobile to insist on the strict compliance by the Subscriber of its undertakings and obligations in terms of the Agreement.

14.12 **Intellectual property rights**

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

14.13 **Laws**

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

SCHEDULE A

CHAPTER 7

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

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

- (1) Before a telecommunication service provider, other than a telecommunication service provider who provides a mobile cellular telecommunication service, enters into a contract with a person for the provision of a telecommunication service to that person, he or she-
- (a) must, if that person is a natural person-
- (i) obtain from him or her-
- (aa) his or her full names, identity number, residential and business or postal address, whichever is applicable; and
- (bb) a certified photocopy of his or her identification document on which his or her photo, full names and identity number, whichever is applicable, appear;
- (ii) retain the photocopy obtained in terms of subparagraph (i) (bb); and
- (iii) verify the photo, full names and identity number, whichever is applicable, of that person with reference to his or her identification document; or
- (b) must, if that person is a juristic person-
- (i) obtain from the person representing that juristic person-
- (aa) his or her full names, identity number, residential and postal address, whichever is applicable;
- (bb) the business name and address and, if registered as such in terms of any law, the registration number of that juristic person;
- (cc) a certified photocopy of his or her identification document on which his or her photo, full names and identity number, whichever is applicable, appear; and
- (dd) a certified photocopy of the business letterhead of, or other similar document relating to, that juristic person;
- (ii) retain the photocopies obtained in terms of subparagraph (i) (cc) and (dd); and
- (iii) verify the-
- (aa) photo, full names and identity number, whichever is applicable, of that person with reference to his or her identification document; and
- (bb) name and registration number of that juristic person with reference to its business letterhead or other similar document; and
- (c) may obtain from such person any other information, which the telecommunication service provider deems necessary for purposes of this Act.
- (2) A telecommunication service provider referred to in subsection (1) must ensure that proper records are kept of-
- (a) the information, including the photocopies, referred to in subsection (1) and, where applicable, any change in such information, which is brought to his or her attention;
- (b) the telephone number or any other number allocated to the person concerned; and
- (c) any other information in respect of the person concerned which the telecommunication service provider concerned may require in order to enable him or her to identify that person.
- (3) An applicant may, for purposes of making an application for the issuing of a direction, in writing request a telecommunication service provider referred to in subsection (1) to-
- (a) confirm that the person specified in the request is a customer of that telecommunication service provider concerned;
- (b) provide the applicant with the telephone number or any other number allocated to that person by that telecommunication service provider; and
- (c) furnish the applicant with a photocopy of the identification document of that person which is retained by that telecommunication service provider in terms of subsection (1) (a) (ii).
- (4) A telecommunication service provider who receives a request referred to in subsection (3) must immediately comply with that request if the person specified in the request is a customer of the telecommunication service provider concerned.

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

- (1) (a) Subject to paragraph (b), an electronic communication service provider who provides a mobile cellular electronic communications service must not activate a SIM-card on its electronic communication system unless subsection (2) has been complied with.
- (b) Paragraph (a) does not apply to a customer of an electronic communication service provider who provides a mobile cellular electronic communications service outside the Republic who enters the geographical coverage area of a mobile cellular electronic communication service provider in the Republic and uses the electronic communication system of such provider to make, receive and send voice calls or data or access other services.
- (2) From the date of commencement of this section an electronic communication service provider must, subject to subsection (4), at own cost implement a process to record and store, and must record and store-
- (a) the Mobile Subscriber Integrated Service Digital Network number (MSISDN-number) of the SIM-card that is to be activated by an electronic communication service provider at the request of a person contemplated in paragraphs (b) and (c);
- (b) in the case of a person who-
- (i) is a South African citizen or is lawfully and permanently resident in the Republic, the full names and surname, identity number and at least one address of such person who requests that a SIM-card referred to in subsection (1) be activated on the electronic communication system of an electronic communication service provider; or
- (ii) is not a South African citizen or who is not permanently resident in the Republic, and who requests that a SIM-card referred to in subsection (1) be activated on the electronic communication system of an electronic communication service provider, the full names and surname, identity number and at least one address of such person and the country where the passport was issued; or
- (c) in the case of a juristic person-
- (i) the full names, surname, identity number and an address of the authorised representative of the juristic person; and
- (ii) the name and address of the juristic person and, where applicable, the registration number of the juristic person.
- (3) (a) For the purposes of subsection (2), an electronic communication service provider must, in the manner provided for in paragraph (b), verify-
- (i) the full names, surname, identity number and identity of the person contemplated in subsection (2) (b) and (c) and, where applicable, the country where the passport was issued;
- (ii) the name and, where applicable, the registration number of the juristic person;
- (iii) in the case of a person contemplated in subsection (2) (b) (i) and (c), the address; and
- (iv) the authority of the representative of a juristic person.

- (b) An electronic communication service provider must verify-
- (i) the information contemplated in paragraph (a) (i) by means of an identification document;
 - (ii) the information contemplated in paragraph (a) (ii) by means of documentation, including a registration document, founding statement, document issued by the South African Revenue Service or any other similar document;
 - (iii) the address contemplated in paragraph (a) (iii) by means of documentation, including a bank statement, a municipal rates and taxes invoice, telephone or cellular phone account of not older than three months, or any other utility bill or an account of a retailer of not older than three months, or an existing lease, rental or credit sale agreement, insurance policy, a current television licence or a new motor vehicle licence document; and
 - (iv) the authority of the representative of the juristic person by means of a letter of authority or an affidavit.
- (4) (a) An electronic communication service provider must ensure that-
- (i) the process contemplated in subsection (2);
 - (ii) the information recorded and stored in terms of that subsection; and
 - (iii) the facility in or on which the information is recorded and stored, are secure and only accessible to persons specifically designated by that electronic communication service provider.
- (b) The Minister may, in consultation with the Cabinet member responsible for communications, by notice in the Gazette, determine security standards relating to the matters contemplated in paragraph (a).
- (5) From the date of commencement of this section, any customer who sells or in any manner provides an activated SIM-card to a person, other than a family member, and the person who is to receive the SIM-card must, immediately upon the sale or provision of the SIM-card, provide the relevant electronic communication service provider with-
- (a) the full names, surname and identity number of the customer; and
 - (b) all particulars as required in subsection (2) in respect of the person who is to receive the SIM-card.
- (6) (a) An electronic communication service provider must, upon receipt of the information provided in terms of subsection (5)-
- (i) verify the full names, surname, identity number and identity of the persons with reference to the persons' identification documents;
 - (ii) verify the address, contemplated in subsection (3) (a) (iii), of the person who is to receive the SIM-card by means of the documents contemplated in subsection (3) (b) (iii); and
 - (iii) verify the particulars contemplated in subsection (2) (a).
- (b) An electronic communication service provider must, upon receipt of the information provided in terms of paragraph (a), immediately record and store the information as contemplated in subsection (2).
- (7) (a) An applicant may, for the purposes of making an application for the issuing of a direction, in writing, request an electronic communication service provider to-
- (i) confirm that the person specified in the request is or was a customer of that electronic communication service provider; and
 - (ii) provide the applicant with the information recorded and stored in terms of subsection (2).
- (b) An electronic communication service provider who receives a request referred to in paragraph (a) must immediately comply with that request if the person specified in the request is or was a customer of the electronic communication service provider concerned.
- (8) If an employee or agent of an electronic communication service provider knows or suspects that an identification document submitted for verification as contemplated in subsection (3) is false, he or she must, within 24 hours, report the matter to a police official at any police station.
- (9) An electronic communication service provider must, on its electronic communication system, record and store-
- (a) every MSISDN-number used with every IMEI-number; and
 - (b) every IMEI-number used with every MSISDN-number, which must, on production of a direction, be provided to an applicant within 12 hours.
- (10) The information recorded and stored in terms of subsections (2), (6) and (9) must be stored by an electronic communication service provider for a period of five years after-
- (a) a customer has cancelled his or her contract with the electronic communication service provider; or
 - (b) the electronic communication service provider has ended the electronic communications service provided to the customer.

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

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

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

- (c) Any directive issued under paragraph (a) must, before the implementation thereof, be submitted to Parliament.

SCHEDULE "B"

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

1 PURPOSE OF THE REGULATIONS

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

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

3 DEFINITIONS In these Regulations, unless the context indicates otherwise, a word or expression to which a meaning has been assigned in the Act has the meaning so assigned:

'The Act' means the Electronic Communications Act (36 of 2005)

'Connectivity' means setting up and connecting the end user to the Electronic Communications network;

'Connectivity Failure' means the inability of an electronic communications network system to initiate or maintain connection between end-users;

'Complaint' means a communication lodged by an end-[User], by means of voice communication, personal visit (walk-in centres), post or by data messaging, expressing dissatisfaction with the service rendered by the licensee;

'Fault' means a failure of performance so serious as to destroy the ability of a network or some elements of a network to function effectively;

'Fault Clearance' means the resolution of a fault;

'Fault Report' means the communication of a fault by the end-user;

'ICASA Act' means the Independent Communications Authority of South Africa Act, 2000 (Act 13 of 2000)

'Installation' means making available the network infrastructure on the customer interface side;

'Qualifying service applicant' means an applicant for a licensee's service that meets certain preconditions as required by the licensee and can access these services within an area in which a licensee provides the required service and has coverage.

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

Licensees must cater for the following:

4.1 Availability of the ECN services All licensees must ensure that they achieve an average of 95 percent network service availability, over a period of six (6) months.

4.2 Availability of the EC services All licensees must ensure that they achieve an average of 95 percent service-availability within their specified area of coverage over a period of six (6) months

4.3 Average time to both install and activate service

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

4.4 Average time to Activate service

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

4.5 Licensees shall within 7 days upon receipt of a request notify and provide full reasons to qualifying service applicants where they are unable to provide service within the period specified in sub-regulations 4.1, 4.2, 4.3 and 4.4 above.

4.6 Connectivity Failure Rate (including dropped calls) The percentage of connectivity failure rate must not exceed an average of 3 percent of all connections, over a period of six (6) months, for all ECNS and ECS licensees.

4.7 Operator assisted calls response time The operator assisted calls must be answered within three (3) minutes averaged over twelve months.

4.8 ECN monitoring All licensees must monitor electronic communications network, 24 hours, seven (7) days a week.

4.9 Fault clearance rate/mean time to clear faults

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

5 COMPLAINTS PROCEDURE

5.1 Complaints reported to the licensee

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

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

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

6 INFORMATION REQUIREMENTS

(a) Licensees must keep and maintain a record of all complaints received from end-users and subscribers.

(b) Licensee must prepare six-monthly reports on complaints received and processed. Copies of such reports must be submitted to the Authority within one (1) month after the end of the licensee's financial year and every six (6) months thereafter.

(c) Licensees must prepare and submit to the Authority six (6) monthly reports on the standards as prescribed in regulation 4.

(d) The reports referred to in sub-regulations 6(b) and (c) of these Regulations must be in accordance with the format as may be determined by the Authority from time to time.

7 PENALTIES

A licensee who is held to be non compliant by the Complaints and Compliance Committee (CCC) will be liable to a fine not exceeding: (a) R500 000.00 for a contravention of regulation 4.

(b) R150 000.00 for a contravention of regulations 5 and 6.

(c) An additional R50 000.00 for every repeated offence.

8 REGULATIONS THAT ARE REPEALED

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

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

9 SHORT TITLE AND COMMENCEMENT

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