

SUBSCRIBER STANDARD TERMS & CONDITIONS

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 **at:**

Telkom Park, The Hub 61 Oak Avenue , Centurion 0157 ; 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.

UNDERTAKING AS A SURETY AND COR PRINCIPAL DEBTOR

Where Telkom requires a person to provide a surety, where the Subscriber is a company or legal entity, that in such case, the person who signs the Agreement on behalf of the legal entity must be held responsible for the payment of all amounts due to A14/R; 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. ***Telkom may require a surety by a person representing a company, close corporation, trust or a division or any other entity with juristic personality if the Customer's credit assessment requires such surety and in such case the person signing will bind himself as coc principal debtor for the Subscriber in favour of A14/R; for the fulfilment of all of the Subscriber's obligations to A14/R; arising out of this Agreement including the payment of all charges, fees, penalties and liquidated damages.***

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 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 ~~w8ONR~~ 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 ~~w8ONR~~ 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 with such information, documentation and signatures that 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 ~~w8ONR~~.

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14.3 Cession

Telkom 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, 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 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, and Protection of Personal Information Act (when enacted read together with the provisions of the CPA, the Subscriber has the option to request Telkom to remove the relevant contact particulars for unsolicited commercial and/or marketing communications by Telkom.

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

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

14.12 Intellectual property rights

Any intellectual property rights vesting in Telkom, whether by statute or common law, will remain vested in Telkom and the Subscriber agrees not to do anything or allow anything to be done that may infringe Telkom Mobile's rights and the Subscriber hereby INDEMNIFIES Telkom against any claims, actions and proceeding that may arise as a result of the Subscriber infringing or violating the Telkom 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 any person for the provision of a telecommunication service to that person, he or she-*
- (a) *must, if that person is a natural person-*
- (i) *obtain from him or her-*
- (aa) *his or her full names, identity number, residential and business or postal address, whichever is applicable; and*
- (bb) *a certified photocopy of his or her identification document on which his or her photo, full names and identity number, whichever is applicable, appear;*
- (ii) *retain the photocopy obtained in terms of subparagraph (i) (bb); and*
- (iii) *verify the photo, full names and identity number, whichever is applicable, of that person with reference to his or her identification document; or*
- (b) *must, if that person is a juristic person-*
- (i) *obtain from the person representing that juristic person-*
- (aa) *his or her full names, identity number, residential and postal address, whichever is applicable;*
- (bb) *the business name and address and, if registered as such in terms of any law, the registration number of that juristic person;*
- (cc) *a certified photocopy of his or her identification document on which his or her photo, full names and identity number, whichever is applicable, appear; and*

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- (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-*

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- (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*

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- (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.*

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- (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.*