

TERMS AND CONDITIONS

1. INTRODUCTION

These terms and conditions, as amended by Telkom from time to time, are applicable to the provision and use of the Telkom Website Design and Development Service which is provided by Telkom to Customers. The Telkom Website Design and Development Service is provided by Telkom in terms of, and subject to:

- a. the ECA;
- b. Telkom's ECS licence issued in terms of the ECA;
- c. the Telkom Website Design and Development Service Level Agreement;
- d. these terms and conditions;
- e. the Telkom Internet AUP; and
- f. Telkom's Standard Terms and Conditions for the Provisioning of Electronic Communications **Services and Products**.

In the event of a conflict arising between the provisions of any of the above documents, the order of precedence shall apply as listed in (a) to (f).

2. FEES

The Customer agrees that it will pay for the Smartsite Meta , Smartsite Meso and for maintenance costs over the contract period being either 12 or 24 months as indicated in the Order Form.

3. SUPPLY OF MATERIALS

The Customer shall supply all materials and information required by Telkom to complete the work in accordance with any agreed specification. Such materials may include, but are not limited to, photographs, written copy, logos and other printed material. Where there is any delay in supplying these materials to Telkom which leads to a delay in the completion of work, Telkom has the right to extend any previously agreed deadlines by a reasonable amount. Where the Customer fails to supply materials, and that prevents the progress of the work, Telkom has the right to invoice the Customer for any part or parts of the work already completed.

4. VARIATIONS

Telkom is pleased to offer the Customer an opportunity to make revisions to the design. However, Telkom has the right to limit the number of design proposals to a reasonable amount and may charge for additional designs if the Customer make a change to the original design specification. The website development phase is flexible and allows certain variations to the original specification. However any major deviation from the specification will be charged per hour at the rate of indicated in the Order Form.

5. PROJECT DELAYS AND CUSTOMER LIABILITY

Any time frames or estimates that Telkom gives are contingent upon the Customer's full cooperation and complete and final content in photography for the work pages. During development there is a certain amount of feedback required in order to progress to subsequent phases. It is required that a

single point of contact be appointed from the Customer's side and be made available on a daily basis in order to expedite the feedback process.

6. APPROVAL OF WORK

On completion of the work the Customer will be notified and have the opportunity to review it. The customer shall notify Telkom in writing of any unsatisfactory points within 7 days of such notification. Any of the work which has not been reported in writing to Telkom as unsatisfactory within the 7-day review period will be deemed to have been approved. Once approved, or deemed approved, work cannot subsequently be rejected and the contract will be deemed to have been completed and the 50% balance of the project price will become due.

7. REJECTED WORK

If the Customer rejects any of Telkom work within the 7-day review period, or not approve subsequent work performed by Telkom to remedy any points recorded as being unsatisfactory, and Telkom, acting reasonably, consider that the Customer has been unreasonable in any rejection of the work, Telkom can elect to treat this contract as at an end and take measures to recover payment for the completed work.

8. PAYMENT

- a. Upon completion of the 7-day review period, Telkom will invoice the Customer monthly for the services.
- b. A Customer is liable for the payment of all charges as reflected in the account rendered by Telkom from time to time (where applicable) in respect of the Telkom Website Design and Development Service.
- c. In the event that the Customer receives an account, amounts are due and payable on or before the due date indicated on the account.
- d. Any amount due by the Customer to Telkom not paid on or before the due date indicated on the account, shall bear interest at a rate not exceeding the maximum rate allowed by the National Credit Act 34 of 2005, compounded monthly, calculated from the date of issue of the account until date of actual payment.
- e. Should either Party default on its obligations in terms of these terms and conditions, such defaulting Party shall be liable for all costs, including legal costs on an attorney and own client basis, as well as tracing costs and collection commission incurred by the aggrieved Party, in the enforcement of any obligations of the defaulting Party in terms of these terms and conditions.
- f. Should the bank dishonour any payment offered by a Customer to Telkom, Telkom shall be entitled, over and above the dishonoured payment as well as bank charges, to charge, and the Customer shall be obliged to pay, a reasonable administration fee.

9. WARRANTY AND INTELLECTUAL PROPERTY RIGHTS

- a. The Customer shall obtain all necessary permissions and authorities in respect of the use of all copy, graphic images, registered company logos, names and trademarks, or any other material that the Customer supply to Telkom to include in Customer website or web applications.

- b. The Customer hereby indemnify Telkom and holds Telkom harmless from any claims or legal actions related to the content of the Customer website.
- c. Any intellectual property rights vesting in Telkom, whether by statute or common law, shall remain vested in Telkom and the Customer agrees not to do anything or allow anything to be done that may infringe Telkom's rights in this regard.
- d. All intellectual property rights in the developed website and to such work shall vest exclusively in Telkom. To the extent that intellectual property rights in the work vests, for whatever reason, in the Customer, the Customer hereby agrees to assign all such intellectual property rights to Telkom, which hereby accepts such assignment.
- e. The Customer shall not modify, reverse engineer or use any software, computer code, data, documents, presentations, solutions design, web site or any application licensed to it in terms of these terms and conditions to create a derivative work.

10. LICENSING

Once the Customer has paid Telkom in full for the work Telkom grants to the Customer a license to use the website and its related software and contents for the life of the website.

11. SEARCH ENGINES

Telkom does not guarantee any specific position in search engine results for the Customer's website. Telkom performs basic search engine optimisation according to current best practice. Search engine listings are not controlled by Telkom. It can take up to 3 months for search engines to list a website and/or pages properly this includes any updates to the website or individual web pages. Reporting or Health Checks is only done once a month to identify any critical issues. This does not guarantee the success of your website on the world wide web, it simply gives indication where improvements can be made.

12. LIABILITY AND INDEMNITY

- a. Telkom assumes no responsibility for, and shall not attract any liability in respect of, the integrity, correctness, retention or content of information transported via its network. Telkom shall not be liable for any loss or damage which the Customer may suffer which is in any way attributable to any delay in performance or completion of Telkom contract, however that delay arises.
- b. In terms of condition 9 of its Standard Terms and Conditions for the Provision of Electronic Communications Services and Products, Telkom shall under no circumstances be liable (including liability for negligence) for any loss, damage or injury that the Customer or any third party may suffer, irrespective of when or how arising, specifically including (but not limited to) refunds of fees, loss of profits, financial loss, loss of contracts, loss of income, loss of anticipated business, cost of replacement services, goodwill or any other form of consequential loss, arising from the provision and / or use of the Telkom Website design and development Service to the Customer, its employees, directors, agents and / or representatives.
- c. In addition to what is set out in clause (a) and (b) above, the Customer shall and hereby does indemnify Telkom against:

- any damage, loss or liability of whatsoever nature arising from a breach of Telkom or the Customer's security measures, which may result in, inter alia, data theft, abuse of a Customer's e-mail account or the defacing of websites hosted by Telkom, any misuse of Telkom facilities or services and/or any act or omission of any other Customer of Telkom;
- any claim by any third party arising directly or indirectly out of or related to the Customer's access to or use of the Telkom Website Design and Development Service or any information or data obtained through such access or use.

13. DISCLAIMER

To the full extent permitted by law, all terms, conditions, warranties, undertakings, inducements or representations whether express, implied, statutory or otherwise (other than the express provisions of these terms and conditions) relating in any way to the services Telkom provides to the Customer are excluded. Without limiting the above, to the extent permitted by law, any liability of Telkom under any term, condition, warranty or representation that by law cannot be excluded is, where permitted by law, limited at Telkom's option to the replacement, re-repair or re-supply of the services or the payment of the cost of the services that Telkom was contracted to perform.

14. SUBCONTRACTING

Telkom reserve the right to subcontract any services that Telkom has agreed to perform for the Customer as Telkom sees fit.

15. EXCUSABLE EVENTS

Telkom shall not be liable to the Customer for any breach of the provisions of these terms and conditions or failure to perform any obligation as a result of any force major event, including but not limited to technical problems relating to Telkom's 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, in so far as these are beyond Telkom's control.

16. ADDITIONAL EXPENSES

The Customer agrees to reimburse Telkom for any requested expenses which do not form part of the proposal including but not limited to the purchase of templates, third party software, stock photographs, fonts, domain name registration, web hosting or comparable expenses.

17. BACKUPS

The Customer shall be responsible for maintaining its own backups with respect to its website and Telkom will not be liable for restoring any Customer data or Customer websites except to the extent that such data loss arises out of a negligent act or omission by us.

18. OWNERSHIP OF DOMAIN NAMES AND WEB HOSTING

Telkom will supply to the Customer account credentials for domain name registration and/or web hosting

that it purchased on the Customer's behalf when the Customer reimburse Telkom for any expenses that it has incurred.

19. GOVERNING LAW

The agreement constituted by these terms and conditions and any proposal will be construed according to and is governed by the laws of The Republic of South Africa. The Customer and Telkom submit to the non-exclusive jurisdiction of the courts in and of the Republic of South Africa in relation to any dispute arising under these terms and conditions or in relation to any services Telkom performs in terms of this Agreement.

20. CROSS BROWSER COMPATIBILITY

By using current versions of well supported content management systems such as "Joomla", Telkom endeavour to ensure that the web sites it creates is compatible with all current modern web browsers such as the most recent versions of Internet Explorer, Firefox, Google Chrome and Safari. Third party extensions, where used, may not have the same level of support for all browsers. Where appropriate Telkom will substitute alternative extensions or implement other solutions, on a best effort basis, where any incompatibilities are found. The websites can be accessed on all platforms whether it be via a smartphone, tablet or pc/laptop.

21. E-COMMERCE

The Customer shall be responsible for complying with all relevant laws relating to e-commerce, and to the full extent permitted by law will hold harmless, protect, and defend and indemnify Telkom and its subcontractors from any claim, penalty, tax, tariff loss or damage arising from the Customer or Customer's clients' use of the website, and Internet electronic commerce.

22. WHOLE AGREEMENT

- a. These terms and conditions, read with Telkom's Standard Terms and Conditions for the Provision of Electronic Communications Services and Products, constitute the whole agreement between Telkom and the Customer relating to the subject matter hereof and save as otherwise provided herein no amendment, alteration, addition, variation or consensual cancellation will be of any force or effect unless reduced to writing and signed by the parties or their duly authorised representatives.
- b. Subject to clause (22a), the Telkom and the Customer agree that no other terms or conditions, whether oral or written, and whether express or implied, will apply hereto.

23. SEVERABILITY

If any of the provisions or any portion of the provisions of these terms and conditions shall be invalid or unenforceable, such invalidity or unenforceability will not invalidate or render unenforceable the entire terms and conditions, but rather the entire terms and conditions will be construed as if not containing the particular invalid or unenforceable provisions or portion thereof, and the rights or obligations of Telkom and the Customer will be construed and enforced accordingly.