

## A) Standard Terms & Conditions

### General Terms & Definitions

1. "Application" means the online or any other written request for initiation/activation of a Service(s) and / or the provision of Good(s), which, when accepted by BAKWENA TELECOMS, becomes a binding Service Contract.
2. "AUFUP" means the Acceptable Use and Fair Use Policy as published on BAKWENA TELECOMS's webpage.
3. "Business Day" means any day other than a Saturday, a Sunday or a public holiday in the Republic of South Africa.
4. "Customer" or "Client" is the party described on any Application or Service Contract concluded between it and BAKWENA TELECOMS.
5. "Emergency Maintenance" means maintenance to the BAKWENA TELECOMS Network intended to remedy existing circumstances or prevent imminent circumstances that are likely to cause danger to persons or property, an interruption to the Communication Services, or substantial loss to the BAKWENA TELECOMS Network, the Customer or any third party. BAKWENA TELECOMS guarantees resolution within 5 Business Days.
6. "Free Installation" - Services with a "Free Installation" may be limited to specific packages/products, areas, agreement term, minimum monthly spend and/or other criteria. Contact the BAKWENA TELECOMS Sales team to get written confirmation that the service you wish to sign up for, qualifies as a "Free Installation".
7. "Goods" means any and all goods to be provided by BAKWENA TELECOMS to the Customer in terms of a Service Contract, including without limitation equipment, hardware and third-party software.
8. "Good Industry Practice" means the exercise of that degree of skill, diligence, prudence, and foresight which would reasonably be expected from a skilled and experienced service provider providing similar services to those provided under this Agreement. Such a service provider would seek in good faith to comply with its contractual obligations, and with all applicable laws, codes of professional conduct, relevant codes of practice, relevant standards, and all conditions of planning and other consents.
9. "Intellectual Property Rights" means patents, registered designs, trademarks (whether registered or otherwise), copyright, trade secret rights, database rights, design rights, service marks and other intellectual property rights and rights to claim something as confidential information, including in other jurisdiction, that grant similar rights.
10. "Provider" means the last-mile infrastructure installer.
11. "RICA" means the Regulation of Interception of Communications and Provision of Communication-related Information Act 70 of 2003.
12. "Service Contract" means these Standard Terms & Conditions, including all the terms and conditions contained herein and as published on the BAKWENA TELECOMS website, the Service Application, the Debit Order Instruction, the Rental Application (if applicable), Quotation(s), Warranty Terms and Conditions, Acceptable Use and Fair Usage Policy, Code of Conduct and Service Charter, Privacy Policy, Termination Policy, and all other Legal Documents published on the BAKWENA TELECOMS website, as well as the standard terms and conditions of any other 3rd-party open access network (if applicable), (collectively hereinafter referred to as "Service Contract") and all annexures to any of these documents.
13. "Service Order" means an application for goods, services and / or work order agreed to in terms of this Agreement describing the specific Goods or Services to be provided by BAKWENA TELECOMS to the Customer.
14. "Service Terms" means a document describing the terms on which BAKWENA TELECOMS will provide as a document or on the BAKWENA TELECOMS website a particular Good or Service, as amended from time to time.
15. "Supplier" means a supplier of goods and / or services to BAKWENA TELECOMS.
16. "User/s" means the Customer or any other person accessing any of the Services provided by BAKWENA TELECOMS.
17. "BAKWENA TELECOMS" means BAKWENA TELECOMMUNICATIONS, a division of Bakwena Entertainment and Production Services (Pty) Ltd, with registration number 2018/084326/07, or any other entity which BAKWENA TELECOMS, a division of Bakwena Entertainment and Production Services (Pty) Ltd may assign, cede or delegate any of their rights or obligations to.
18. "BAKWENA TELECOMS Website" means the Internet website published at the URL "www.bakwenatelecoms.co.za" or another URL that BAKWENA TELECOMS notifies the Customer of from time to time.
19. "BAKWENA TELECOMS Networks" means equipment operated together as a system by BAKWENA TELECOMS to provide any Service, including without limitation servers, peripherals, routers, switches, software, databases, cables, generators, uninterruptible power supplies and solar systems.
20. Any campaign referring to estimated average savings customers get when comparing what they used to pay with their previous service provider and what they are paying after moving to BAKWENA TELECOMS. Because savings are realised over any combination of multiple invoice line items, including telephone line rentals, per second telephone call billing, call rates, internet access, free on-net calling, BAKWENA TELECOMS cannot guarantee a specific saving, a higher saving, a lower saving or any saving at all.

### Applications and Commencement

21. BAKWENA TELECOMS will provide the Goods and Services to the Customer as described in an application or Service Order in terms of the signed Service Contract.
22. The Customer hereby consents to and authorizes BAKWENA TELECOMS to process its personal information, which includes but is not limited to, the name, identity or registration number and banking details of the Customer, for the purpose of performing the services in terms of this Service Contract.
23. BAKWENA TELECOMS reserves the right to refuse to commence provision of Services based on the Customer's prior conduct or vetting information received.
24. An Application, once signed and/or submitted via the BAKWENA TELECOMS Website and accepted by BAKWENA TELECOMS, together with any additional accepted BAKWENA TELECOMS Quotation(s), shall become a Service Order.
25. Each Service Order will form a separate contract between the Customer and BAKWENA TELECOMS (unless amended or renewed by another Service Order).
26. The terms of one Application or Service Order will not apply to another, unless a Service Order amends or renews an existing Service Order or adds Goods or Services to an existing contract.
27. The Customer consents to BAKWENA TELECOMS carrying out a credit and affordability assessment on the Customer at any applicable credit bureau and may make the provision of the Goods or Services dependent on its satisfaction with the outcome of such assessment.
28. If the Customer is a juristic person or legal entity, BAKWENA TELECOMS may require one or more of its officers to stand surety for the Customer's obligations under this Agreement. Even if the Agreement has commenced, BAKWENA TELECOMS may withhold to provide the Services until the surety has been signed.



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29. Depending upon the Service provided, BAKWENA TELECOMS may be obliged under The Regulation of Interception of Communications and Provision of Communication-Related Information Act ("RICA") to obtain certain information and documents from the Customer, and BAKWENA TELECOMS may withhold or suspend providing Services until the Customer has provided the necessary information and/or documents to BAKWENA TELECOMS.
30. With the prior written permission of BAKWENA TELECOMS which can be withheld at any time and for any reason, the Customer may be entitled to migrate or convert to any other service offered by BAKWENA TELECOMS from time to time provided that –
1. any charge levied by BAKWENA TELECOMS in respect thereof has been paid; and
  2. all relevant documents required by BAKWENA TELECOMS have been signed by the Customer indicating acceptance of any terms and conditions applicable thereto.
31. If the Customer has not complied with all the requirements set out in this Agreement, BAKWENA TELECOMS may delay providing the Goods or Services until the Customer has complied. If the Customer does not comply within a reasonable period, BAKWENA TELECOMS may terminate the Service Contract and will not be liable for any damage that the Customer may suffer as a result.
32. This Service Contract comes into effect after receipt and acceptance of this Service Contract by BAKWENA TELECOMS ("effective date"). In terms hereof BAKWENA TELECOMS shall provide the Customer with the telecommunications equipment, internet access, fibre, wireless, voice and/or other data services as agreed upon in exchange for the agreed fees.
33. Installation date will be confirmed after receipt of all required documentation and affordability approval (if applicable). Installation is for a specific address as specified on the Service Application and is subject to the on-site technical coverage, signal strength and connectivity assessment before installation. Should the results of the assessment prove not to be viable, the installation will be aborted, the Service Contract will become null and void and no additional fees will be payable by the client. Billing shall only commence after successful installation and is payable monthly in advance by way of compulsory debit order instruction or payment via customer portal, calculated pro-rata from date of installation completion. 230V AC power supply, sleeve, conduits and ducts for cables (if applicable) is to be supplied/installed by the Customer, together with draw wires. Any additional work and/or equipment not quoted for and required to complete the installation, will be billed for and shall become due and payable by the Customer, in full, after installation completion.
34. BAKWENA TELECOMS may make use of independent third-party contractors to fulfil its duties in terms of this Service Contract.
35. The Customer must obtain permission from the Landlord, Body Corporate, Home Owners Association and/or Property Manager prior to installation, failure by which the Customer will be liable for site survey, callout and labour fees.
36. Additional legal documents may also apply to the provision of BAKWENA TELECOMS Wireless and Fibre Services and is binding on any subscriber to such service.
37. Customers and potential Customers must familiarise themselves with the content of these documents, which are incorporated by reference into these Terms and Conditions.

### **General**

38. This Service Contract constitutes the entire agreement between the parties.
39. With the exception of the notice of amended prices, fees and costs, no amendment to this Service Contract shall be of force unless communicated in written notice by BAKWENA TELECOMS to the Customer.
40. The Customer shall not cede their rights or assign their obligations under this Service Contract unless prior written notice is given to and accepted by BAKWENA TELECOMS. BAKWENA TELECOMS reserves the right to cede its rights in terms of this Service Contract to any third party of its choice, with or without notification and/or consent by the Customer.
41. No extension of time, waiver, indulgence, or other arrangement granted or allowed by either party shall constitute a waiver or novation of that party's rights.
42. Should any provisions of this Service Contract be held to be invalid, unlawful, or unenforceable, such provisions will be severable from the remaining provisions of this Service Contract.
43. It is not intended that any provision of this Service Contract contravenes any provision of the Consumer Protection Act 68 of 2008 ("CPA") as amended or the Protection of Personal Information Act 4 of 2013 ("POPIA") as amended. Therefore, all provisions of this Service Contract must be treated as being qualified, to the extent necessary, to ensure compliance with the provisions of the CPA and POPIA, if the CPA and/or POPIA are applicable.

### **Pricing**

44. All prices exclude VAT. The full amount payable by the Customer shall include VAT at the prevailing VAT rate.
45. The service fees consist of fixed monthly costs that are billed monthly in advance. Variable costs may be billed monthly in arrears.
46. BAKWENA TELECOMS reserves its rights to change its prices at any time on reasonable notice, which will not be less than one calendar month, as per the minimum term of a month-to-month agreement.

### **Customer's Obligations**

47. The Customer confirms that all statements made to BAKWENA TELECOMS are true and correct. BAKWENA TELECOMS reserves the right to request proof of any facts or claims. The Customer also commits to providing BAKWENA TELECOMS with necessary information required in the provision of the selected Services, and (where applicable) consent to the use or sharing of this information with 3rd (third) parties to comply with regulatory conditions (such as Domain Registration Listings) within the guidelines of applicable privacy legislation.
48. BAKWENA TELECOMS reserves the right to request verification of the identity of the primary account holder. Failure to produce such verification could result in summary suspension or cancellation of the product(s) and Services.
49. The Customer (or the Customer's agent) certifies that the Customer is above the age of 18 years, has full contractual capacity and, in the case of an agent, is duly authorised by the Customer to contract on the Customer's behalf.
50. BAKWENA TELECOMS's website and attached systems, are designed to facilitate reasonable use of the BAKWENA TELECOMS products and services. BAKWENA TELECOMS reserves the right to suspend or terminate users who are improperly using features of the systems to avoid billing, shaping, suspension or any other system controls, or exploit bugs or limitations in the system design to effect avoidance of system controls or commit crimes. BAKWENA TELECOMS reserves the right to deem such an activity as "unreasonable exploitation of the system" and will take appropriate action based on the circumstances and severity of the incident(s).
51. If the Customer engages in behavior that is a contravention of the Acceptable Use and Fair Use Policy or may be considered offensive to BAKWENA TELECOMS or its staff, BAKWENA TELECOMS reserves the right to suspend or terminate the Customer's Services, irrespective of the form and medium of this abuse.



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52. In the event that any of the terms of this document are found to be invalid, unlawful or unenforceable, such terms will be severable from the remaining terms, which will continue to be valid and enforceable.
53. BAKWENA TELECOMS reserves the right to remove any content hosted by a customer which it considers illegal or contrary to the AUFUP.
54. The Customer should note that, as per ICASA regulations, in respect of voice services, the Customer may not port their number to a 3rd (third) party service provider network within the first 3 (three) months from the first number porting date, but it can be ported back to the original donor network within the first 3 (three) months. Approval of number porting applications may take up to 15 (fifteen) business days from date of number porting application date, subject to approval of the donor service provider.
55. BAKWENA TELECOMS requires that all rented and/or unpaid equipment be comprehensively insured by the Customer as set out in the Insurance of Equipment Policy as published on the BAKWENA TELECOMS website or available on request. BAKWENA TELECOMS recommends the installation of power surge and lightning protection by the Customer for the Customer's account.
56. If the equipment is damaged or defective while at the Customer's premises or under the Customer's control, BAKWENA TELECOMS may replace the damaged equipment and the Customer will be billed for after completion of the work. Where the equipment is replaceable under warranty, a credit will be passed to the Customer's account after assessment by the equipment manufacturer.
57. All rented equipment including brackets, poles, cables, routers, switches, equipment, software, connectors and interfaces remains the property of BAKWENA TELECOMS at all relevant times and shall be returned in a good and proper working condition (fair wear and tear excluded) to BAKWENA TELECOMS after termination of this Service Contract, or after 90 days of not paying for their service. Should the equipment be damaged or found not to be in a good and working condition, the Customer accepts liability for the replacement cost of such equipment (as set out in the Insurance of Equipment Policy and published on the BAKWENA TELECOMS website or available on request). All non-rented equipment remains the property of BAKWENA TELECOMS until paid for in full.
58. BAKWENA TELECOMS may at its sole discretion install either new or second-hand BAKWENA TELECOMS owned equipment at the Customers address, subject to the equipment being in good and proper working condition.
59. The Customer warrant and undertake not to allow any third-party charges, liens, pledges or other encumbrances to be created over any equipment of BAKWENA TELECOMS, or not fully paid for equipment, or any other property of BAKWENA TELECOMS.
60. Should the Customer's account be unpaid by the invoice date, BAKWENA TELECOMS will notify the Customer of the same and the Customer will have 10 (ten) days to pay the account failing which the services will be suspended. Where BAKWENA TELECOMS has suspended the services due to non-payment, a reconnection fee of R97,50 (ninety seven Rand and fifty cents) will be levied in order to reconnect the services.
61. By accepting this Service Contract, the Customer authorizes and hereby gives BAKWENA TELECOMS full permission to enter the Customer's premises to remove all of the rented and/or unpaid equipment and materials, at any date and time convenient to BAKWENA TELECOMS, should the Customer be in breach of this Service Contract or upon termination hereof. Collection of the rented and/or unpaid equipment and materials is in addition to any other rights and remedies BAKWENA TELECOMS has in law.
62. In addition to this Service Contract, the Customer consent that BAKWENA TELECOMS has the right to terminate this Service Contract as set out in the Acceptable Use and Fair Usage Policy, as published on BAKWENA TELECOMS's website and is available on request.

#### **Terms Subject to Change**

63. BAKWENA TELECOMS may amend the General Terms and Service Terms at any time. The amended versions will be posted on the BAKWENA TELECOMS Website. It is the responsibility of the Customer to keep itself informed of the latest version of the general terms and conditions by accessing the BAKWENA TELECOMS Website on a regular basis.
64. BAKWENA TELECOMS will give at least one calendar month notice for the amendments or fee change, which will become effective at the beginning of the first calendar month after the notice period has expired.

#### **Conduct and BAKWENA TELECOMS Brand**

65. Customers will be held accountable for their conduct towards BAKWENA TELECOMS staff and in the public domain with regard to allegations or malicious conduct directed towards BAKWENA TELECOMS or its staff.
66. Abusive behavior, including (but not limited to) aggression, offensive language or conduct, including threats or any type of intimidation on a forum or directed at BAKWENA TELECOMS or its staff will be deemed abusive and will not be tolerated. Such conduct may constitute an AUFUP violation and BAKWENA TELECOMS reserves the right to suspend or terminate Services to a Customer in such cases.
67. Customers using public platforms to spread false allegations, unreasonably or maliciously diminish the reputation or the public perception of the BAKWENA TELECOMS brand, may have their Services suspended or terminated, depending on the severity and circumstances of the incident(s), and may also be regarded as contrary to the AUFUP.

#### **Availability of Services**

68. BAKWENA TELECOMS cannot guarantee the provision of the requested Service upon the receipt of an Application.
69. Provision of the Service is subject to BAKWENA TELECOMS confirming that it is technically feasible to do so. The availability of Fibre Services is subject to a valid and operational last mile provider service.
70. Customers will be notified after receipt of an application whether or not the Service can be provided.

#### **Services and Products**

72. BAKWENA TELECOMS offers an online application and sign-up for all products and Services. The Customer is solely responsible for ensuring that their choice of product or service conforms to their requirements or desired outcome. BAKWENA TELECOMS will not be liable for compensation, costs or damages resulting from incorrect selection of products or services, or resultant delays in rectifying such errors.
73. Sign-up for products and services is subject to the cooling-off period described in section 44 of the Electronic Communications and Transactions Act ("the ECT Act").
74. BAKWENA TELECOMS provides Services on the basis of information provided by the Customer, and BAKWENA TELECOMS offers no warranty as to the suitability of the Services beyond the requirements as expressed by the Customer.
75. BAKWENA TELECOMS reserves the right to stop offering a particular Services if it deems it necessary. BAKWENA TELECOMS will then either provide the service for the remainder of the time that has been paid for or refund the amount paid for that specific package.
76. All equipment carries a 12 (twelve) month on-site warranty from date of installation/delivery, unless specified otherwise. The warranty excludes power and/or lightning surges and any other exclusions imposed by the equipment manufacturer and/or distributor. It is the responsibility of the consumer to insure all BAKWENA TELECOMS equipment on their own policies. The Customer is bound by BAKWENA TELECOMS's Warranty Terms and Conditions, as published on BAKWENA TELECOMS's website or available on request. The risk in and to, as well as the responsibility for the equipment



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shall vest in the Customer from date of installation/delivery until termination of this Service Contract.

### **Payment and Penalties**

77. BAKWENA TELECOMS accepts payment via automatic Debit Order (Payfast) EFT and via the Splynx portal for services and will also accept alternative payment under specific circumstances and only by prior arrangement at BAKWENA TELECOMS's discretion. Non-payment may result in suspension of services via automatic disconnection system BAKWENA TELECOMS utilizes.

78. The Customer's monthly debit orders of the fee will be submitted monthly in advance as per selection of debit order mandate form.

79. Once-off amounts, equipment purchased, installation costs, additional work etcetera, are billed as ad-hoc invoices and is also payable by automatic debit order, on the ad-hoc automatic debit order payment date as per the specified date on these invoices or via EFT and/or Customer Portal.

80. BAKWENA TELECOMS will not accept any liability or responsibility for delays, suspensions or impact to Services due to use of non-approved payment methods by Customers.

81. Unpaid Debit Orders or any other irregularity regarding payment will result in immediate suspension of Services (which may not be limited to the particular Service in question). BAKWENA TELECOMS retains the right to suspend any Services for non-payment, and to withhold such Services until all arrears are settled in full on all products and Services.

82. BAKWENA TELECOMS reserves the right to pursue the Customer for any outstanding debt in terms of Section 129 of the National Credit Act 34 of 2005 (as amended), including all costs. BAKWENA TELECOMS reserves the right to list the defaulting Customer as a defaulter with credit bureau/s in line with Regulation 19(4) of the National Credit Act 34 of 2005 (as amended).

83. BAKWENA TELECOMS will charge an Admin Fee of R80.00 for failed or returned payments, regardless of method of payment or the reason for non-payment. Such Admin Fees are payable immediately and in conjunction with the outstanding fees which resulted in non-payment. Admin Fees can also be calculated on a sliding scale based on the number of incidents of non-payment on the Customer's payment record. Non-payment of Admin Fees will be considered non-payment and will be subject to the same terms. Once levied, Admin Fees are not recoverable or reversible, regardless of whether payment is made within the prescribed period.

84. If the Customer's Services are suspended or terminated for any reason, including non-payment, BAKWENA TELECOMS will charge a Reconnection Fee for subsequent reactivation of services. Reconnection Fees are payable in full before any services can be reactivated, once suspended. BAKWENA TELECOMS will charge multiple reconnections Fees where multiple products are affected and may charge "escalating" penalties for repeated non-payment offences. Any prior leniency shown in this regard will not prejudice BAKWENA TELECOMS's right to enforce such penalties in full at any time (within their discretion).

85. Reconnection of Services may be subject to a waiting period of up to 48 hours, at BAKWENA TELECOMS's discretion, regardless of when payment is received or cleared. Reconnection is subject to a reasonable connection fee.

86. In cases of suspension of Services due to non-payment, BAKWENA TELECOMS reserves the right to levy both a Reconnection Fees and an Admin Fee. Any and all penalty fees must be settled in full, prior to reconnection of affected services.

87. In the case of billing disputes, the onus is upon the Customer to raise such disputes in good time to prevent interruption of services while the billing is in dispute. Reparations will be made to Customers with successful disputes by means of an account credit or refund, at BAKWENA TELECOMS's discretion or within 30 days of billing date.

88. BAKWENA TELECOMS reserves the right to terminate services where a customer has shown a repeated disregard for payment terms and consistently fails to make regular scheduled payments on time and using approved payment methods. The conditions of termination will be based on guidelines determined at BAKWENA TELECOMS's discretion and may vary. The means and terms of termination will be determined at BAKWENA TELECOMS's discretion. Notice of termination will be provided to the best of BAKWENA TELECOMS's ability, but BAKWENA TELECOMS will not be held liable for claims or requests for further provision of services once a Customer's services have been terminated due to non-payment.

89. Unless otherwise agreed:

1. Billing will commence on the date that Service provision commences. Partial months will be charged pro rata.

2. Services are billed in advance and all invoices must be paid by the Customer in advance.

3. Any Services invoiced in arrears are payable on presentation of invoice.

4. All Fees and other amounts payable as per the invoice include VAT.

90. Interest will be charged on any amount that remains unpaid by the Customer beyond the due date of payment:

1. The interest rate will be 2% (two percent) above the prime overdraft rate.

2. The prime overdraft rate will be as charged by BAKWENA TELECOMS's bankers at the time, which will be evidenced by a certificate issued by any manager of that bank, whose authority it shall not be necessary to prove.

3. The interest will be calculated from the due date of payment to the date of actual payment, both days inclusive, and will be compounded monthly in arrears. The Customer agrees and undertakes to pay the interest.

### **Customer Information and Privacy (POPI)**

91. Customers signing up for services as a Primary Contact are considered as "the Customer" and no other parties will be permitted access or authority to the Customer Account, even if they are a 3rd party recipient or affiliate of the "Customer".

92. BAKWENA TELECOMS will observe all privacy of information best practices, in accordance with the applicable laws of South Africa, including the Protection of Personal Information Act (POPI) of 2013.

93. The Customer consents to BAKWENA TELECOMS processing Personal Information transmitted to the BAKWENA TELECOMS System in a way which is consistent with the Service being provided. Where the Customer's use of a Service leads to the transmission of Personal Information to or from the Republic of South Africa, the Customer acknowledges that it has a duty to comply with any relevant statutory provisions dealing with data privacy either in the Republic of South Africa or in any foreign country to which the Personal Information is transmitted. The Customer warrants that it has obtained the consent of any third party for the use of that party's Personal Information in this way, or otherwise that such processing is lawful, and indemnifies BAKWENA TELECOMS from any claim brought by such third party as a result of its failure to do so.

94. The Customer understands that the Customer's personal information given to BAKWENA TELECOMS is to be used for the purposes of assessing affordability and/or credit worthiness and in order to perform in terms of this Service Contract and the Customer consents thereto. The Customer confirms that the Customer's personal information given to BAKWENA TELECOMS is accurate and complete. The Customer further agrees to update the information supplied as and when necessary, in order to ensure the accuracy of the above information failing which BAKWENA TELECOMS will not be liable for inaccuracies.



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95. BAKWENA TELECOMS will take appropriate security measures to ensure the personal information is kept secure and protected against unauthorized use or unlawful processing. BAKWENA TELECOMS will not use or disclose the personal information to third parties without the Customer's consent, unless the use or disclosure is required to carry out the performance of the Service Contract between BAKWENA TELECOMS and the Customer; to comply with applicable law, order of court or legal process; and/or disclosure is necessary to protect and defend the legitimate interests of BAKWENA TELECOMS as per the Privacy Policy.

96. The Customer consents that BAKWENA TELECOMS may install its "connected by" name board on the Customer's property or building. This sign will not be larger than 800x800mm.

#### Security

97. BAKWENA TELECOMS will implement measures in line with Good Industry Practice to ensure the security of the BAKWENA TELECOMS System and the physical security of BAKWENA TELECOMS's premises but gives no warranty that breaches of security will not take place.

98. If a security violation occurs, or BAKWENA TELECOMS is of the view that a security violation is imminent, BAKWENA TELECOMS may take whatever steps it considers necessary to maintain the proper functioning of the BAKWENA TELECOMS System including without limitation:

1. changing the Customer's access codes and passwords (or those of any user of the BAKWENA TELECOMS System), and
2. prevent access to the BAKWENA TELECOMS System.

99. BAKWENA TELECOMS takes reasonable measures to provide disaster recovery but does not warrant that recovery will be successful or that it will be completed within any time limit.

100. The Customer must give its full cooperation to BAKWENA TELECOMS in any investigation that may be carried out by BAKWENA TELECOMS regarding a security violation.

101. If the Customer is providing any service to third parties that makes use of the BAKWENA TELECOMS System, the Customer must contractually bind those third parties to equivalent terms regarding security as are set out herein.

102. BAKWENA TELECOMS may on prior written notice to the Customer inspect the Customer's installation and Customer Equipment located on BAKWENA TELECOMS's premises to ensure compliance with the building regulations and restrictions agreed between the parties.

#### Suspension or Terminations of Service

103. BAKWENA TELECOMS may, subject to this Agreement or the AUFUP, suspend or terminate services of a customer in its absolute discretion by providing email/Whatsapp or SMS notice if:

1. the Customer commits a serious or repeated breach of the Agreement, or the Customer engages in any conduct which in BAKWENA TELECOMS's opinion would have a negative impact on BAKWENA TELECOMS, other Customers or BAKWENA TELECOMS's staff or is detrimental to the welfare, good order or character of BAKWENA TELECOMS; or
2. Any part of the Customer's Fees is not paid in full when due; or
3. The information the Customer supplied to BAKWENA TELECOMS is found to be incorrect or false.
4. BAKWENA TELECOMS reasonably thinks that the Customer's use of the Services may result in the commission of a crime or is otherwise unlawful.
5. The customer has not paid for services for more than 90 days.

104. BAKWENA TELECOMS reserves the right to affect such suspension or termination without notice, depending on the severity of the breach, but will undertake to inform Customers where possible. Upon such suspension or termination, such Customers:

1. Will not be eligible for reimbursement / compensation, unless at BAKWENA TELECOMS's discretion.
2. May be further barred from signing up for any services with BAKWENA TELECOMS in the future.
3. May be reported to governing bodies, such as ISPA, for listing purposes.
4. May be listed with applicable authorities and credit bureaus.

105. The period of suspension will be that which is reasonable under the circumstances that gave rise to the suspension.

106. Should the Customer decide to relocate and/or move their BAKWENA TELECOMS Installation to a different address/location, the customer will remain liable for fulfilment of its obligations as contained in this Service Contract, even if no acceptable BAKWENA TELECOMS coverage, signal strength or connectivity is available at the new address/location.

107. Should a bad connection (as determined by BAKWENA TELECOMS) occur in future for any reason whatsoever including but not limited to interference, trees, terrain, the erection of new buildings or other obstructions, civil road works, community unrest, electricity supply, etcetera, and where BAKWENA TELECOMS is unable to find an alternative and adequate signal strength and/or good connection, BAKWENA TELECOMS shall have the right to cancel this Service Contract by providing the Customer with 1 (one) calendar month notice. In such an event, the Customer will only be held liable for

payment of the monthly service and rental fees up to the last day of such termination date. BAKWENA TELECOMS shall at its own cost remove all rented and/or unpaid equipment from the Customers premises at a date and time convenient to BAKWENA TELECOMS.

108. Upon final termination of this Service Contract by the Customer, BAKWENA TELECOMS shall remove its equipment, at a date and time convenient to BAKWENA TELECOMS, and the Customer shall be liable to BAKWENA TELECOMS for payment of R980 (inclusive of VAT) technical labour fee. The Customer should also refer to the Termination Policy available on BAKWENA TELECOMS's website for more related information.

109. The Customer is entitled to cancel this Service Contract within 7 (seven) days after the effective date, with written notice via the Customer Portal to BAKWENA TELECOMS, which may or may not be accepted by BAKWENA TELECOMS. Should BAKWENA TELECOMS accept cancellation the customer will be liable for installation, labour and sundries used during the Installation and removal of equipment.

#### Intellectual Property

110. The Customer acknowledges that BAKWENA TELECOMS will retain ownership of all right, title and interest, including but not limited, to all intellectual property rights in and to the BAKWENA TELECOMS services and all software programs developed by BAKWENA TELECOMS and used in the delivery of the services. All intellectual property (including but not limited to copyright, patents, proprietary material, trademarks, logos, design, software programs, systems, know-how, trade secrets, new proprietary and secret concepts, methods, techniques, processes, adaptations, ideas, technical specifications and testing methods) owned by BAKWENA TELECOMS and all modifications thereto shall at all times remain the sole property of BAKWENA TELECOMS and the Customer shall not acquire any rights, title or interest of any kind in any of BAKWENA TELECOMS's intellectual property, other than permitted in terms of this Service Contract.

#### Limitation of Liability and Indemnity

111. BAKWENA TELECOMS will not be liable to the Customer or any third party in of any and all damages, loss, claims or costs of any nature including but



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but not limited to direct, indirect, consequential or special damages suffered by the Customer or any third party however arising, and BAKWENA TELECOMS will moreover not be liable whether the loss was the result of an act or omission of a BAKWENA TELECOMS employee.

112. To the extent permitted by law, BAKWENA TELECOMS will not be liable in any way whatsoever, for any claims arising from loss, injury, damage or costs, suffered by the Customer (including but not limited to their person, employees, customers, property or business) in connection with this Service Contract, the equipment and/or services whether or not such claim arises during installation, while this Service Contract is in effect or after termination hereof.

113. In the event that BAKWENA TELECOMS is nonetheless held liable, the quantum of BAKWENA TELECOMS's liability will not exceed the monthly or pro-rata fees due for the Service that occasioned the loss, in the preceding three (3) months, regardless of whether the claim arises out of negligence on the part of BAKWENA TELECOMS or any other cause.

114. Use of the services indicates that the Customer indemnifies and holds BAKWENA TELECOMS harmless in respect of any damages, loss, costs or claims instituted against BAKWENA TELECOMS arising from any application or subscription to or the use of any service or breach of the terms and conditions applicable to it.

115. These limitations on liability and indemnities apply to the benefit of BAKWENA TELECOMS and BAKWENA TELECOMS's Affiliates, directors, officers, employees, contractors, agents and other representatives, as well as any third parties whose networks are connected to the BAKWENA TELECOMS System.

116. Nothing contained in this clause will limit the Customer's liability in respect of charges incurred for ongoing Services.

117. Where the Consumer Protection Act 68 of 2008 is applicable to this Agreement, and any provision of this clause is found by a court or tribunal with jurisdiction over BAKWENA TELECOMS to be unfair, unreasonable or unjust, then that provision (whether it be a word, phrase or sub-clause) will be severed, and the remainder of this clause will have full force and effect.

118. In the case of ambiguity, this clause will take precedence over any expression of the Parties' intention, whether express or implied, that may be contained elsewhere in this Agreement.

#### Notices

119. All requests by the Customer for the provisioning, modification or termination of services, and for modification of contact and other personal information must be made via [helpdesk@bakwenatelecoms.co.za](mailto:helpdesk@bakwenatelecoms.co.za) BAKWENA TELECOMS reserves the right to ignore any such request made in any other manner.

120. The Parties choose their addresses where they will accept service of any notices/documents for all purposes arising from this Agreement (domicilium citandi et executandi):

1. In the case of BAKWENA TELECOMS, a division of Bakwena Entertainment and Production Services (Pty) Ltd:  
16902 Skhosana STREET, Daveyton Ext 2, Benoni, 1520

And

2. in the case of the Customer, the addresses set out in the most recent Service Contract agreed to between the Parties.

121. Either Party may vary its domicilium address or other contact details by notifying the other Party in writing.

122. Any notice given in terms of this Agreement must be in writing and any notice given by any Party to another ("the addressee") which:

1. is delivered by hand will be deemed to have been received by the addressee on the date of delivery; or

2. is transmitted by email will be deemed to have been received upon confirmation of receipt (not automated receipt) thereof by the addressee.

3. any notice that BAKWENA TELECOMS sends by email to an email account hosted on the BAKWENA TELECOMS System by the Customer will be deemed to have been received by the Customer on the date of transmission; and

4. if a written notice or communication is actually received by one of the Parties from the other, this will be adequate written notice or communication to that Party.

#### Line Faults and Repairs

123. BAKWENA TELECOMS will be entitled to assume that the Services provisioned to a customer is in good working order until such time as the Customer advises BAKWENA TELECOMS support in writing on the Customer portal of any problems or service breaks.

124. Any faults or service interruption should be reported via one of the channels available on the BAKWENA TELECOMS website or via Customer Portal.

125. The provider will attend to faults reported by the Customer during office hours and the relevant party will apply its reasonable endeavors to have the Services restored in the shortest possible time.

126. If the Provider determines that the reported fault was caused by the Customer, the Customer shall be liable for payment of the relevant call-out charge @ R550 (inclusive of VAT) per hour (this will change at any time) plus equipment and travelling as stipulated by the Provider from time to time. Some services are governed by BAKWENA TELECOMS's Service Level Agreement ("SLA") as published on BAKWENA TELECOMS's website and/or available on request.

127. BAKWENA TELECOMS accepts no responsibility for connectivity, network and/or Customer downtime problems, or any losses or damages associated thereto, or any "line-of-sight" or "external factors" that could affect the quality of the service after completion of installation. BAKWENA TELECOMS does not accept liability for loss of services due to any form of Loadshedding either on the customer equipment or on the BAKWENA TELECOMS Network Equipment and any third party network BAKWENA TELECOMS utilizes.

128. All post installation technical problems must be reported to BAKWENA TELECOMS's technical help desk as per the Fault Reporting and Escalation Procedure published on BAKWENA TELECOMS's website and/or available on request.

129. Installation, service or billing problems may not be voiced on any public platform (including social media) if the above procedure has not been followed and BAKWENA TELECOMS have not been given acceptable time to rectify problems on a non-public platform.

#### Upgrades, Downgrades and Migration

130. Upgrades and downgrades of services are governed by the terms and conditions as pertained in the relevant Service Contract.

131. A Customer is entitled to migrate from wireless to fibre subject to the customer being prepared to agree to the pricing of Fibre services offered, in writing and then sign a new agreement and pay any outstanding existing contractual fees.

132. The following applies to the migration, and will substitute the early cancellation policy:

133. Customer must complete the Cancellation/Downgrade form, indicating that they want to migrate to BAKWENA TELECOMS Fibre and select a wireless package (if any) to remain as back-up / fail over.

134. Customer must complete a new online application for Home Fibre service by following [www.bakwenatelecoms.co.za](http://www.bakwenatelecoms.co.za) for Home Fibre on a Month-to-Month contract, using the current customer code as reference. Please note installation and/or activation fees will be applicable.



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[www.bakwenatelecoms.co.za](http://www.bakwenatelecoms.co.za)

135. For Business Fibre and other select services, the Customer agree to enter into a minimum of 24 month agreement.

### **Interpretation & General**

136. This Agreement forms the basis of the agreement between the parties and should be read together with the service application and all documents and/or terms and conditions referred to therein. Only a written variation, waiver or cancellation agreed to by both parties will be of any effect.

137. The laws of the Republic of South Africa will apply to this Agreement, its interpretation and any matter or litigation relating to or arising from it, and the party's consent to the jurisdiction of the courts of Republic of South Africa in this regard.

138. For the avoidance of doubt, any provision of this Agreement that anticipates any right or duty extending beyond the termination or expiry of this Agreement will survive the termination or expiry of this Agreement and continue in full force and effect.

139. The signatories acting in representative capacities warrant that they are authorised to act in such capacities and accept personal liability under this Agreement should they prove not to be so authorised.

140. If a provision of this Agreement is reasonably capable of an interpretation which would make that provision valid and enforceable and an alternative interpretation that would make it void, illegal, invalid or otherwise unenforceable, then that provision shall be interpreted, so far as is possible, to be limited and read down to the extent necessary to make it valid and enforceable.

141. In the event that any part of this Agreement is found to be partially or fully unenforceable because it does not comply with any law, or for any other reason, this will not affect the application or enforceability of the remainder of this Agreement.

### **B) APPLICABLE TO INDIVIDUALS (ONLY)**

#### **Special Terms and Conditions**

142. Use of the Services may be subject to ID verification and / or proof of address and income, as required by RICA (the Regulation of Interception of Communication Act of 2002 as amended). A driver's license is not acceptable, only a full coloured, clear, legible copy of their valid Identity Document or Identity Card will be accepted. Non-South African citizens may submit a copy of their valid Passport or International Driver's License. Term Conditions (applicable to Term Agreements only)

143. The Customer may upgrade the services or cancel this Service Contract by giving a minimum of 1 (one) calendar month written notice to BAKWENA TELECOMS. In the event of termination, the Customer may be liable for termination fees as set out in the Termination Policy (available on BAKWENA TELECOMS's website or on request). A reasonable cancellation fee is calculated as the total monthly cost of the services and/or equipment rental, multiplied with the remaining term months, less 10% (ten percent) early settlement discount. At the end of the initial period, the customer may elect to renew for a further term as per the initial period and on the terms and conditions applicable at that time, failure by which this Service Contract will continue on a month to month basis.

144. The provisions set out in the paragraph above shall mutatis mutandi apply in the event that BAKWENA TELECOMS elects to cancel the Service Contract as a result of any breach incurred by the Customer.

Month-To-Month Conditions (applicable to Month-to-Month Agreements only)

145. The Customer may upgrade or downgrade the services or cancel this Service Contract by giving a minimum of 1 (one) calendar month written notice to BAKWENA TELECOMS, unless specified otherwise. The Customer will however be liable for all fees due up until the last day of the notice period together with the connection fee, service fee and equipment cost if the same has not been paid in full.

146. Where the Customer has applied for Third Party Home Fibre services and should the Customer cancel the Service Contract within the first 12 months from Commencement Date, the customer shall be liable for a maximum cancellation fee of R5000.00 (Five Thousand Rand) including VAT to recoup the installation costs or such other amount as determined by BAKWENA TELECOMS's third party home fibre contractual agreement.

147. The provisions set out in the paragraph above shall mutatis mutandi apply in the event that BAKWENA TELECOMS elects to cancel the Service Contract as a result of any breach incurred by the Customer.

### **C) APPLICABLE TO LEGAL ENTITIES (ONLY)**

#### **Special Term and Conditions**

148. Use of the Services may be subject to verification and/or proof of address, as required by RICA (the Regulation of Interception of Communication Act of 2002). Documents required for Legal entities on request: Company/Closed Corporation registration documents, Copy of SARS document confirming Income tax or VAT registration number. Resolution on company letterhead signed by all directors / members / partners nominating an authorised signatory / representative; Copy of bank statement confirming banking details (less than three months old); For the authorised signatory/representative, we require a copy of ID and proof of address (less than three months old).

149. Where the Customer has applied for business fibre services and should the Customer cancel the Service Contract after the period as set out in paragraph 12 above but before installation, the customer shall be liable for a cancellation fee of R10'000.00 (ten thousand Rand) excluding VAT, or such other amount as determined by BAKWENA TELECOMS determined by agreement with BAKWENA TELECOMS's third party business fibre contractual agreement.

#### **Term Conditions (applicable to Term Agreements only)**

150. The Customer may upgrade the services by giving a minimum of 1 (one) calendar written notice to BAKWENA TELECOMS, unless otherwise specified.

This Service Contract will automatically be renewed for a further term as per the initial period, unless the Customer notifies BAKWENA TELECOMS in writing, not less than 3 (three) calendar months before the expiry date, of its intention to terminate the Service Contract.

Month-To-Month Conditions (applicable to Month-to-Month Agreements only)

151. The Customer may upgrade or downgrade the services or cancel this Service Contract by giving a minimum of 1 (one) calendar written notice to BAKWENA TELECOMS, unless specified otherwise. The Customer will be liable for all fees up until the last day of the calendar month notice period.

### **D) SURETY (applicable to Legal Entities only)**

152. The person agreeing to this agreement hereby act as the Surety to assume certain risks, liabilities and legal responsibilities on behalf of the Customer towards BAKWENA TELECOMS.

153. The Surety hereby agrees to and stands as surety for the Customer ("the Surety"), by him/her agreeing hereto, binds himself/herself in his/her personal capacity, in favour of BAKWENA TELECOMS, its successors-in-title and assigns as surety and co-principal debtor in solidum, jointly and severally, with the Customer for the proper, full and punctual payment and performance of the Customer of all its present and future obligations to BAKWENA TELECOMS which the Customer owes or may in the future owe to BAKWENA TELECOMS from whatsoever cause arising in terms of goods and/or services rendered in terms of this Service Contract concluded or about to be concluded between BAKWENA TELECOMS and the Customer.

154. This Suretyship shall remain in full force and effect notwithstanding any indulgence, concession, leniency or extension of time which may be shown



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or given by BAKWENA TELECOMS to the Customer; or any amendment/s to this Service Contract, this Suretyship Agreement and/or other agreement for the time being subsisting between the parties.

155. The Surety hereby renounces the benefits of the legal exceptions "beneficium ordinis seu excussionis" (i.e. excussion, enabling BAKWENA TELECOMS to proceed against me as the Surety before proceeding against the Customer if BAKWENA TELECOMS chooses to do so); "beneficium divisionis" (i.e. division, enabling BAKWENA TELECOMS to proceed against any one of us sureties alone for the full amount owing to BAKWENA TELECOMS); "exceptio erroris calculi" (the exception of a wrong calculation); "exceptio non numeratae pecuniae" (the exception that money was not paid over); "exceptio non causa debiti" (the exception that no cause of action exists); where applicable, the "exceptio de duobus vel pluribus reis debendi" (the exception that all the sureties must be joined in any action, each for his/her proportionate share of the debt); "revision of accounts"; and "no value received", with the meaning and effect of all of which the Surety declares himself/herself to be fully acquainted.

156. The Surety warrants, as a material warranty, that he/she is duly authorised to enter this Suretyship, and that he/she has read and understood each term and condition of this Suretyship and accepts them as binding.

157. The Surety accepts that the authorized representative of the Customer to any Schedule or other documentation in terms of this Service Contract shall bind the Customer in respect of the relevant transaction.

158. In the event of more than 1 (one) person appending his/her acceptance hereto, there shall come into existence a separate and distinct Suretyship agreement for each person agreeing hereto ("the Sureties"). If for any reason the Suretyship is not binding on 1 (one) Surety, it shall nevertheless remain in full force and effect in respect of the obligations of the remaining Sureties.

159. For its duration, this Suretyship shall be a continuing covering security for all the Customer's obligations to BAKWENA TELECOMS in terms of, or arising in connection with this Service Contract, until all amounts owing to BAKWENA TELECOMS and all obligations (including contingent obligations), plus such interest and costs until date of payment as are permissible in law, have been paid and fully and finally settled or discharged.

160. The Surety hereby chooses its domicilium citandi et executandi (domicile address) for all purposes at the address of the Customer.

#### **F) DEBIT ORDER MANDATE AND INSTRUCTION**

1. Abbreviated name as registered with bank: Bakwena Entertainment and Production

2. "Debit Amount" refers to Invoice amount and/or outstanding account balance.

3. "Commencement Date" is the same as Effective Date.

4. The Authority and Mandate refers to our contract as dated as on acceptance hereof ("the Agreement"). I/We hereby authorise you to issue and deliver payment instructions to the bank for collection against my / our above mentioned account at my / our above mentioned bank (or any other bank or branch to which I/We may transfer my / our account) on condition that the sum of such payment instructions will never exceed my / our obligations as agreed to in the Agreement, and commencing on the commencement date and continuing until this Authority and Mandate is terminated by me/us by giving you notice in writing of no less than 20 ordinary working days, and sent by prepaid registered post or delivered to your address indicated above.

5. The individual payment instructions so authorised to be issued must be issued and delivered on the day ("payment day") of each and every month commencing after service commencement. If the payment day falls on a Sunday or recognized South African public holiday, the payment day will automatically be the very next or preceding ordinary business day. Further, if there are insufficient funds in the nominated account to meet the obligation, you are entitled to track my account and re-present the instruction for payment as soon as sufficient funds are available in my account, on or after the dates when the obligation in terms of the Agreement is due and the amount of each individual payment instruction may not be more or less than the obligation due.

6. I/We understand that the withdrawals hereby authorised will be processed through a computerized system provided by the South African Banks and I also understand that details of each withdrawal will be printed on my bank statement. Each transaction will contain a number, which must be included in the said payment instruction and if provided to you should enable you to identify the Agreement. A payment reference is added to this form before the issuing of any payment instruction. I/We shall not be entitled to any refund of amounts which you have withdrawn while this authority was in force, if such amounts were legally owing to you.

7. MANDATE: I/We acknowledge that all payment instructions issued by you shall be treated by my/our bank as if the instructions had been issued by me/us personally.

8. CANCELLATION: I/We agree that although this Authority and Mandate may be cancelled by me/us, such cancellation will not cancel the Agreement. I/We shall not be entitled to any refund of amounts which you have withdrawn while this authority was in force, if such amounts were legally owing to you.

9. ASSIGNMENT: I/We acknowledge that this Authority may be ceded to or assigned to a third party if the agreement is also ceded or assigned to that third party, but in the absence of such assignment of the Agreement, this Authority and Mandate cannot be assigned to any third party.



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