

TELVIVA TERMS OF BUSINESS

VERSION EFFECTIVE DATE:	1 JULY 2026
The following is a statement of the current standard terms of business under which the Telviva Group provides equipment, software, connectivity or services to its customers. We refer to ourselves as “TELVIVA” in this document. Any person or entity that validly accepts a proposal for equipment, software, connectivity and/or services issued by us will enter into a binding agreement with us. Such a person or entity is referred to as a “CUSTOMER” in this document and we refer to the validly accepted proposal as an “Order”. Unless otherwise agreed in writing, all such Orders are subject to these terms. These terms may be replaced or amended from time to time. Such changes will take effect as and when published. CUSTOMER should review these terms prior to concluding an Order since the latest version of these terms will apply to such Order.	

1. APPLICATION

- 1.1 **Proposals.** Any proposal or quotation rendered by TELVIVA to the CUSTOMER, whether in electronic form or otherwise, that constitute an offer by TELVIVA to the CUSTOMER to provide TELVIVA Technology and related Services will be subject to the then prevailing version of these terms unless otherwise agreed in writing and will constitute an Order hereunder if duly accepted in accordance with the terms of such proposal or quotation.
- 1.2 **Application.** Unless otherwise agreed in writing, the then prevailing version of these terms will apply to each Order concluded with TELVIVA. Such prevailing terms will be incorporated into and form part of each such Order. However, unless otherwise provided in an Order, the terms and conditions of any one Order shall not apply to any other Order.
- 1.3 **Replacement.** These terms shall apply as from its effective date specified at the head hereof until replaced with amended or new standard terms. Such replacement terms will be published on our web site at <https://telviva.co.za/legal/> and will apply to all new Orders concluded from the date on which they are specified to take effect.
- 1.4 **Conflicts.** Insofar as any term and condition in an Order conflicts with these terms, the Order shall prevail.

2. DEFINITIONS AND INTERPRETATION

- 2.1 **Definitions.** For purposes hereof, the following terms shall have the following meanings -
 - 2.1.1 **“Affiliate”** means, with respect to any entity, any other entity Controlling, Controlled by or under common Control with such entity;
 - 2.1.2 **“Anti-Bribery Law”** means the anti-bribery and anti-corruption Law of the relevant territory in which business is conducted under an Order as applicable to the Parties, such as the South African Prevention and Combating of Corrupt Activities Act, 2004, EU Anti-Corruption Directive, UK Bribery Act and US Foreign Corrupt Practices Act, as applicable;
 - 2.1.3 **“Authorised User”** means a person that is duly authorised by the Parties to access and use the relevant TELVIVA Technology and/or TELVIVA Services;
 - 2.1.4 **“Authority”** means any national, municipal, provincial, other local or administrative government, authority or department, or any agency, tribunal, commission, regulator or other similar body having jurisdiction by Law over a Party’s assets, resources, activities or operations relevant to the Order;
 - 2.1.5 **“Business Day”** means any day other than a Saturday, a Sunday or a public holiday proclaimed under applicable Law;
 - 2.1.6 **“Confidential Information”** means any information of a confidential nature, which has been, or may be obtained directly or indirectly by one Party hereto from the other Party hereto, including, without limitation all non-public information relating to a Party’s business affairs, as well as all software code and Know How and the terms hereof and of any Order;
 - 2.1.7 **“Connectivity”** means the communication network links made available to CUSTOMER by TELVIVA pursuant to the Order, including the type and bandwidth of such links;
 - 2.1.8 **“Contract Year”** means, in respect of an Order, each successive 12 (twelve) month period during the term of such Order, as measured from the Effective Date of such Order;

- 2.1.9 **“Control”** and its derivatives shall mean that an entity holds more than a fifty percent (50%) equity interest in the other entity in question or has the power to direct the management and policies of such entity, whether through the ownership of voting securities, by contract or otherwise;
- 2.1.10 **“CUSTOMER”** means the entity or person that contracts for the supply of TELVIVA Technology and/or Services in the Order;
- 2.1.11 **“Customer Data”** means data that are Processed by or for Customer using the TELVIVA Technology or TELVIVA Services, including as may pertain to the communications of Authorised Users;
- 2.1.12 **“Customer Material”** means all data, reports, documentation, software or materials provided or made available by or on behalf of CUSTOMER to TELVIVA, irrespective of the media on which they occur, including the Customer Data;
- 2.1.13 **“Customer Site”** means a location at which TELVIVA Technology is agreed to be implemented on-site for the benefit of CUSTOMER pursuant to the Order;
- 2.1.14 **“Customer Systems”** means the computer systems and communications infrastructure and devices managed and used by CUSTOMER for the purposes of accessing and using the TELVIVA Services, including the hardware, network connections and software provided by Customer, and the TELVIVA Technology provided by TELVIVA for implementation on or in conjunction therewith, but excluding the TELVIVA Platforms;
- 2.1.15 **“Data Protection Law”** means the data protection and privacy Law applicable to a Party’s Processing of Personal Information hereunder, such as the South African Protection of Personal Information Act 4 of 2013, the EU General Data Protection Regulation, and the UK General Data Protection Regulation;
- 2.1.16 **“Designated Account”** means TELVIVA’s designated bank account for payment that has been duly notified to CUSTOMER in writing;
- 2.1.17 **“Early Termination Fee”** means the sum of all outstanding Fees that would have become payable for the balance of the Minimum Term had termination not occurred, plus any costs incurred by TELVIVA to make early payment under its financing arrangements for the supplies involved;
- 2.1.18 **“Effective Date”** means the date stipulated in the Order for such Order to become effective, and failing such stipulation the date of such Order being duly accepted and becoming binding;
- 2.1.19 **“Equipment”** means User Devices, routing devices and other hardware delivered by TELVIVA to CUSTOMER under an Order, including the software implemented thereon;
- 2.1.20 **“Error”** means a failure by the TELVIVA Services or TELVIVA Technology to conform in all material respects to the Manuals relevant thereto, but shall exclude all Excluded Defects;
- 2.1.21 **“Excluded Defect”** means a problem affecting the TELVIVA Technology or TELVIVA Services caused by any of the following:
 - (a) connectivity, equipment, software or services not supplied by TELVIVA;
 - (b) power surge, accident, misuse, operator error, negligence or abuse or a failure to comply with the relevant Manuals;
 - (c) a modification, adjustment or alteration by anyone other than TELVIVA Personnel;
 - (d) the failure by CUSTOMER to implement an upgrade, fix, workaround or other recommendation as advised by TELVIVA;

- (e) a breach by CUSTOMER of any of its obligations hereunder or under the relevant Order; or
- (f) Force Majeure Events, including fire, flood, earthquake, storm, hurricane or other natural disaster, epidemic, war, invasion, act of foreign enemies, hostilities (regardless of whether war is declared), civil war, rebellion, revolution, insurrection, military or usurped power or confiscation, terrorist activities, nationalisation, government sanction, blockage, embargo, labour dispute, strike, lockout or interruption or failure of electricity or telephone infrastructure services;
- 2.1.22 **"Fees"** means the fees and charges to be paid by CUSTOMER to TELVIVA under the Order;
- 2.1.23 **"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 its confidential information, including in other jurisdictions, that grant similar rights as the foregoing;
- 2.1.24 **"Know-How"** means any and all designs, concepts, ideas, methods, protocols, methodologies, procedures, processes, know-how, formulae, techniques, models and templates; the structure, sequence and organisation of software, program code, interface and communications protocols, numbering systems, business rules, system architecture, data file definitions, utilities and routines; and logic, coherence and methods of operation of computer systems that a Party has created, acquired or otherwise has rights in or may, in connection with the performance of its obligations under the Order, employ, provide, modify, create or otherwise acquire rights in;
- 2.1.25 **"Law"** means:
- (a) any statute, regulation, by law, ordinance or subordinate legislation in force from time to time to which a Party is subject;
 - (b) the common law as applicable to a Party from time to time;
 - (c) any binding court order, judgement or decree;
 - (d) any applicable industry code, policy or standard enforceable by law; or
 - (e) any direction, policy, rule or order issued by an Authority that is binding on a Party;
- 2.1.26 **"Loss"** means all losses, liabilities, damages and claims, and all related costs and expenses (including legal fees at an attorney and own client scale, interest and penalties);
- 2.1.27 **"Minimum Term"** means the minimum duration for the supply of TELVIVA Services and/or TELVIVA Technology under an Order as may be specified in the Order and commencing on the date of activation of the TELVIVA Services and/or TELVIVA Technology for CUSTOMER;
- 2.1.28 **"Manuals"** means the operating and reference documents and guides provided by TELVIVA to assist with enabling access to or use of the TELVIVA Technology or TELVIVA Services (as may be amended by TELVIVA from time to time), including any interfaces, specifications, operating procedures, communications protocols, or standards, rules or requirements pertaining to the implementation thereof or to interoperation with the TELVIVA Platforms;
- 2.1.29 **"Order"** means a proposal by TELVIVA for the supply of TELVIVA Technology and/or TELVIVA Services that has been duly signed and accepted by CUSTOMER in accordance with the terms thereof and that is and remains binding on the Parties, including any and all additional terms and conditions included therein that relate specifically to the particular supply involved;
- 2.1.30 **"Parties"** means TELVIVA and CUSTOMER and **"Party"** means either one of them;
- 2.1.31 **"Performance Data"** means all data relating to the performance of the TELVIVA Technology and/or TELVIVA Services as implemented for CUSTOMER, including without limitation all test and performance data, as well as usability feedback data generated during the use thereof;
- 2.1.32 **"Personal Information"** mean Customer Data that is protected as personal information or personal data under applicable Data Protection Law;
- 2.1.33 **"Personnel"** means any director, employee, agent, consultant, contractor, service provider or other representative of an entity;
- 2.1.34 **"Processing"** means any operation or activity or any set of operations, whether or not by automatic means, concerning Personal Information, including collection, combination, recording, organization, storage, updating, modification, disclosure, transfer, retrieval, consultation, use, consolidation, blocking, erasure and destruction;
- 2.1.35 **"Professional Services"** means services other than Support Services rendered to CUSTOMER by TELVIVA Personnel, including without limitation, consultancy, installation, configuration, training, project management and support other than for Errors;
- 2.1.36 **"Professional Services Fees"** means the fees payable by CUSTOMER as consideration for the rendering of Professional Services by TELVIVA, which fees will be payable on a Time and Materials basis unless otherwise agreed in an Order;
- 2.1.37 **"Service Deliverable"** means any deliverable or work product produced or made available to Customer by TELVIVA as part of or pursuant to the Services or its use of the TELVIVA Technology;
- 2.1.38 **"Services"** means any and all services provided by TELVIVA to CUSTOMER pursuant to the Order, including TELVIVA Services, Support Services and Professional Services;
- 2.1.39 **"Software"** means the computer software programs that are made available to CUSTOMER by TELVIVA pursuant to the Order, including the TELVIVA Software and Third Party Software forming part thereof;
- 2.1.40 **"Support Services"** means the technical support services of TELVIVA for the TELVIVA Technology and TELVIVA Services as described in the Schedule and the relevant Manuals;
- 2.1.41 **"TELVIVA"** means the TELVIVA Group entity that executes an Order;
- 2.1.42 **"TELVIVA Group"** means Telviva (Pty) Ltd, a company incorporated in South Africa, with registration number 2007/014820/07 currently having its principal place of business at 6th Floor Terraces, Black River Park, Fir Street, Observatory, 7926, Cape Town and its Affiliates;
- 2.1.43 **"TELVIVA Platform"** means a computer system and its related communications infrastructure made available by TELVIVA for the purposes of enabling remote access to and use of Software and/or TELVIVA Services for Customer or its Authorised Users, comprising all servers, software, interfaces, data files and network links forming part thereof, but excluding all Customer Systems;
- 2.1.44 **"TELVIVA Services"** means Services involving the use of the TELVIVA Technology, such as communication services, video conferencing services, contact centre services, network services or security services, as may be further described in the Order and the relevant Manuals, that are agreed in the Order to be rendered to CUSTOMER by TELVIVA;
- 2.1.45 **"TELVIVA Software"** means the computer software programs that are licensed to CUSTOMER by TELVIVA pursuant to the Order, including as may be installed on the Customer Systems and User Devices;
- 2.1.46 **"TELVIVA Technology"** means the TELVIVA Platform(s), Equipment, Connectivity, Software, Service Deliverables and Manuals made available by or on behalf of TELVIVA pursuant to the Order;
- 2.1.47 **"Third Party Software"** means any software forming part of the TELVIVA Technology that is proprietary to a third party;
- 2.1.48 **"Time and Materials"** means a basis for calculation of Fees based on the time actually spent by TELVIVA resources in delivering a service which are to be charged at TELVIVA's prevailing fee rates and which also provides for payment by CUSTOMER for all expenses reasonably incurred by TELVIVA in delivering such service, including for materials, travel, accommodation and subsistence;
- 2.1.49 **"Usage Rights"** means the rights of CUSTOMER to use the TELVIVA Technology as described in clause 5 hereof;
- 2.1.50 **"User Data"** means all data regarding the Authorised Users that may be required by TELVIVA, including the details of the User

Devices allocated to the Authorised Users and such other data as TELVIVA may be required to hold by Law;

- 2.1.51 **"User Device"** means a device of a type approved by TELVIVA that is registered with TELVIVA and enabled for a User to access the TELVIVA Services;

- 2.2 **Headings.** Headings and sub-headings are inserted for information purposes only and shall not be used in the interpretation of these terms.

- 2.3 **References.** Unless otherwise stated in these terms, references herein to the Order or to any other agreement are references to such Order or such other agreement as varied, supplemented, substituted or replaced from time to time.

- 2.4 **Clause References.** Unless otherwise stated herein, references to clauses, sub-clauses, schedules or paragraphs are references to clauses, sub-clauses, schedules or paragraphs of these terms, as the case may be.

- 2.5 **Enactments.** References to any Law shall be deemed to include references to such Law as re-enacted, amended or extended from time to time.

- 2.6 **References to persons.** References to persons shall include natural and juristic persons and references to either Party shall include such Party's successors or permitted assigns.

- 2.7 **Substantive Provisions.** If any provision in a definition is a substantive provision conferring rights or imposing obligations on either Party, effect shall be given to it as if it were a substantive provision in these terms notwithstanding that it is only contained in this clause 2.

- 2.8 **Definitions.** Where any term is defined within the context of any particular clause in these terms, the term so defined, unless it is clear from the clause in question that the term so defined has limited application to the relevant clause, shall bear the meaning ascribed to it for all purposes in these terms, notwithstanding that the term has not been defined in this clause 2.

- 2.9 **Calculation of Days.** Unless expressly otherwise stated, when any number of days is prescribed in these terms or the Order, same shall be reckoned exclusively of the first and inclusively of the last day, unless the last day falls on a day that is not a Business Day, in which case the last day shall be the next Business Day.

- 2.10 **Counterparts.** The Order may be executed in any number of counterparts and all of such counterparts taken together shall be deemed to constitute one and the same instrument.

- 2.11 **Interpretation.** No rule of construction that an agreement shall be interpreted against the Party responsible for its drafting or preparation shall apply to these terms or to the Order.

3. ORDERS

- 3.1 **Appointment.** Upon conclusion of an Order, TELVIVA is appointed on the terms and conditions hereof and of the Order to provide the TELVIVA Technology and TELVIVA Services identified in such Order to CUSTOMER for the duration of such Order against payment of the relevant Fees and TELVIVA accepts such appointment.

- 3.2 **Term of Orders.** Each Order shall commence on its Effective Date and be of force and effect until all supplies of TELVIVA Technology and/or TELVIVA Services under such Order are terminated, or such Order is otherwise terminated in accordance with these terms or the terms of such Order. The termination of any one Order will not affect the validity of any other Order. The termination of any one Service component under an Order will not affect the validity of any other Service component provided under such Order.

- 3.3 **Termination of Supplies.** The Minimum Term for the supply of TELVIVA Technology and/or TELVIVA Services under an Order will be detailed in the Order. Following expiry of such Minimum Term, such supply of TELVIVA Technology and/or TELVIVA Services will automatically continue on a month-to-month basis unless terminated by either Party by giving the other Party at least 90 (ninety) days' written notice thereto, which termination will take effect as of the date specified in the notice of termination.

- 3.4 **Early Termination.** If the supply of TELVIVA Technology and/or TELVIVA Services under an Order is wholly or partly terminated prior to the expiry of the applicable Minimum Term for any reason

whatsoever, CUSTOMER will immediately become liable for payment of Early Termination Fees pertaining thereto and CUSTOMER agrees to comply with such requirement and pay the relevant Early Termination Fees within 7 (seven) days of receipt of invoice therefor.

- 3.5 **Suspension.** Without prejudice to any of its other rights or remedies, TELVIVA may suspend TELVIVA Services or the use of TELVIVA Technology in whole or in part by way of a written notice thereto:

- 3.5.1 if the supply or use of such TELVIVA Services or TELVIVA Technology by CUSTOMER or an Authorised User is or becomes unlawful or breaches these terms in any way, including if any of the licences, authorisations, permissions or consents required in Law to enable such supply or use is not granted or is insufficient or terminates without being renewed;
- 3.5.2 in the event of an impairment or threat to the proper operation or security of such TELVIVA Services of TELVIVA Technology; or
- 3.5.3 for routine and emergency maintenance of such TELVIVA Technology or TELVIVA Services;
- 3.5.4 if its rights to make available Third Party Software to CUSTOMER on which the use of such TELVIVA Services or TELVIVA Technology are dependent are suspended or terminated;
- 3.5.5 if it is required to do so by a relevant Authority or court order or
- 3.5.6 if it or any of its Authorised Users are placed on any government sanctions list;

in each case, until the cause of the suspension has been adequately addressed. TELVIVA will endeavour to minimise the impact of such suspensions on CUSTOMER.

4. DELIVERY AND IMPLEMENTATION

- 4.1 **Delivery.** In return for payment of the relevant Fees, TELVIVA will deliver the TELVIVA Technology and make available the TELVIVA Services in the manner as provided for in the Order. CUSTOMER will cooperate and provide TELVIVA with such assistance as may be required by TELVIVA in this regard, including by providing the required access to the relevant Customer Sites and Customer Systems to enable such supply, and making available such Personnel and Customer Material as may be required for such purpose.

- 4.2 **Customer Systems.** Save for the TELVIVA Technology to be provided by TELVIVA, CUSTOMER shall, at its own expense, procure, install, configure and maintain all components of the Customer Systems required to interoperate with the TELVIVA Technology or receive the TELVIVA Services. Any assistance with this by TELVIVA will be chargeable. CUSTOMER must ensure that such Customer Systems compliant with TELVIVA's minimum specifications therefor are in place prior to the implementation of TELVIVA Technology or TELVIVA Services commencing.

- 4.3 **User Devices.** CUSTOMER and its Authorised Users shall be responsible to procure and maintain User Devices of the types as may be approved by TELVIVA to access and use the TELVIVA Technology and TELVIVA Services.

- 4.4 **Testing.** CUSTOMER will test the TELVIVA Technology and TELVIVA Services as implemented for it to ensure that it works properly and meets with its requirements and work with TELVIVA to resolve any problems identified before using such TELVIVA Technology or TELVIVA Services for operational purposes.

5. LICENSING

- 5.1 **Licence Terms.** In return for payment of the relevant Fees, TELVIVA grants to CUSTOMER the non-exclusive, non-transferable right to use and permit the use by its Authorised Users of the TELVIVA Technology and the TELVIVA Services activated by TELVIVA for the CUSTOMER for the CUSTOMER's own internal business purposes only and in compliance with the relevant Manuals. CUSTOMER's rights to use the Third Party Software are further specified in the licence terms of the suppliers of such Third Party Software and CUSTOMER shall abide by such terms.

- 5.2 **Restrictions.** Save as set forth in Clause 5.1, CUSTOMER shall not, and shall not permit, whether directly or indirectly, any third party, to-

- 5.2.1 modify, adapt, translate, reproduce, distribute, use, rent, lease, share, sell, assign, sub-license or otherwise transfer or make

- available to any person any part of the TELVIVA Technology or TELVIVA Services;
- 5.2.2 remove, alter or conceal any proprietary notices or labels on the TELVIVA Technology; or
- 5.2.3 reverse assemble, decompile or reverse engineer any Software, whether in whole or in part, or otherwise attempt to derive the source code of any Software.
- 5.3 **Withdrawal.** TELVIVA may demand that CUSTOMER or any of its Authorised Users wholly or partially cease use of the TELVIVA Technology or TELVIVA Services if -
- 5.3.1 it determines that such use or the continued use of such TELVIVA Technology or TELVIVA Services may subject TELVIVA or any third party to legal liability, or may jeopardise its rights in the TELVIVA Technology or TELVIVA Services; or
- 5.3.2 a failure to comply with the terms of this clause occurs as it pertains to the use of such TELVIVA Technology or TELVIVA Services and such failure is not remedied promptly following receipt of a written notice thereof; or
- 5.3.3 its rights to use the TELVIVA Technology or TELVIVA Services are terminated,
- and CUSTOMER will promptly take such steps as may be required to ensure compliance with such request.
6. **SUPPORT SERVICES**
- 6.1 **Scope.** In return for payment of the relevant Fees TELVIVA will provide Support Services for the TELVIVA Technology and the TELVIVA Services in accordance with the terms of the Schedule.
- 6.2 **Term.** Support Services will be provided in respect of TELVIVA Technology only if and for as long as CUSTOMER is entitled to use the TELVIVA Services that make use of such TELVIVA Technology.
7. **PROFESSIONAL SERVICES**
- CUSTOMER may request, and TELVIVA may provide, certain Professional Services to CUSTOMER during the term of the Order. Professional Services Fees may be charged in respect of the Professional Services rendered hereunder, which will be determined with reference to TELVIVA's standard prevailing Time and Materials rates unless otherwise agreed.
8. **FEES AND PAYMENT**
- 8.1 **Fees.** CUSTOMER shall be liable for and shall pay the relevant Fees in respect of all TELVIVA Technology and Services supplied on the basis set out below (unless otherwise stated in the Order):
- 8.1.1 Once off Fees may be charged immediately upfront prior to any delivery occurring;
- 8.1.2 Fixed recurring Fees may be charged monthly in advance; and
- 8.1.3 Consumption-based Fees (including for Professional Services) may be charged monthly in arrears.
- 8.2 **Adjustments.** TELVIVA may adjust any of its Fee rates from time to time. TELVIVA will provide CUSTOMER with written notice of any adjustments to the Fees, which notice will specify the date on which such adjustments are to take effect.
- 8.3 **Expenses.** CUSTOMER shall reimburse expenses incurred by TELVIVA or TELVIVA's Personnel for travelling, accommodation and subsistence to attend at Customer Sites at CUSTOMER's request and for any goods or services acquired on CUSTOMER's behalf and at its specific request. Travelling, accommodation and subsistence expenses may be charged in accordance with TELVIVA's standard policies in respect of such matters from time to time. TELVIVA may request CUSTOMER to approve a particular expense before incurring it and TELVIVA shall not be obliged to take the relevant action and incur such expense before the necessary approval thereto has been provided.
- 8.4 **Taxes.** The Fees shall exclude all taxes (including without limitation value added tax, sales tax, withholding tax, (and any other similar taxes levied in any jurisdiction), duties (including without limitation stamp duties and customs and excise duties), tariffs, rates, levies and other governmental charges or expenses, all of which shall be payable by CUSTOMER in addition to the Fees.
- 8.5 **Invoices.** All invoices shall be paid to TELVIVA by CUSTOMER within 7 (seven) calendar days of receipt of invoice in the currency specified for payment without withholding, deduction or set-off

by way of transfer into the Designated Account.

- 8.6 **Remedies for non-payment.** Where full payment is not made on due date, TELVIVA shall be entitled, without prejudice to any other right or remedy it may have, to -
- 8.6.1 charge interest on the outstanding amount at a rate that is the lesser of the prevailing overdraft lending rate of the bank at which the Designated Account is held plus 2% or the highest rate permitted by applicable Law, which interest shall be calculated from the due date for payment to the date of actual payment, both days inclusive, compounded monthly in arrears and CUSTOMER agrees and undertakes to pay such interest, which it hereby accepts as fair and reasonable, on demand; and/or
- 8.6.2 disable the use of any TELVIVA Technology and/or suspend the provision of any Services or such portion thereof as TELVIVA in TELVIVA's sole discretion chooses until all payments in arrears have been paid in full.
9. **CUSTOMER RESPONSIBILITIES**
- In order to enable TELVIVA to provide the Services, CUSTOMER agrees to provide assistance, input, support and co-operation and shall be responsible to -
- 9.1 **testing.** evaluate and select the TELVIVA Technology and TELVIVA Services to address its specific business requirements and thoroughly test the functioning thereof and ensure that it is suitable for its business prior to permitting use thereof for its business purposes, including by ensuring all material defects and other shortcomings are suitably addressed prior to permitting its operational use;
- 9.2 **provision of access.** provide TELVIVA Personnel with access to facilities and infrastructure at the Customer Sites to enable such Personnel to fulfil its obligations at the Customer Sites;
- 9.3 **liaise regularly.** liaise regularly with TELVIVA to ensure that TELVIVA is in a position to provide the Services;
- 9.4 **decisions and approvals.** render all decisions and approvals required as soon as is reasonably possible, so as not to delay or impede the performance of the Services;
- 9.5 **suitable infrastructure.** to the extent necessary, provide a suitable infrastructure for the components, software or deliverables that are to be implemented, including without limitation, the Customer System environment and infrastructure, in accordance with the requirements provided by TELVIVA;
- 9.6 **access.** provide TELVIVA with reasonable access to the Customer Material and Customer Systems to enable TELVIVA to comply with its obligations under the Order, including remote network access and direct physical access;
- 9.7 **notifications.** notify TELVIVA as soon as reasonably possible of any issues, concerns or disputes with respect to the Services;
- 9.8 **Customer Material.** be responsible for the accuracy and completeness of all Customer Material and other information, provided to TELVIVA;
- 9.9 **supply of infrastructure.** provide electricity services, telephone services and other connectivity (including access to computer networks and the Internet) at each Customer Site;
- 9.10 **dependent functions.** make available sufficiently qualified and authorised CUSTOMER Personnel, with appropriate access rights and permissions, to assist TELVIVA if required.
- 9.11 **Authorised Users.** identify and record, in a manner compliant with applicable Law, each Authorised User prior to permitting their use of the TELVIVA Services or TELVIVA Technology and securely maintain complete, up to date and accurate records of the identities of all Authorised Users as part of the User Data;
- 9.12 **records.** monitor and keep a complete up-to-date and accurate record of the User Data and Performance Data and provide TELVIVA with such portions of the User Data and Performance Data as TELVIVA may from time to time request, it being agreed that the User Data and Performance Data may be used by TELVIVA to exercise its rights and comply with its obligations under these terms and the Orders and under applicable Law and otherwise for its internal business purposes, including for improving the services rendered by it; and

- 9.13 **audits.** provide to TELVIVA, its auditors (including internal audit staff and external auditors), inspectors, regulators and other representatives as TELVIVA may from time to time designate in writing access at all reasonable times (and in the case of regulators, at any time required by such regulator) to the Customer Systems, User Data and Performance Data for the purpose of performing audits and inspections to verify CUSTOMER's compliance with these terms and the Order including with usage restrictions and Fee obligations.
10. **PERSONAL INFORMATION**
- 10.1 **Processing Authority.** CUSTOMER authorises TELVIVA (and its subcontractors involved in the Services) to Process the Personal Information for exercising its rights and performing its obligations under these terms and the Orders and applicable Law and for such other purposes as may be agreed with or authorised by CUSTOMER, and the CUSTOMER confirms and warrants to TELVIVA that it is and will at all times be entitled under applicable Law to grant such authorisation.
- 10.2 **Processing Consents.** CUSTOMER shall obtain and maintain all the approvals, authorisations, permissions and grants of rights required under applicable Law, including from Authorised Users and the Authorities (if and to the extent required), to permit the Processing of Personal Information for all purposes in connection with the Services.
- 10.3 **Compliance.** TELVIVA and CUSTOMER are each responsible for complying with their respective obligations under applicable Data Protection Law governing the Processing of Personal Information.
- 10.4 **Transfers.** Each Party shall be responsible to ensure that Personal Information is not transferred by it to another country in breach of applicable Data Protection Law.
- 10.5 **Notification of Unauthorised Access.** Each Party must notify the other if it has reasonable grounds to believe that Personal Information has been accessed or acquired by an unauthorised person (a "Data Compromise"). The Parties shall provide each other with reasonable assistance in investigating and managing Data Compromises.
- 10.6 **Mutual Assistance.** Each Party shall, upon request by the other Party, provide that other Party with such information regarding the Personal Information under its control as may reasonably be required for the other Party to comply with its duties under these terms and the Order and applicable Data Protection Law, including to respond to access and correction requests received from Authorised Users.
- 10.7 **Duty to Secure.** The Parties shall treat all Personal Information as Confidential Information in accordance with clause 19 and shall not disclose such Personal Information save in the course of exercising their rights or performing their duties under this Agreement or applicable Law. Each Party must secure the integrity and confidentiality of Personal Information in its possession or under its control by taking appropriate, reasonable technical and organisational measures to prevent:
- 10.7.1 loss of, damage to or unauthorised destruction thereof; and
- 10.7.2 unlawful access to or Processing thereof.
- 10.8 **Measures to be Taken.** In order to give effect to clause 10.7, each Party must take reasonable measures to:
- 10.8.1 identify all reasonably foreseeable internal and external risks to the Personal Information in its possession or under its control;
- 10.8.2 establish and maintain appropriate safeguards against the risks identified;
- 10.8.3 regularly verify that the safeguards are effectively implemented; and
- 10.8.4 ensure that the safeguards are continually updated in response to new risks or deficiencies in previously implemented safeguards.
- 10.9 **Standards.** Each Party must have due regard to generally accepted information security practices and procedures which may apply to it generally or be required from it in terms of specific industry or professional rules and regulations.
- 10.10 **Audit Rights.** Each Party shall provide to the other Party, its auditors (including internal audit staff and external auditors),

inspectors, regulators and other representatives as the other Party may from time to time designate in writing access at all reasonable times (and in the case of regulators, at any time required by such regulator) to the records of Personal Information held by it to verify its compliance with the terms of this clause 10. Neither Party shall be obliged to provide access to any personal information or confidential information of any third party or to any of its information systems used for the processing of personal information or confidential information of third parties.

- 10.11 **Retention.** Following termination of the Services, TELVIVA shall destroy all Personal Information in its possession, provided that it may retain such records thereof as may be reasonably required by it for evidentiary purposes or for compliance with its obligations under applicable Law.

11. SECURITY

- 11.1 **Preservation of TELVIVA Technology.** CUSTOMER shall be responsible to ensure that the integrity of the TELVIVA Technology as made available to CUSTOMER is preserved and will procure that all reasonable precautions and security measures are implemented to prevent any unauthorised access, use or alteration of the TELVIVA Technology. Without limiting the generality of the aforesaid CUSTOMER shall:

- 11.1.1 not allow anyone other than Authorised Users to access or use the TELVIVA Technology or TELVIVA Services;
- 11.1.2 provide adequate redundancy, backup and disaster recovery measures for the TELVIVA Services as implemented for it as well as for all related Customer Data; and
- 11.1.3 comply with the security requirements and processes described in the Manuals.

- 11.2 **Notification of Breaches.** If CUSTOMER becomes aware of any unauthorised access to the TELVIVA Technology or TELVIVA Services, CUSTOMER will promptly report the incident to TELVIVA describing in detail the scope and nature of the incident.

- 11.3 **TELVIVA Equipment.** In respect of all Equipment made available to CUSTOMER that is not owned by CUSTOMER, CUSTOMER shall ensure that:

- 11.3.1 the Equipment is used with care and that reasonable precautions are taken to avoid accidents and to safeguard it from loss or damage and excessive wear and tear;
- 11.3.2 TELVIVA is notified immediately of any loss of, or damage to, the Equipment or part thereof or any failure of the Equipment to function;
- 11.3.3 the Equipment is not repaired by anyone other than TELVIVA or its authorised subcontractors, save as may be expressly authorised by TELVIVA in writing;
- 11.3.4 no part or component for the Equipment is implemented which has not been supplied by TELVIVA or its designated suppliers;
- 11.3.5 TELVIVA or anyone authorised by TELVIVA is allowed to inspect and examine the Equipment at all reasonable times,
- 11.3.6 TELVIVA is provided with all such information as it may reasonably require to protect its right of ownership in the Equipment;
- 11.3.7 the Equipment is not sub-let, does not leave its possession, and no person or entity other than Authorised Users is permitted to use the Equipment;
- 11.3.8 the Equipment is used only for the purpose for which it has been designed, and in accordance with TELVIVA's reasonable instructions; and
- 11.3.9 the Equipment is covered by a comprehensive all-risks insurance policy in which the interest of TELVIVA or its designated subcontractor has been noted, which will insure the replacement value of the Equipment.

12. RISK

THE RISK OF LOSS OR DAMAGE IN RESPECT OF ALL COMPONENTS OF THE TELVIVA TECHNOLOGY DELIVERED TO CUSTOMER SHALL TRANSFER TO CUSTOMER UPON DELIVERY THEREOF.

13. COMPLIANCE WITH LAW

CUSTOMER shall obtain such information and consents as may be required in Law to permit its compliance with the terms of the

Order and its use of the Services, including as may be necessary to permit Authorised Users to access and use the TELVIVA Services.

14. DISCLAIMERS AND WARRANTIES

14.1 **Warranty of Authority.** Each Party warrants that it has the legal right and full power and authority to execute the Order.

14.2 **DISCLAIMER OF WARRANTIES.** EACH PARTY HEREBY EXCLUDES AND DISCLAIMS ALL WARRANTIES, WHETHER EXPRESSED OR IMPLIED, STATUTORY OR OTHERWISE (INCLUDING BUT NOT LIMITED TO, ANY IMPLIED WARRANTIES OF TITLE, NON-INFRINGEMENT, MERCHANTABILITY, QUALITY, SERVICES BEING UNINTERRUPTED OR ERROR-FREE, FITNESS FOR A PARTICULAR PURPOSE, WARRANTIES IMPLIED BY COURSE OF PERFORMANCE OR USAGE OF TRADE, OR THAT THE SERVICE WILL MEET CUSTOMER'S REQUIREMENTS), EXCEPT THOSE WARRANTIES EXPRESSLY MADE HEREIN. USE BY CUSTOMER OF AND/OR RELIANCE ON THE SERVICES AND/OR TELVIVA TECHNOLOGY AND/OR CUSTOMER DATA EMANATING FROM SUCH USE SHALL ACCORDINGLY BE AT THE ELECTION AND SOLE RISK OF CUSTOMER.

14.3 **No representations.** CUSTOMER acknowledges that it has not been induced to enter into the Order by any prior representations, warranties or guarantees, whether oral or in writing, except as expressly contained in herein.

15. INTELLECTUAL PROPERTY INDEMNITY

15.1 **Indemnity.** Subject to Clause 20, TELVIVA hereby indemnifies and holds CUSTOMER harmless from and undertakes to pay all damages, if any, finally awarded against CUSTOMER by a court of competent jurisdiction in any action which is attributable to a claim that a component of the TELVIVA Software (other than the Third Party Software) infringes the copyright or patent right of any third party ("**a Claim**"), provided that CUSTOMER:

15.1.1 notifies TELVIVA of any such Claim promptly after becoming aware thereof;

15.1.2 gives TELVIVA sole control of and agrees that TELVIVA may undertake, at its option, the defence of any such Claim, including all settlement negotiations;

15.1.3 does not, at any time, admit liability or otherwise settle or compromise the Claim, without the prior written consent and instruction of TELVIVA; and

15.1.4 provides such assistance to TELVIVA as it shall reasonably require in the defence of the Claim including, but not limited to, the provision of all relevant documentation.

15.2 **Costs of Assistance.** TELVIVA shall reimburse CUSTOMER for its reasonable costs incurred in complying with the provisions of clause 15.1.4 above.

15.3 **Consequences of successful claim by third parties.** In the event of a Claim being successful or if TELVIVA becomes aware of a potential Claim, TELVIVA shall be entitled at its own expense and option either to -

15.3.1 obtain for CUSTOMER the right to continue using the infringing component or the parts thereof which gave rise or may give rise to the Claim;

15.3.2 replace the infringing component or the parts thereof which gave rise or may give rise to the Claim with another product which does not infringe;

15.3.3 alter the infringing component in such a way as to render it non-infringing; or

15.3.4 failing any of the above, withdraw the infringing component.

15.4 **Exclusion.** Notwithstanding the provisions of this clause, TELVIVA shall not be liable under the provisions of this clause to the extent that a claim hereunder arises as a result of: (a) the use of the TELVIVA Software in a manner not licensed by TELVIVA hereunder; (b) the use of the TELVIVA Software in combination with any equipment or software provided by CUSTOMER or which are procured from a third party; or (c) any alteration or modification which was not made by or on behalf of TELVIVA.

15.5 **Customer Material.** CUSTOMER warrants that the Customer Material provided by CUSTOMER to TELVIVA is lawful and does not infringe the rights of any person or entity and CUSTOMER hereby indemnifies and holds TELVIVA harmless from any Losses arising as a result of such infringement.

16. DELAYS

16.1 Definition of Delay. If -

16.1.1 CUSTOMER gives an instruction changing the scope of the Services; does not provide access to a person, place or thing timeously; changes a decision which has been previously communicated to TELVIVA; does not reply to a communication from TELVIVA within the period required, or if no period stipulated, within a reasonable time; unreasonably withholds or delays an acceptance or consent; commits a breach of the Order which is not otherwise categorised as a Delay; or

16.1.2 TELVIVA's performance is affected by an event of force majeure; or the failure of a third party supplier or service provider; same shall constitute a "**Delay**".

16.2 **Notification.** Either Party shall notify the other of an event which has occurred or is anticipated and which the notifying Party believes is or may be a Delay.

16.3 **Extension of time for performance.** Unless the Delay notified has no effect upon TELVIVA's costs or planned delivery, TELVIVA's performance shall be extended on a reasonable basis in proportion to the prejudice caused by the Delay, provided that the extension is at least the number of days of the Delay.

16.4 **Changes caused by Delay.** Should a Delay arise, either Party may propose a change to the agreed Services. In the event that the Parties are unable to agree on such change, a dispute will be deemed to exist between the Parties to be resolved in terms of clause 23.

17. FORCE MAJEURE

17.1 **Parties not liable for force majeure.** Save for a Party's obligations to make payment which shall not be excused hereunder, neither Party shall be liable for any failure to fulfil its obligations under the Order if and to the extent such failure is caused by any circumstances beyond its reasonable control, including but not limited to acts of God, natural disasters, earthquakes, fire, explosions, floods, hurricanes, extreme weather, riots, wars, (whether declared or not), hostilities, revolutions, civil disturbance or usurped authority, accidents, embargo or requisition, unforeseeable acts (including failure to act) of any governmental authority (*de jure* or *de facto*), sabotage, nuclear incidents, epidemics, strikes over which the affected Party have no control, or the failure of any institution whose consent is required for the performance of any obligation hereunder to provide such consent, or delays in the performance of its sub-contractor caused by any such circumstances as referred to in this clause. The right of relief shall apply irrespective of whether the cause of prevention or delay occurs before or after the agreed due time for such obligations.

17.2 **Right to terminate.** Should a Party be unable to fulfil a material part of its obligations hereunder for a period in excess of 90 (ninety) calendar days due to circumstances of force majeure, either Party may at its sole discretion terminate the Order or the affected supply of TELVIVA Technology or TELVIVA Services forthwith by written notice.

18. PROPRIETARY RIGHTS

18.1 **Retention of Rights.** TELVIVA reserves all rights not expressly granted in these terms or the Order, including under all Intellectual Property Rights. CUSTOMER acknowledges that the rights granted to it in respect of the TELVIVA Technology are limited to the Usage Rights and that TELVIVA and its suppliers shall, remain solely entitled to all ownership rights in the TELVIVA Technology, including all Intellectual Property Rights therein and all Know-How represented by or incorporated therein notwithstanding the delivery thereof to CUSTOMER, provided that the ownership of any Equipment purchased by CUSTOMER that is delivered to it and in respect of which the full agreed purchase price has been paid to TELVIVA shall transfer to CUSTOMER.

18.2 **CUSTOMER Representations.** CUSTOMER undertakes that it shall not in any manner whatsoever represent that it is the owner or has any interest, other than as licensee in terms hereof, in the TELVIVA Technology and shall not take any action to impute any right, title or interest of TELVIVA in and to the TELVIVA Technology.

- 18.3 **Landlord Notices.** In the event that the Customer Site is leased by CUSTOMER, CUSTOMER will ensure that the landlord of such Customer Site is promptly notified of all Equipment that is located at such Customer Site that is owned by TELVIVA and/or its suppliers. The notice will conform to any standard format that may be prescribed by TELVIVA from time to time and CUSTOMER will use all reasonable endeavours to obtain an acknowledgement of receipt of such notice from the landlord and will provide a copy of the notice containing the receipt acknowledgement to TELVIVA. CUSTOMER will repeat the aforesaid process promptly following any change of landlord.
- 18.4 **TELVIVA Know-How.** To the extent that TELVIVA utilises any of its Know-How in connection with the performance of its obligations pursuant to the Order, same shall remain the property of TELVIVA and CUSTOMER shall acquire no right, title or interest in such Know-How.
19. **CONFIDENTIAL INFORMATION**
- 19.1 **Confidentiality obligation.** Each Party ("**Receiving Party**") must treat and hold as confidential all Confidential Information which they may receive from the other Party ("**Disclosing Party**") or which becomes known to them during the currency of the Order.
- 19.2 **The Receiving Party's obligations.** The Receiving Party agrees that in order to protect the proprietary interests of the Disclosing Party in the Disclosing Party's Confidential Information, unless the Disclosing Party has expressly agreed otherwise in writing -
- 19.2.1 the Receiving Party may make such Confidential Information available to its Personnel on a "need to know" basis;
- 19.2.2 the Receiving Party will only use and will ensure that its Personnel only uses the Confidential Information for the purposes of executing its rights or obligations under the Order;
- 19.2.3 the Receiving Party will not and will ensure that its Personnel does not at any time, whether during the Order or thereafter, either use any Confidential Information of the Disclosing Party or directly or indirectly disclose any Confidential Information of the Disclosing Party to any third party other than as allowed in terms hereof;
- 19.2.4 the Receiving Party will initiate internal security procedures reasonably acceptable to the Disclosing Party to prevent unauthorised use and disclosure and will take all practical steps to impress upon those Personnel who need to be given access to Confidential Information, the secret and confidential nature thereof;
- 19.2.5 all written instructions, drawings, notes, memoranda and records of whatever nature relating to the Confidential Information of the Disclosing Party which have or will come into the possession of the Receiving Party and its Personnel, will be and will at all times remain the sole and absolute property of the Disclosing Party and shall promptly be handed over to such Disclosing Party when no longer required for the purposes of the Order; and
- 19.2.6 the Receiving Party shall promptly notify the Disclosing Party if it becomes aware of any breach of confidence in respect of the Confidential Information of the Disclosing Party by any person within it or by any person to whom it has divulged such Confidential Information and shall give the Disclosing Party all reasonable assistance in connection with any proceedings which it may institute as a result.
- 19.3 **Effect of termination.** Upon termination of an Order, the Parties will deliver to each other or, at each Party's option, destroy all originals and copies of the other Party's Confidential Information in their possession that was provided to it or arose in the pursuit of such Order and neither Party will continue using any Confidential Information of the other Party, save that each Party may retain such records thereof as may be required by Law.
- 19.4 **Exceptions.** The foregoing obligations in this clause 19 shall not apply to any information which -
- 19.4.1 is lawfully in the public domain at the time of disclosure;
- 19.4.2 subsequently and lawfully becomes part of the public domain by publication or otherwise;
- 19.4.3 is already lawfully known to the Receiving Party prior to the time of disclosure;
- 19.4.4 subsequently becomes available to the Receiving Party from a source other than the Disclosing Party, which source is lawfully entitled without any restriction on disclosure to disclose such information; or
- 19.4.5 is disclosed pursuant to a requirement or request by operation of Law, provided that the Receiving Party gave the Disclosing Party reasonable written notice prior of such requirement and provided the Disclosing Party with all reasonable assistance in preventing such disclosure.
20. **LIMITATION OF LIABILITY**
- 20.1 **DIRECT DAMAGES LIMITED.** EXCEPT TO THE EXTENT THAT SUCH LIMITATION IS NOT PERMITTED BY APPLICABLE LAW AND WITHOUT LIMITING THE CUSTOMER'S PAYMENT OBLIGATIONS ARISING UNDER THESE TERMS AND THE ORDER, EACH PARTY'S MAXIMUM AGGREGATE LIABILITY FOR ANY LOSSES WHATSOEVER CLAIMED IN CONNECTION WITH THE ORDER DURING ANY CONTRACT YEAR SHALL BE THE TOTAL FEES PAID BY CUSTOMER TO TELVIVA IN TERMS OF THE ORDER DURING SUCH CONTRACT YEAR, IRRESPECTIVE OF THE FORM (WHETHER BASED ON CONTRACT, WARRANTY, PRODUCT LIABILITY, STATUTE, TORT (INCLUDING NEGLIGENCE) OR ANY OTHER LEGAL OR EQUITABLE THEORY) OF SUCH LEGAL ACTION.
- 20.2 **CONSEQUENTIAL DAMAGES EXCLUDED.** IN NO EVENT SHALL EITHER PARTY OR ITS PERSONNEL BE LIABLE FOR ANY INDIRECT, INCIDENTAL, EXTRINSIC, SPECIAL OR CONSEQUENTIAL DAMAGES OR LOSSES (WHETHER FORESEEABLE OR UNFORESEEABLE) OF ANY KIND (INCLUDING, WITHOUT LIMITATION, LOSS OF PROFITS, LOSS OF INCOME, LOSS OF GOODWILL, LOSS OR CORRUPTION OF DATA OR SOFTWARE, LOSS OF USE, BUSINESS INTERRUPTION, PROCUREMENT OF SUBSTITUTE PRODUCTS OR EQUIPMENT OR ANY PECUNIARY LOSS ARISING OUT OF A DELAY IN DELIVERY OR RELIANCE ON THE TELVIVA TECHNOLOGY OR SERVICES OR CUSTOMER DATA) ARISING IN CONNECTION WITH THE ORDER OR THESE TERMS, WHETHER BASED ON CONTRACT, WARRANTY, PRODUCT LIABILITY, STATUTE, TORT (INCLUDING NEGLIGENCE) OR ANY OTHER LEGAL OR EQUITABLE THEORY, EXCEPT TO THE EXTENT THAT THE LIMITATION OF LIABILITY CONTAINED HEREIN IS NOT PERMITTED BY APPLICABLE LAW.
- 20.3 **USAGE INDEMNITY.** CUSTOMER ACCEPTS THAT ITS USE AND USE BY ITS AUTHORISED USERS OF THE SERVICES IS AT ITS SOLE DISCRETION AND RISK AND AGREES THAT TELVIVA, ITS PERSONNEL OR OTHER THIRD PARTIES INVOLVED IN THE SERVICES (INCLUDING FOR EMERGENCY COMMUNICATIONS) WILL NOT BE LIABLE TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW FOR CLAIMS ARISING IN CONNECTION WITH SUCH USE OR FAILURE OR INABILITY TO USE. CUSTOMER HEREBY INDEMNIFIES TELVIVA AGAINST ANY AND ALL SUCH CLAIMS TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, REGARDLESS OF WHETHER SUCH CLAIMS ARE BASED ON CONTRACT, WARRANTY, PRODUCT LIABILITY, STATUTE, TORT (INCLUDING NEGLIGENCE) OR ANY OTHER LEGAL OR EQUITABLE THEORY.
- 20.4 **CLASS ACTION.** NO DISPUTE RESOLUTION PROCEEDING, BY CUSTOMER OR ITS AFFILIATES OR AUTHORISED USERS, WHETHER IN ARBITRATION OR COURT, WILL BE CONDUCTED OTHERWISE THAN ON AN INDIVIDUAL BASIS AND WILL NOT BE CONDUCTED IN A CLASS ACTION OR REPRESENTATIVE ACTION OR AS A MEMBER IN A CLASS, CONSOLIDATED OR REPRESENTATIVE ACTION. CUSTOMER AND ITS AFFILIATES AND AUTHORISED USERS WILL NOT BE A CLASS REPRESENTATIVE, CLASS MEMBER OR OTHERWISE PARTICIPATE IN A CLASS, CONSOLIDATED OR REPRESENTATIVE PROCEEDING.
21. **BREACH AND TERMINATION**
- 21.1 **Termination for Breach.** Should -
- 21.1.1 the terms of an Order, including these terms as they apply to such Order, be materially breached, and such breach is not remedied within 30 (thirty) calendar days of written notice thereof; or
- 21.1.2 any amount due under an Order that is 30 (thirty) calendar days outstanding, not be paid;
- then, without prejudice to any other rights it may have in Law, the Party entitled to require performance of the relevant obligation

may, in its discretion, terminate the Order or the supply of any TELVIVA Technology or TELVIVA Services under such Order on written notice to the other Party, such termination to take effect on the date specified in the notice.

21.2 **Termination for Insolvency.** Should either Party ("Defaulting Party")-

21.2.1 defer or suspend payment of all or substantially all of its debts or is unable to pay its debts as and when they fall due; or

21.2.2 effect or attempt to effect a compromise or composition with the its creditors; or

21.2.3 commence business rescue proceedings, take steps for its voluntary winding up or be provisionally or finally liquidated or cease to conduct business;

then, without prejudice to any other rights it may have in Law, the other Party ("Innocent Party") may, in its discretion, terminate the Order on written notice to the Defaulting Party, such termination to take effect on the date specified in the notice.

22. **EFFECT OF TERMINATION**

22.1 **Effects of termination.** The termination of any one Order will not affect the validity of any other Order. The termination of the supply of some TELVIVA Technology or TELVIVA Services under an Order will not affect the supply of any other TELVIVA Technology or TELVIVA Services under such Order.

22.2 **Amounts due to TELVIVA.** In the event of the termination by TELVIVA of the supply of TELVIVA Technology or TELVIVA Services under an Order in terms of Clause 20.3 or by CUSTOMER otherwise than in terms of Clause 20.3 for an unremedied material breach by TELVIVA prior to the expiry of the Minimum Term thereof, all Fees which would have become payable for such supply over the unexpired period of the Minimum Term, will become due and payable to TELVIVA immediately upon the date of such termination.

22.3 **Duties upon termination.** Upon termination of the supply of TELVIVA Technology and/or TELVIVA Services under an Order -

22.3.1 CUSTOMER will cease using such terminated TELVIVA Services and such TELVIVA Technology and promptly return and permit TELVIVA to remove from any Customer Site any and all tangible elements of such TELVIVA Technology, save for the Equipment owned by CUSTOMER;

22.3.2 the provision of such terminated TELVIVA Services may be terminated forthwith including by rendering the relevant TELVIVA Technology inoperable; and

22.3.3 CUSTOMER will deliver to TELVIVA, or at TELVIVA's option destroy all originals and copies of TELVIVA's Confidential Information and proprietary materials in its possession or under its control that pertain to the supply of such terminated TELVIVA Technology and/or TELVIVA Services.

22.4 **Accrued Rights.** The termination of the Order or of the supply of any TELVIVA Technology or TELVIVA Services shall be without prejudice to the rights of the Parties accrued as at the date of such termination.

22.5 **Survival.** Termination of an Order shall not affect the enforceability of the provisions which have been specified or are by their nature required to operate after such termination, including without limitation, the following provisions contained herein: Clause 2 (Definitions), clause 13 (Compliance with Law), clause 18 (Proprietary Rights), clause 19 (Confidential Information), clause 20 (Limitation of Liability), clause 22 (Effect of Termination), clause 23 (Dispute Resolution), clause 24 (Notices and Domicilia) and clause 25 (General).

23. **DISPUTE RESOLUTION**

23.1 **Arbitration.** In the event of there being a unresolved dispute relating to or arising out of the Order, including regarding the scope, effect, validity, implementation, execution, interpretation, rectification, termination or cancellation of the Order, then, save where otherwise provided in the Order, such dispute shall be finally resolved on the terms as provided for below:

23.1.1 In the event of any such dispute or difference arising between the Parties the said dispute or difference shall on written demand by any Party to the dispute be submitted to arbitration

in Cape Town in the English language in accordance with the rules of the Arbitration Foundation of Southern Africa.

23.1.2 Each of the Parties hereby irrevocably agrees that the decision of the arbitrator in the arbitration proceedings:

(a) shall be final and binding on each of them; and

(b) will be carried into effect; and

(c) can be made an order of any competent Court to whose jurisdiction a Party is subject.

23.1.3 Any arbitration in terms of this clause 23.1 shall be conducted in camera and the Parties shall treat as confidential and not disclose to any third party details of the dispute submitted to arbitration, the conduct of the arbitration proceedings or the outcome of the arbitration, without the written consent of the other Party.

23.1.4 This clause 23.1 shall constitute each Party's irrevocable consent to the arbitration proceedings described herein, and no Party shall be entitled to withdraw from such proceedings or to claim at such proceedings that it is not bound by this clause.

23.2 **Urgent Relief.** Nothing herein contained shall be deemed to prevent or prohibit a Party from applying to any appropriate Court for an interdict, urgent relief, enforcement of intellectual property rights or for judgment in relation to a liquidated claim.

23.3 **Severability.** The provisions of this clause 23 are severable and will continue to be binding on the Parties notwithstanding any termination or cancellation of the Order or any part thereof.

24. **NOTICES AND DOMICILIA**

24.1 **Addresses.** The Parties hereby choose domicilium citandi et executandi ("Domicilium") for all purposes their physical addresses set out in the Order.

24.2 **Change of Address.** Either Party may give written notice to the other, change its Domicilium to any other physical address in the its country of establishment, provided that such change shall take effect 14 (fourteen) calendar days after delivery of such written notice.

24.3 **Deemed Delivery.** Notice will be deemed given -

24.3.1 if delivered by hand to a responsible person to the designated physical address, on the date of delivery;

24.3.2 if sent by an express courier with a system for tracking delivery, when received; and

24.3.3 if successfully sent by email during the trading hours of the recipient to an email address designated by the recipient for the delivery of notices then on the day of sending, and if outside such trading hours then at the beginning of the next Business Day.

24.4 **Notice actually received.** Notwithstanding anything to the contrary stated above, if a notice or communication is actually received by a Party, adequate notice or communication shall have been given, even though it was not delivered in a manner described above.

25. **GENERAL**

25.1 **Assignment.** Neither Party shall be entitled to cede, assign, delegate or otherwise transfer any of its rights or obligations under the Order without the prior written consent of the other Party, such consent not to be unreasonably withheld, subject to clause 25.2, below.

25.2 **Exception.** Notwithstanding the provisions of clause 25.1, it is expressly recorded that TELVIVA shall be entitled to cede and assign all rights and obligations hereunder or in terms of the Order to any Affiliate of TELVIVA, or to any successor of all or substantially all of the business or assets of TELVIVA, provided that TELVIVA shall notify CUSTOMER of such event within a reasonable time of it occurring.

25.3 **Non-Exclusivity.** Nothing in these terms or an Order shall be construed as precluding or limiting in any way the right of TELVIVA to license any technology or to provide products or services of any kind or nature whatsoever to any person or entity as TELVIVA in its sole discretion deems appropriate.

25.4 **Non-Solicitation.** Neither Party shall during the currency of the

Order or for a period of 12 (twelve) months following the termination thereof directly or indirectly solicit or offer employment to any of the Personnel of the other Party, and shall not employ or contract in any manner with any Personnel of the other Party.

- 25.5 **Reading Down.** If a provision herein or in the Order 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.
- 25.6 **Severability.** If the whole or any part of a provision herein or in an Order is void or voidable by either Party or unenforceable or illegal, the whole or that part (as the case may be) of that provision, shall be severed, and the remainder of these terms and the Order shall have full force and effect, provided such severance does not alter the nature of the Order as read with these terms.
- 25.7 **Relationship.** The Parties act as independent contractors and nothing in these terms or the Order shall be construed as creating any form of employment, agency or partnership between the Parties and neither Party shall have any authority to bind, make representations or incur any liability on behalf of the other.
- 25.8 **Entire Agreement.** The Order and these terms constitute the entire agreement between the Parties in respect of the subject matter of such Order and no agreements, representations or warranties between the Parties other than those set out therein are binding on the Parties.
- 25.9 **Variation.** No amendment or modification to an Order shall be effective unless in writing and signed by authorised signatories of both CUSTOMER and TELVIVA.
- 25.10 **Waiver.** No latitude, granting of time or forbearance of a Party hereto regarding the performance of the other Party shall be or be deemed to be a waiver of any term or condition hereof or of an Order and no waiver of any breach shall operate a waiver of any continuing or subsequent breach. No waiver shall be effective unless it is expressly stated in writing and signed by the Party giving it.
- 25.11 **Governing Law and jurisdiction.** Unless expressly otherwise agreed in an Order, these terms and all Orders shall be governed and construed according to the laws of the Republic of South Africa and, subject to clause 23, the Parties agree to submit to the

exclusive jurisdiction of the Western Cape High Court, Cape Town regarding any and all disputes arising in connection therewith.

- 25.12 **Costs.** Each Party shall be responsible for its own legal and other costs relating to the negotiation of the Order.
- 25.13 **Third Party Rights.** Except where expressly provided to the contrary, neither these terms nor any Order is intended to be for the benefit of, and shall not be enforceable by, any person who is not named as a Party to it, and neither Party can declare itself a trustee of the rights under it for the benefit of any third party. Neither these terms nor any Order confers any enforceable benefit on any Authorised User.
- 25.14 **Publicity.** Neither Party will make or issue any formal or informal announcement or statement to the press in connection with the Order without the prior written consent of the other Party, provided that either Party may name the other of them as a customer or supplier, as applicable, and disclose the general nature of the overall arrangement between the Parties.
26. **SANCTIONS AND ANTI-BRIBERY**
- 26.1 **Sanctions.** CUSTOMER warrants and represents that neither it nor any of its Authorised Users are on any government prohibited person, sanctions, debarment, or exclusion list (collectively, "Sanctions Lists") and CUSTOMER will immediately notify TELVIVA if it or any of its Authorised Users is placed on any such Sanctions List and remove such Authorised User's access to the TELVIVA Technology and TELVIVA Services if such Authorised User is placed on any Sanctions List.
- 26.2 **Anti-Bribery.** Each Party shall comply with the Anti-Bribery Laws applicable to it and shall ensure that none of its Personnel will make any gift, payment, loan, reward, inducement, benefit or give any other advantage to any member of the other Party's Personnel (i) to induce such person to improperly perform, or to reward the person for the improper performance of, a relevant function or activity; or knowing or believing that the acceptance of the advantage would itself constitute the improper performance of a relevant function or activity, or (ii) if such offer, payment, promise, gift or transfer would constitute a bribe, extortion, kickback or other unlawful or improper means of obtaining business or any commercial advantage, or acquiescence thereto. The breach of this clause by a Party shall entitle the other Party to terminate any Order with immediate effect.

THE SCHEDULE

SECTION A: SUPPORT SERVICES

- 26.3 **Scope of Support.** The support services provided by TELVIVA hereunder will only include services in respect of "Errors". TELVIVA may, upon the request of CUSTOMER, provide support in respect of any problem that is not an "Error", but may charge Professional Service Fees in respect of such support. TELVIVA may also charge Professional Services Fees for all time reasonably spent and all expenses reasonably incurred by it in order to verify that a problem reported to it by CUSTOMER is not an Error.
- 26.4 **CUSTOMER Responsibilities.** CUSTOMER shall be responsible for the maintenance of all components of the Customer Systems that are not provided by TELVIVA and for providing a suitable operating environment for such Customer Systems. Furthermore, CUSTOMER shall be responsible to provide support to its Authorised Users regarding the use of the TELVIVA Technology and TELVIVA Services. TELVIVA and CUSTOMER shall collaborate to prepare a FAQ list to assist CUSTOMER in rendering such support.
- 26.5 **TELVIVA Responsibilities.** In consideration for payment of the relevant Fees, TELVIVA undertakes to provide support services in respect of all Errors logged with TELVIVA. Such support will be limited to assisting with the resolution of Errors affecting the TELVIVA Technology or TELVIVA Services, including by providing workarounds and coding fixes where reasonably possible.
- 26.6 **Support Time Limits.** If a maximum support time entitlement is agreed to apply to CUSTOMER, TELVIVA will not be obliged to provide any support in excess of such entitlement. If TELVIVA does provide such additional support, TELVIVA will be entitled to charge Professional Services Fees for any time spent providing such additional support.
- 26.7 **Severity.** When reporting an Error, CUSTOMER in consultation with TELVIVA will reasonably allocate a Severity Level to its support requests in accordance with the table below.

Severity Level	Definition of Severity
Severity 1	The TELVIVA Service is unavailable or is impaired to be practically unusable.
Severity 2	The TELVIVA Service is practically usable but materially impaired or degraded. Users are able perform primary functions, although with increased effort or a workaround is provided.
Severity 3	The TELVIVA Service is available but moderately impaired or the problem can be circumvented

- 26.8 **Logging.** All problems logged by CUSTOMER must be reported to TELVIVA as follows:
- 26.8.1 All problems must be reported at TELVIVA's service desk. TELVIVA will provide support during Support Hours only. All after hours support must be pre-arranged with TELVIVA and will be chargeable at TELVIVA's prevailing after hour rates. TELVIVA's "Support Hours" are the hours from 08h00 to 17h00 (GMT+2 hours) on Business Days. Problems can be logged with TELVIVA's service desk as follows:
- (a) via email to support@telviva.co.za;
- (b) or on +27 878 200 400;
- 26.8.2 At the time of first reporting the problem to TELVIVA, CUSTOMER will provide TELVIVA with the complete chronological history of the problem from the moment it was first reported, as well as the steps taken and results obtained from first and second line support efforts and CUSTOMER will also to ensure that the appropriate support engineer is assigned by it and remains available to assist TELVIVA in resolving the problem.
- 26.9 **Network Access.** CUSTOMER will give TELVIVA and its authorised representatives controlled remote and direct network access to the Customer Systems to resolve problems.
- 26.10 **On-Site Support.** The Parties will endeavour to attend to all problems by way of remote support. Should support be provided by TELVIVA on-site at any Customer Site, CUSTOMER will refund all TELVIVA's reasonable expenses in providing such support on-site at a Customer Site, including for travel, accommodation and subsistence.
- 26.11 **Escalation.** CUSTOMER will provide a list of at least three responsible persons and contact numbers that TELVIVA may contact in the sequence as set out in the list to escalate any Error logged to TELVIVA in respect of which CUSTOMER is required to provide assistance to TELVIVA.
- 26.12 **Response.** Depending on the severity level of the reported problem, TELVIVA will endeavour to respond to CUSTOMER in respect of all problems reported and to provide a workaround or solution for Errors within the following time frames:

Severity Level of Problem	Response Time	Resolution Time
Severity 1	2 Support Hours	6 Support Hours
Severity 2	4 Support Hours	12 Support Hours
Severity 3	8 Support Hours	N/A

- 26.13 **Replacements.** All replacement parts (except consumable parts) and replacements for purchased / rent-to-own User Devices that are under warranty are inclusive of the Fees (save if necessitated by any Excluded Defect), but all replacement parts and replacements for User Devices provided after the expiry of the applicable warranty will be chargeable. All replacement parts (except consumable parts) for leased Equipment where the need for such parts results from normal wear and tear are inclusive of the Fees. All replacement parts and replacements for User Devices and Equipment necessitated by any Excluded Defect are chargeable. The following further details the charges applicable to site call-out for repair or replacement of items under warranty, out of warranty or under rental.
- 26.13.1 Purchased / Rent-to-own Equipment:
- Under warranty: Latent defect of device - No call-out fee will be billed to Customer
 - Under warranty: Damage due to power surge, wilful damage or any other cause by the Customer for which supplier is not willing to repair / replace - Customer will be liable for call-out & repair / replacement of device
 - Out of warranty: Call out fee billed as well as repair / replacement of device

26.13.2 Leased Equipment

- Both in and out of warranty: Latent defect of device - No call-out fee billed
- Both in and out of warranty: Damage due to power surge, wilful damage or any other cause by the Customer for which supplier is not willing to repair / replace - Customer will be liable for call-out & repair / replacement of device

26.14 **Upgrades.** TELVIVA may from time to time release upgrades, updates or error corrections for the TELVIVA Technology ("Upgrades"). If the TELVIVA Technology is implemented at a Customer Site, CUSTOMER will enable TELVIVA to install such Upgrades remotely by procuring that TELVIVA is provided with the necessary remote and direct network access. CUSTOMER will install all Upgrades that cannot be installed by TELVIVA as soon as reasonably possible, but in any event by the date specified for implementation by TELVIVA in the release, or failing such specification, within 1 (one) month of the date of being notified in writing of the release. If an Upgrade is not implemented within the specified period, and provided that TELVIVA has given CUSTOMER at least 30 (thirty) days written notice of its intention to do so, then, until such time as the relevant Upgrade is installed, TELVIVA shall be entitled to suspend its provision of Support Services to CUSTOMER in respect of the relevant TELVIVA Technology.