

ADSL SERVICES – LTA SUBMISSION

1.0 INTRODUCTION

Telecom Lesotho provides various backbone technologies for accessing Internet services offered by independent Internet Service Providers (ISP's) or TL itself. Dial-up service is predominantly for residential customers, Broadband wireless access (BWA) for business and residential and leased lined for corporates. TL intends to introduce broadband access service on copper, an ADSL product described hereunder, as a means of extending the reach and coverage of Internet services to the public.

2.0 Product Description and Pricing

ADSL services are dedicated, point-to-point, public network access over twisted pair copper wire on the local loop ("last mile") between a network service provider's (NSP) central office and the customer site. DSL is an access medium to the Internet. ADSL which stands for asymmetric digital subscriber line offers higher speed for downlink than uplink and is capable of running up to the speed of 8 Mbps for up to *a distance of 2.5 kilometers*)

Access circuit capacity and pricing

Downlink (kbps)	Uplink (kbps)	Once of Installation Price (Excluding CPE)	Access Circuit Price/Month
192	64	450	300
384	128	450	370
512	192	450	450
1024	256	450	600

3.0 Price Justification / Cost models

The project will be started as a pilot project in Maseru, and as such, the price has been subjected to rigorous analysis of costs and growth projections. The prices offered by Telkom SA and other fixed line network operators in the sub0region have been taken into account as indicative benchmarks, and this information has been factored into the analysis for a full national roll-out.

4.0 Standard Terms and Conditions of Service

1. Definitions And Interpretation

- 1.1 In this Agreement, the words hereunder will have the meanings assigned to them below:
- 1.1.1 "**Agreement**" means these Standard Terms and Conditions and any Application Form, Schedules, Annexures and attachments hereto;
 - 1.1.2 "**Contract Value**" means the total cost of the Service/s being provided to the Customer by TL in terms of this Agreement;
 - 1.1.3 "**Cost Schedule**" means Schedule 1 attached hereto wherein the costs of the Service/s are specified.
 - 1.1.4 "**Customer**" means the party specified as Customer on the Application Form to which these Standard Terms and Conditions are attached;
 - 1.1.5 "**Effective Date**" means, notwithstanding the date of signature of this Agreement, the date when each Service/s reflected in the Schedule/s is commissioned by TL for use by the Customer irrespective of whether or not the Customer uses the Service/s;
 - 1.1.6 "**TL**" means Telecom Lesotho (Pty) Limited, registration number 2000/219;
 - 1.1.7 "**Initial Period**" means the initial contract term of the Service/s, as set out in the Cost Schedule (Schedule 1) hereto;
 - 1.1.8 "**Proprietary Information**" means any and all trade secrets and data/information of a proprietary and/or confidential nature, including data/information that the parties should reasonably have known to be proprietary or confidential;
 - 1.1.9 "**Service/s**" means all the service/s provided by TL as specified in the Schedules to this Agreement, including all software and equipment necessary for the provision of the Service/s;
 - 1.1.10 "**Service Specification Schedule**" means the schedule attached hereto wherein the service specifications of the Service/s are specified;
 - 1.1.11 "**VAT**" means Value-Added Tax.
- 1.2 The clause headings contained in this Agreement are for reference purposes only and shall not be used in the interpretation of this Agreement. Words importing any one gender includes the other gender, the singular includes the plural and vice versa, and natural persons includes juristic entities and vice versa.

2 Commencement And Duration

- 2.1 The Agreement shall commence upon the Effective Date of the first Service to be provided in terms of the Agreement and shall endure throughout the duration period of the Service/s provided.
- 2.2 The duration period of each of the Service/s shall be as specified in the Cost Schedule attached hereto.

3 Charges And Payment

- 3.1 All Service/s provided are to be billed as of the Effective Date in respect of each Service. In the event of a single Service consisting of a number of components, billing will commence for each respective component of that Service as and when each component of that Service goes live.
- 3.2 Customer is responsible for and agrees to pay to TL all fees for the Service/s specified in the Cost Schedule in and without deduction or set-off of any amount of whatsoever nature or for whatsoever reason.
- 3.3 All prices specified in the Cost Schedule exclude:
 - 3.3.1 VAT and any other any taxes and duties including any regulatory surcharge, which Customer becomes obligated to pay by virtue of this Agreement, and
 - 3.3.2
- 3.4 Invoicing will be processed and delivered in advance, and all invoices for Services shall be settled monthly within 30 days of the date of invoice.
- 3.5 Any amount falling due for payment by Customer to TL in terms of or pursuant to this Agreement which is not paid on its due date shall bear interest calculated from the due date for payment thereof until date of payment, at a rate of two percent (2%) per month charged by from time to time, monthly in arrears.
- 3.6 TL shall upon prior application to and approval by the Authority, increase the monthly fees referred to in the Cost Schedule from time to time provided that :
 - 3.6.1 TL shall give 30 (thirty) days prior written notice thereof to Customer;
 - 3.6.2 TL shall not be entitled to increase the monthly fees during the first 12 (twelve) months of this Agreement.

4 Customer's Obligations

- 4.1 Customer shall comply strictly with all restrictions imposed on computer networks through which any information and/or data transmitted by Customer passes.
- 4.2 It shall be the obligation of the customer to replace any modem or parts thereof at its own cost.
- 4.3 Customer shall not commit nor attempt to commit any act or omission which directly or indirectly:
 - 4.3.1 damages in any way TL's technical infrastructure or any part thereof;
 - 4.3.2 impairs or precludes TL from being able to provide the Service/s in a reasonable and businesslike manner;
 - 4.3.3 constitutes an abuse or malicious misuse of the Service/s;or is calculated to have the abovementioned effect.

In such an event, should TL incur expenses to remedy the situation, TL reserves the right to charge the Customer the amount necessary to cover TL's additional expenditure. Notwithstanding the above, TL reserves the right to take any other appropriate action it may deem necessary to remedy the situation.

- 4.4 Customer is prohibited from selling, reselling or otherwise dealing with the Service/s in any manner whatsoever. Without limitation to the foregoing, any consideration which Customer may receive whilst acting in breach of this prohibition shall be forfeited to TL.
- 4.5 Customer is prohibited from allowing any person other than its employees or other authorised parties, access to the Service/s through any of Customer's equipment, personnel and/or address.
- 4.6 Customer is prohibited from modifying any equipment (including but not limited to router equipment) utilised by Customer to receive any of the Service/s, in any way whatsoever, including the changing of any of the settings of such equipment.
- 4.7 Under no circumstances may Customer resile from this Agreement or withhold or defer payment or be entitled to a reduction in any charge or have any other right or remedy against TL, its servants, its agents or any other persons for whom it may be liable in law (and in whose favour this provision constitutes a stipulation alteri) if TL interrupts the Service to Customer as it would be entitled to do if Customer is in default of any of its obligations under this Agreement to TL or in the circumstances contemplated in clause 6.4 below.
- 4.8 Customer may not at any time use the Service in contravention of any Lesotho law. In particular, Customer undertakes to familiarize itself and ensure that it is kept continuously appraised of all Lesotho law in force from time to time which has any bearing on the Service and/or its use. Customer acknowledges that TL has no obligation to assist Customer in this regard.

5 Warranties

- 5.1 Save as expressly set out in this Agreement, TL does not make any representations nor give any warranties or guarantees of any nature whatsoever in respect of the Service/s and all warranties which are implied or residual at common law are hereby expressly excluded.
- 5.2 Without limitation to the generality of 5.1 above, TL does not warrant or guarantee that the information transmitted by or available to Customer by way of the Service/s:
 - 5.2.1 will be preserved or sustained in its entirety;
 - 5.2.2 will be delivered to any or all of the intended recipients;
 - 5.2.3 will be suitable for any purpose;
 - 5.2.4 will be free of inaccuracies or defects or bugs or viruses of any kind; or
 - 5.2.5 will be secured against intrusion by unauthorised third parties; and TL assumes no liability, responsibility or obligations in regard to any of the exclusions set forth in this clause 5.
 - 5.2.6 The conditions set out in this clause above shall be applicable, unless any negligence on the part of TL and/or its lawful agents can be proved by the Customer in which case TL shall be bound to provide the remedies available in law to the extend of the damage or the prejudice suffered by the Customer.

6 Exclusion Of Liability

- 6.1 Except as otherwise expressly provided herein to the contrary or negligence on the part of TL and/or its agents, can be sufficiently proved, TL shall not be liable to Customer or any third party for any loss or damage of whatsoever nature and/or howsoever arising (including consequential or incidental loss or damage which shall include but shall not be limited to loss of property or of profit, business, goodwill, revenue, data or anticipated savings) or for any costs, claims or demands of any nature whether asserted against TL or against Customer by any party, arising directly or indirectly out of the Service/s, their use, access, withdrawal or suspension or out of any information or materials provided or not provided, as the case may be.
- 6.2 Subject to clause 6.1 above, the entire liability of TL and Customer's exclusive remedy for damages from any cause related to or arising out of this Agreement shall be limited and proportionate to the actual damage or prejudice suffered by the customer.
- 6.3 Customer hereby indemnifies TL against and holds TL harmless from any claim by any third party arising directly or indirectly out of access to or use of the Service/s or information obtained through the use thereof or in respect of any matter for which liability of TL is excluded in terms of clause 6.1 above.
- 6.4 Because of the need to conduct maintenance, repair and/or improvement work from time to time on the technical infrastructure by means of which the Services are provided, the provision of the Services may be suspended from time to time, and all liability on the part of TL of any loss or damage (whether direct or consequential) thereby incurred or for any costs, claims, or demands of any nature arising therefrom, is excluded, and the provisions of clause 6.1 above shall apply mutatis mutandis to such exclusion. Should the provision of the Service/s be suspended by TL for the purpose aforementioned for a period in excess of 48 (forty eight) consecutive hours, TL shall give Customer credit in an amount which represents a pro rata portion of Customer's basic monthly subscription fee for the month during which the said suspension occurred.
- 6.5 Where the Service/s provided include Hosting Services, then, notwithstanding anything to the contrary contained in this Agreement, TL reserves the right in its absolute discretion and after the receipt by TL of any complaint from any governmental department, or any other third party (including but not limited to any Internet industry body or any other organisation) that Customer's web site contains information that infringes against any third party's rights in terms of the any other legislative enactment or regulation in force from time to time, or is defamatory in nature, to immediately give written notice to Customer of TL's intention to remove the offending information or any portion thereof from Customer's web site. Should such offending information not be removed from the web site by Customer within 24 hours of written notice to that effect, TL shall be entitled to immediately remove the offending information or any portion thereof from Customer's web site, or where it is not possible to remove such content, to terminate the Hosting Services of such Customer. Any removal or termination by TL shall in no way constitute a breach by TL of this Agreement.

7 Documentation

Any specifications, descriptive matter, drawings and other documents which may be furnished by TL to Customer from time to time:

- 7.1 do not form part of this Agreement and may not be relied upon, unless they are agreed in writing by both parties hereto to form part of this Agreement;

7.2 shall remain the property of TL and shall be deemed to have been imparted by it in trust to Customer for the sole use of Customer. All copyright in such documents vests in TL. Such documents shall be returned to TL on demand.

8 Intellectual Property

- 8.1 Notwithstanding anything set out in Clause 10 below, all intellectual property (including, without limitation, copyright, trade marks, designs and patents) relating to or used in connection with the Service/s provided under this Agreement shall belong to TL. Customer undertakes that it shall at no time, have any right, title or interest in the intellectual property and agrees that it shall not (or permit any third party to) reverse engineer, decompile, modify or tamper with the equipment or software owned by TL, or any of its third party suppliers.
- 8.2 Customer warrants that it shall not use the Service/s to produce, host or present any content in contravention of any person's intellectual property rights, and in particular warrants that it shall recognize, acknowledge and use any content in accordance with any third party's intellectual property rights. Customer furthermore warrants that it has received all necessary permissions to make use of any intellectual property relating to 3rd parties.

9 Cession

Customer shall not be entitled to cede or assign any rights and/or obligations which it may have in terms of this Agreement to any third party unless consented to in writing by TL.

10 Lien

The parties agree that in the event of a breach of this Agreement by Customer which causes TL to suffer damages of any nature whatsoever, TL shall not be required to attach any of Customer's hardware in execution, and shall be entitled to retain a lien over such hardware in reduction of any debt due by Customer to TL.

12 Termination

Either Party may terminate this Contract by notice in writing to the other Party on the occurrence of any of the following events:

If the Party commits a material breach of this Contract and after receipt of a written notice specifying the breach or default fails to remedy the breach within a specified period of time set forth in the said notice, which period of time shall be reasonable taking into account all relevant circumstances.

If bankruptcy or insolvency proceedings are instituted against the other Party and such proceedings are not dismissed within thirty (30) days from the date of proceedings, or the other Party makes an assignment for the benefit of its creditors.

Due to a force majeure event, in accordance with the provisions regarding force majeure as stipulated in this Contract.

13. Force Majeure

- 13.1 If TL is prevented or restricted directly or indirectly from carrying out all or any of its obligations under this Agreement from any cause beyond the reasonable control of TL, including without limitations, acts of God, civil commotion, riots, insurrection, lock-outs, acts of government, fire, theft, explosion, the elements, epidemics, governmental embargoes or like causes, TL shall be relieved of its obligations hereunder during the period of such events and its consequences, but only to the extent so prevented and shall not be liable for any delay or failure in the performance of any obligations hereunder or loss or damage either general, special or consequential which the Customer may suffer due to or resulting from such delay or failure provided always that written notice shall within twenty four (24) hours of the occurrence constituting such an event (force majeure) be given of any such inability to perform by the

affected Party and provided further that the obligation to give such notice shall be suspended to the extent necessitated by such force majeure.

- 13.2 The Parties hereby agree that should force majeure last more than fourteen (14) days, and TL has not invoked force majeure to excuse any non-performance of its obligations the Customer may terminate this Agreement by giving ten (10) days written notice to the other.

14 Governing Law And Jurisdiction

This Agreement will be governed by and construed in accordance with the laws of the Kingdom of Lesotho and all disputes, actions and other matters relating thereto will be determined in accordance with Lesotho law.

15 Domicilium Citandi Et Executandi

For all purposes, including but not by way of limitation, the giving of any notice, the making of any communication and the serving of any process, Customer chooses its domicilium citandi et executandi ("domicilium") at the physical address appearing on the application form to which these Standard Terms and Conditions are attached. TL chooses its domicilium citandi et executandi ("domicilium") at. Either party shall be entitled from time to time to vary its domicilium and shall be obliged to give notice to the other within ten (10) days of the said change. Any notice which either party may give to the other shall be posted by prepaid registered post or hand delivered to the other party's domicilium and shall be presumed, unless the contrary is proved by the party to whom it is addressed, to have been received by that party on the tenth (10th) day after the date of posting or on the day of delivery as the case may be.

16 General

- 16.2 No variation, amendment or consensual cancellation of this Agreement or any provision or term thereof or of any agreement, bill of exchange or other document issued or executed pursuant to or in terms of this Agreement shall be binding unless recorded in a written document signed by a duly authorized representative from both TL and Customer.
- 16.3 The parties acknowledge having read and understood this Agreement and are not entering into this Agreement on the basis of any representations not expressly set forth in it.
- 16.4 Neither party shall be bound by any express or implied term, representation, warranty, promise or the like not recorded herein, whether it induced the Agreement between Customer and TL or not.
- 16.5 No extension of time or waiver or relaxation of any of the provisions or terms of this Agreement, bill of exchange or other document issued or executed pursuant to or in terms of this Agreement, shall operate as an estoppel against either party hereto in respect of its right under this Agreement, nor shall it operate so as to preclude either of the parties thereafter from exercising its rights strictly in accordance with this Agreement.
- 16.6 In the event that any provision of this Agreement conflicts with any statute, ruling or order of any governmental or regulatory body from time to time, then such provision of this Agreement shall be controlled by the statute, ruling or order.

- 16.7** Should any of the terms and conditions of this Agreement be held to be invalid, unlawful or unenforceable, such terms and conditions will be severable from the remaining terms and conditions which will continue to be valid and enforceable.
- 16.8** In the event of any expiration, termination or cancellation of this Agreement, provisions hereof which are intended to continue and survive shall so continue and survive. In particular, termination or cancellation of this Agreement shall not affect any rights or duties arising under it with respect to Proprietary Information as set out in Clause 10 above.
- 16.9** The terms and conditions appearing in the Schedule(s) hereto, are hereby incorporated into the Agreement. In the event of any conflict between the Standard Terms and Conditions of this Agreement and those appearing in any Schedule/s hereto, these Standard Terms and Conditions shall prevail. In respect of any conflict in respect of pricing in the Agreement or the Schedules hereto, the costs set out in the Cost Schedule shall prevail.
- 16.10** These terms and conditions, together with the Schedule(s), Annexures and attachments hereto, constitute the whole of the agreement between TL and Customer relating to the subject matter hereof, notwithstanding anything in Customer's inquiry, specification, acceptance, order or other documentation or discussion to the contrary.

Annexure A - Application Form

Full Particulars Of Customer

Name of company or close corporation or partnership or individual			
Identification or Passport Number		VAT number	
Admin Contact Name:		Job Title	
e-mail address		Work number	
Cell Number		Fax number	
Technical Contact 1 Name:		Job Title	
e-mail address		Work number	
Cell / Pager number		Fax number	
Technical Contact 2 Name:		Job Title	
e-mail address		Work number	
Cell / Pager number		Fax number	
Physical address			
Postal address			
Service Location		TL Representative:	(Office use only)
Contract Details	Contract Reference		
	Payment Method:	<input type="checkbox"/> Debit Order	<input type="checkbox"/> Cheque

Debit Order Details

Telecom Lesotho is hereby authorised to arrange with my bank or building society to collect the monthly subscription rate against my bank or transmission account (wherever it may be) in terms of a debit order.

Date of first withdrawal		Bank and Branch	
Account Name			
Account Number		Branch Code	
	Telecom Lesotho –		
Signature of payer or authorised official	Account Number		

THE CUSTOMER HEREBY AGREES THAT ALL SERVICE/S PROVIDED PURSUANT TO TL'S ACCEPTANCE OF THIS APPLICATION FORM WILL BE SUBJECT TO THE TERMS AND CONDITIONS ATTACHED HERETO, WHICH TERMS AND CONDITIONS ARE EXPLICITLY INCORPORATED INTO AND FORM AN INTEGRAL PART OF THE AGREEMENT BETWEEN TL AND THE CUSTOMER.

Signed on behalf of Customer, duly authorised	Signatory's Name	Signatory's Designation (Director/Member/Partner)	Date
TL Director- Signature	TL Director- Name		Date

