

SABEN REN SERVICES STANDARD TERMS AND CONDITIONS

Version 2017.1

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1. PURPOSE AND STATUS OF THIS DOCUMENT

- 1.1. This document contains the SABEN REN Services Standard Terms and Conditions that are referred to in all SABEN REN Service Agreements.
- 1.2. At any date the then current Version of the SABEN REN Services Standard Terms and Conditions form part of each and every SABEN REN Service Agreement that is in force on that date.
- 1.3. The current version of the SABEN REN Services Standard Terms and Conditions is available to be read on SABEN's web site, and also copies of it and of earlier versions can be requested from SABEN's Help Desk.

2. INTERPRETATION

- 2.1. Where an expression that is defined in a sub-clause of this Section 2 is also defined in an Applicable SABEN REN Service Agreement then, should the two definitions not be the same, the definition that appears in such Applicable SABEN REN Service Agreement shall take precedence.
- 2.2. The expressions in the following sub-clauses bear the meanings assigned to them therein, and cognate expressions bear corresponding meanings.
- 2.3. "**Applicable SABEN REN Service Agreement**" means any agreement between SABEN and another party that governs SABEN's provision of SABEN REN Services to that party and that binds SABEN and that party to these SABEN REN Service Standard Terms and Conditions.
- 2.4. "**bps**" or "**b/s**" means bits per second. References to "kilo-", "mega-", or "gigabits per second" use International System of Units (SI) metric (decimal) prefixes with standard symbols, meaning kilo- (k) is 10^3 , mega- (M) is 10^6 , and giga- (G) is 10^9 .
- 2.5. "**Business Day**" means any day other than a Saturday or a Sunday or a day proclaimed as a public holiday in South Africa.
- 2.6. "**Commissioned**" means:
 - 2.6.1 when applied to a SABEN REN Service, that the service provider, be it SABEN or a SABEN-Appointed Service Provider, as the case may be, has certified that the SABEN REN Service has been installed and tested and is available for use by the INSTITUTION;
 - 2.6.2 when applied to a Service Order, that all SABEN REN Services entailed in the Service Order have been commissioned;and "**Commissioning**" shall bear a related meaning.
- 2.7. "**IP**" means the Internet Protocol, including versions 4 and 6 (IPv4 and IPv6).
- 2.8. "**Participating Institutions**" means those institutions with which SABEN has concluded SABEN REN Service Agreements.
- 2.9. "**Parties**" means the INSTITUTION and SABEN.

- 2.10. **“REN”** means Research and Education Networking
- 2.11. **“REN Services”** means a suite of interdependent Internet-related services that meets the needs of tertiary education and research institutions to communicate and collaborate with each other and with like institutions across the world. REN Services include but are not limited to Internet Protocol connectivity, via dedicated high-speed circuits, with universities, colleges, research institutions, science gateways, high performance scientific computing centres, online scientific instruments, scientific data and information resources, worldwide.
- 2.12. **“SABEN Access Network”** means an electronic communications network that is operated by SABEN and interconnects one or more TVET Colleges and/or Schools Networks to a SANReN PoP.
- 2.13. **“SABEN-Appointed Service Provider”** means a duly licensed provider of electronic communications services and/or electronic communications network services that SABEN has specifically appointed to provide certain SABEN REN Services in terms of a SABEN REN Services Agreement.
- 2.14. **“SABEN equipment”** means equipment that is owned by SABEN and is located on the INSTITUTION’s premises for the provision of services in terms of this agreement.
- 2.15. **“SABEN invoice”** means a document issued by SABEN detailing charges due for payment by the INSTITUTION, and including a tax invoice for charges due to SABEN in respect of SABEN REN Services provided by SABEN itself as well as a pro-forma tax invoice for charges due to a SABEN-Appointed Service Provider in respect of SABEN REN Services provided by such SABEN-Appointed Service Provider.
- 2.16. **“SABEN REN Service”** means the REN services offered by SABEN and SABEN-Appointed Service Providers, as described in the SABEN REN Service Agreement.
- 2.17. **“SABEN’s web site”** means the web site available at <http://www.saben.ac.za>.
- 2.18. **“SANReN”** means the South African National Research Network, the high-speed electronic communications network known by that name that has been and continues to be deployed by the SCA, as augmented by certain circuits and facilities deployed from time to time by both TENET and SABEN.
- 2.19. **“SCA”** means the SANReN Competency Area within the Meraka Institute of the Council for Scientific and Industrial Research.
- 2.20. **“Schools Network”** means an organisation that provides electronic communications services to Schools as a reseller of services from upstream providers and/or using its own network.
- 2.21. **“Service Incident”** means any event or occurrence that is not part of the normal operation of the SABEN REN Services and which threatens (or might threaten) to interrupt or degrade the services.
- 2.22. **“Service Initiation Date”** means the date of the first full day on which the INSTITUTION can make use of SABEN REN Services as specified in a Service Order.
- 2.23. **“Service Order”** means a Service Schedule that the INSTITUTION has formally accepted and which thereby has become a formal order placed by the INSTITUTION for SABEN to implement.
- 2.24. **“Site”** means a location of a Participating Institution in respect of which TENET, SANReN or one of TENET’s sub-contractors provides a connection or interface, for purposes of providing the REN service at that location to the Participating Institution.
- 2.25. **“TENET”** means Tertiary Education and Research Network of South Africa NPC, Registration Number 2000/020780/08.
- 2.26. **“TVET College”** means a Technical Vocational Education and Training College as defined in the Technical Vocational Education and Training Act No. 29 of 2013.

3. SERVICE SCHEDULES AND ACCEPTANCE OF ORDERS

- 3.1. The INSTITUTION may engage with SABEN at any time regarding the INSTITUTION's requirements for REN Services for its Sites and may request SABEN to prepare an Access Network Services Schedule in which SABEN proposes and quotes for the provision to the INSTITUTION of SABEN REN Services by SABEN itself and/or by one or more SABEN-Appointed Service Providers.
- 3.2. Each Service Schedule ("the Schedule") shall specify:
 - 3.2.1 Its date of issue;
 - 3.2.2 the SABEN REN Services to be provided by SABEN itself;
 - 3.2.3 the name of each SABEN-Appointed Service Provider and the SABEN REN Services it will provide;
 - 3.2.4 all once-off and recurring charges for each SABEN REN service;
 - 3.2.5 the term during which the SABEN REN Services specified in the Schedule will be provided and at the end of which service provision in terms of that Schedule will cease;
 - 3.2.6 the "period of validity of the Schedule") – i.e. the number of days following the date of issue of the Schedule during which the INSTITUTION must formally accept the Schedule for its to become a Service Order and upon the expiry of which the Schedule no longer stands as a binding quote from SABEN and its SABEN-Appointed Service Providers; and
 - 3.2.7 an estimate of the number of days required by SABEN and the SABEN-Appointed Service Providers to implement the order and commission all the ordered services.
- 3.3. In setting a Provisional Ready for Service Date in a Service Schedule, SABEN does not thereby commit itself to being in a position to commission the services specified therein on that date.
- 3.4. SABEN may decline include specific SABEN REN Services in an Access Network Services Schedule or may decline to submit an Access Network Services Schedule as requested by the INSTITUTION if:
 - 3.4.1 Such SABEN REN Services cannot be made available at the Site for which they are required;
 - 3.4.2 The service quantities required by the INSTITUTION are too great to be accommodated within the capacities available to SABEN and/or its SABEN-Appointed Service Providers for the provision of the required services;
 - 3.4.3 After consultation with the INSTITUTION's duly appointed representative, SABEN's Service Manager judges that one or more required SABEN REN Services are unlikely to be successfully commissioned at the specified Sites of the INSTITUTION within a reasonable time; or
 - 3.4.4 The INSTITUTION is in arrears with its payments to SABEN in terms of this Agreement and has not disputed the amounts reflected in SABEN's Invoices.
- 3.5. In submitting a Service Schedule ("the Schedule") to the INSTITUTION, SABEN thereby commits itself and any SABEN-Appointed Service Providers that appear in the Schedule to applying their best efforts to implement and commission the SABEN REN Services specified in the Schedule in the event that the INSTITUTION formally accepts the Schedule within its period of validity.
- 3.6. The formal acceptance of a Service Schedule ("the Schedule") by an authorised representative of the INSTITUTION constitutes that Schedule as a Service Order placed by the INSTITUTION upon:
 - 3.6.1 SABEN itself, in respect of any and all SABEN REN Services that are specified in the Schedule and that SABEN provides itself; and
 - 3.6.2 Each SABEN-Appointed Service Provider, in respect of SABEN REN Services that are specified in the Schedule and are provided by that SABEN-Appointed Service Provider.

- 3.7. Upon the INSTITUTION's acceptance of a Service Schedule SABEN shall declare a Target Commissioning Date for the resulting Service Order, which shall be the Provisional Ready for Service Date or a somewhat later date if so justified by delays in the acceptance process delays and/or changed supply circumstances.

4. ORDER COMMISSIONING AND ACCEPTANCE PROCESSES

- 4.1. Subject to clause 3.7, SABEN shall apply its best efforts to ensure that it and its SABEN-Appointed Service Providers commission the ordered SABEN REN Services, as specified in any Service Order, by the Provisional Ready for Service Date recorded in the Service Order.
- 4.2. In respect of any Service Order, SABEN's Service Manager, or failing him, such other officer as SABEN may determine, shall:
- 4.2.1 manage and coordinate the efforts of SABEN itself and its SABEN-Appointed Service Providers to ensure the timeous installation and readying of the ordered SABEN REN Services for commissioning;
- 4.2.2 keep the INSTITUTION informed of progress and of any delays;
- 4.2.3 consult with the INSTITUTION, regarding changes to the Target Commissioning Date;
- 4.2.4 when ready, declare the Service Order to have been Commissioned;
- 4.2.5 declare the Service Initiation Date of the Service Order, which shall be the day after the declaration envisaged in 4.2.4; provided that if that date is earlier than the Target Commissioning Date, then, if the INSTITUTION so desires, SABEN may instead declare the Service Initiation Date to be the Target Commissioning Date, or any intervening date.
- 4.3. At any time SABEN may seek the INSTITUTION's agreement for the Target Commissioning Date to be changed. SABEN shall provide its reasons for requesting the change. The INSTITUTION shall not unreasonably withhold its agreement, and, if it declines to agree, shall provide its reasons for declining in writing.
- 4.4. The INSTITUTION shall have the right to cancel the Service Order without incurring any charges or penalties from SABEN in any of the following circumstances:
- 4.4.1 no Target Commissioning Date has been set;
- 4.4.2 the initially declared Target Commissioning Date is more than twenty (20) Business Days after the Provisional Ready for Service Date on the Service Order; or
- 4.4.3 more than ten (10) Business Days have elapsed since the Target Commissioning Date and SABEN has not yet declared the Service Order to have been Commissioned.
- 4.5. Upon SABEN's declaration of the Commissioning of a Service Order, as contemplated in 4.2.5, SABEN shall advise the INSTITUTION of the Commissioning in writing and shall request the INSTITUTION to accept the Commissioning.
- 4.6. Within five (5) Business Days of SABEN having advised the INSTITUTION of the commissioning of a Service Order in terms of clause 4.5, the INSTITUTION shall inform SABEN in writing of its acceptance of the Commissioning or shall provide SABEN in writing with reasons, supported by compelling evidence, as to why the Service Order cannot be accepted as having been Commissioned.
- 4.7. The INSTITUTION will be deemed to have accepted the Commissioning if, within two (2) Business Days of SABEN's declaration as contemplated in 4.6, the INSTITUTION has not provided SABEN in writing with reasons supported by compelling evidence as to why the Service Order has not, in fact, been successfully Commissioned. In this event, SABEN and the INSTITUTION shall jointly and independently apply their urgent and best efforts to address the issues raised by the INSTITUTION, and to seek agreement between the Parties as to the acceptance of the commissioning from a specific Service Initiation Date.
- 4.8. Service charges in respect of the SABEN REN Services specified in any Service Order shall apply from 00:00 hours on the Service Initiation Date of the Service Order.

5. PROVISIONING, COMMISSIONING AND ACCESS TO SITES

- 5.1. The INSTITUTION shall provide safe access to authorised representatives of SABEN and SABEN's sub-contractors and SABEN-Appointed Service Providers to all equipment ("SABEN-provided equipment"), that is provided by SABEN or any SABEN-Appointed Service Provider and is located at Sites of the INSTITUTION for the provision of the SABEN REN Services, subject to the INSTITUTION's protocols for the admission of visitors to premises. The INSTITUTION may temporarily withdraw this right of access if, in the opinion of its duly authorised representatives, the safety of visitors cannot be guaranteed.
- 5.2. The INSTITUTION shall ensure that its personnel co-operate with authorised representatives of SABEN and SABEN's sub-contractors and SABEN-Appointed Service Providers, as required, for installation, troubleshooting, fault isolation and repairs.
- 5.3. The INSTITUTION further undertakes, in respect of each of its Sites, to appoint two persons ("site contact persons") to interact with SABEN and/or SABEN's appointed representatives regarding operational matters; and for each such contact person, the INSTITUTION shall also specify an e-mail address to which written communications may be directed, and telephone numbers where such persons can be contacted during normal working hours on Business Days. The INSTITUTION undertakes to notify SABEN if and when such contact information changes.
- 5.4. Unless otherwise agreed in writing between SABEN and the INSTITUTION, no piece of SABEN-provided equipment ever becomes the property of the INSTITUTION. The INSTITUTION shall keep such equipment free from the claim of third parties and from attachment, and shall not alienate or transfer the equipment, nor encumber it, either in part or as a whole, nor allow any lien to arise in respect thereof.
- 5.5. At no cost to SABEN the INSTITUTION shall make available sufficient floor and/or rack space in a secure operating environment at each Site to accommodate all SABEN-provided equipment.
- 5.6. At no cost to SABEN and at each of its Sites, the INSTITUTION shall provide adequate electrical power as may be specified by SABEN to power the SABEN-provided equipment.
- 5.7. The INSTITUTION is solely responsible for the environmental conditions within the rooms in which any SABEN-provided equipment is located.
- 5.8. SABEN may inspect such facilities of the INSTITUTION and request the INSTITUTION to take such corrective actions as are required to secure and protect SANReN-provided equipment and to ensure environmental conditions that accord with good operating practice.

6. SERVICE SUPPORT

- 6.1. SABEN or a suitable service provider contracted by SABEN operates a service desk ("the SABEN Service Desk") that shall be available at all times ("24 by 7 by 365") to receive telephone calls and emails about faults and Service Incidents related to the SABEN REN Services ("Calls") from the INSTITUTION and other Participating Institutions.
- 6.2. The SABEN Service Desk:
 - 6.2.1 accepts and acts upon all Calls made to it, and provides the caller with a call reference number;
 - 6.2.2 identifies and logs new Service Incidents;
 - 6.2.3 escalates Service Incidents to higher authorities within SABEN and its upstream providers and SABEN-Appointed Service Providers as and when required to ensure speedy resolution of any Service Incident;
 - 6.2.4 regularly informs all affected Sites about progress towards the resolution of Service Incidents.

7. SERVICE LEVEL MANAGEMENT

- 7.1. At any time, SABEN's service delivery performance is assessed using the Service Level Indicators and Service Level Targets as set out in the document entitled "SABEN REN Service Level Indicators and Service Level Targets", which may be downloaded from SABEN's web site and which is also available to the INSTITUTION upon request to SABEN.
- 7.2. SABEN's service level management activities include:
 - 7.2.1 regular measuring monitoring and reporting on each of the Service Level Indicators;
 - 7.2.2 recording and storing such measurements ("Service Performance Data") for at least twelve months;
 - 7.2.3 making the Service Performance Data available to the INSTITUTION upon request; and
 - 7.2.4 publishing the Service Performance Data in the form of tables, charts and/or graphs on its web site for viewing by all Participating Institutions.

8. BILLING AND PAYMENT PROCESSES

- 8.1. Each month SABEN shall render SABEN invoices to the INSTITUTION, comprising:
 - 8.1.1 a tax invoice setting out the amounts due in respect of SABEN REN Services delivered by SABEN itself to Sites of the INSTITUTION;
 - 8.1.2 a pro-forma tax invoice setting out the amounts due in respect of SABEN REN Services delivered by each SABEN-Appointed Service Provider to Sites of the INSTITUTION;
 - 8.1.3 a statement setting out the balances brought forward from the previous month, amounts newly invoiced, amounts received, any applicable interest charges, and closing balances to be carried forward.
- 8.2. The INSTITUTION undertakes to pay, without deduction or set-off, all amounts reflected in the tax invoices and pro-forma tax invoices referred to in 8.1, as being due by the INSTITUTION; such payment to be effected within a period of thirty (30) days reckoned from the date of issue of any such tax invoice and/or statement. The INSTITUTION undertakes to associate each payment to SABEN with the corresponding invoice or invoices, by citing the payment reference information that SABEN specifies in such invoice or invoices. The INSTITUTION acknowledges that failure to cite payment reference information may cause delays in the recognition of payments by SABEN.
- 8.3. In respect of all charges and recurring charges referred to in clause 8.1.2 as are due by the INSTITUTION to any SABEN-Appointed Service Provider and that SABEN has received from the INSTITUTION, SABEN shall pay over such amounts to such SABEN-Appointed Service Provider timeously in accordance with SABEN's agreements with such SABEN-Appointed Service Providers.
- 8.4. SABEN shall be entitled to require that the INSTITUTION pay an amount equivalent to any disconnection, installation and/or cancellation fee which may become due on termination for whatsoever reason. This amount will be utilised by SABEN in paying any such disconnection, installation and/or cancellation fee as may become payable by SABEN, but may be refunded to the INSTITUTION in the event that SABEN considers that such provision is no longer necessary.
- 8.5. In the event of the INSTITUTION disputing the correctness of any amount reflected in a SABEN invoice, the INSTITUTION shall, prior to the Invoice falling due for payment give detailed reasons setting out the basis of any such dispute, (in which event, the shortfall shall be deemed to be a matter in dispute to be dealt with in accordance with the provisions of the SABEN REN Service Agreement) and shall:
 - 8.5.1 pay to SABEN the amount which the INSTITUTION admits to be due, in which event the INSTITUTION shall provide SABEN in writing with an explanation of the shortfall between

the amount admitted as due on the SABEN Invoice, or alternatively,

- 8.5.2 pay to SABEN the full amount reflected in such disputed tax invoice, but under protest and without admission that the amount is in fact due.
- 8.5.3 Within seven (7) days of resolution of the matter in dispute or by written agreement between the Parties:
 - 8.5.3.1. Any overpayment that may have been effected by the INSTITUTION shall be refunded by SABEN; and
 - 8.5.3.2. Any underpayment that may have been due by the INSTITUTION shall be paid to SABEN.
 - 8.5.3.3. The Parties shall collaborate with regard to the issuance of appropriate tax invoices, debit notes or credit notes as may be appropriate from time to time, both in respect of SABEN's invoices, and in respect of any overpayment or underpayment as contemplated above.
- 8.6. The INSTITUTION acknowledges that SABEN shall not be obliged to continue providing services to a Site or Sites in respect of which the INSTITUTION is in arrears for more than ninety (90) days, and that SABEN shall be entitled to suspend services to such Site or Sites, except if a dispute as contemplated in clause 8.5 above is in progress. SABEN undertakes not to suspend service to any Site of the INSTITUTION without exhausting all avenues for bringing the arrears to the attention of the INSTITUTION, as well as the measures available to the INSTITUTION under clause 8.5 above.
- 8.7. Save as otherwise provided in terms of this agreement the INSTITUTION shall not be held liable for claims by third parties in respect of SABEN's operational or other costs.