COLLECTIVE AGREEMENT

between

TELKOM SA LIMITED
("The Company")

and

SOLIDARITY
("The Union")

ON THE

INCAPACITY PROCEDURE
1. PURPOSE

1.1 The Incapacity procedure is aimed at finding ways of correcting unacceptable work performance as a result of the employee's incapacity to do the work.

1.2 The employee's incapacity to do the work includes unsatisfactory work performance due to poor performance and due to ill health or injury.

2. DEFINITIONS

2.1 Incapacity - means poor work performance, under performance or unsatisfactory performance and occurs when the productivity or quality of work of an employee falls short of the norm or standard that can reasonably be expected of an employee in terms of his/her contract of employment and/or for a particular position in which the employee is employed.

2.2 Promoter - Promoter refers to the direct supervisor and/or line manager according to reporting lines.

2.3 Promoter's promoter - Promoter's promoter refers to the direct supervisor and/or line manager of the Promoter according to reporting lines.

3. OBJECTIVES

3.1 To ensure the existence of sound relationships between management, employees and organised labour.
3.2 To contribute to the achievement of organisational strategic objectives and business plans.

3.3 To enable management to manage in a way commensurate with their responsibilities entrusted to them by the company.

3.4 To initiate a process to correct incapacity either due to poor work performance or ill health or injury.

4. PRINCIPLES

4.1 The processes of dealing with incapacity counseling / hearings and enquiries as a result of unsatisfactory work performance due to poor work performance or ill health or injury are the same but may be different due to the nature of the incapacity.

4.2 While dismissal could result if the matter is referred to a formal incapacity enquiry, the process must be corrective and not punitive.

4.3 The process comprises of various stages of counseling with the main aim of correcting the incapacity identified and rehabilitating the employee to achieve acceptable performance levels.

4.4 The employee has the right to be represented at any stage during the process by a co-worker, a union representative from his/her Place of Work or a Union Official. In the event where a Union representative from the Place of Work is not available for good reason, the employee may be represented by a Full Time Shopsteward or Union Office Bearer, after consultation with the Employee Relations Manager, or his/her designate. No legal representation will be allowed.
4.5 An observer and/or interpreter from either party may be involved in the process by prior arrangement and by mutual agreement.

4.6 The process must be dealt with in a private and confidential manner.

4.7 The employee must be provided with sufficient information with regard to the incapacity and he/she will be allowed to provide an explanation during each stage of the incapacity process which must be taken into account to establish whether the employee is incapacitated or continues to perform below the standard of performance that can be reasonably required from the employee.

5. EXPLANATION OF EACH STAGE OF INCAPACITY

5.1 POOR WORK PERFORMANCE

STAGE 1 (FORMAL INCAPACITY COUNSELLING)

5.1.1 The Promoter identifies the incapacity.

5.1.2 The employee must be given three (3) working days written notification of the alleged incapacity prior to a formal incapacity counseling meeting. Any request for extension of this period will be sanctioned by the ER manager or his/her designate.

5.1.3 The employee may provide an explanation which must be taken into account to establish whether the employee is performing below the standard of performance that can be reasonably required from him/her.
5.1.4 If the employee agrees or is found to be performing below the standard of performance that can be reasonably required from him/her, the Promoter counsels the employee regarding the nature of the incapacity and sets out the agreed standard of performance that is required of the employee.

5.1.5 The Promoter concludes a commitment to performance with the employee on what is expected from him/her.

5.1.6 The Promoter monitors the employee over an agreed period.

5.1.7 If the employee achieves the agreed standard of performance then the process ceases.

5.1.8 If the employee fails to achieve the agreed standard of performance, the process elevates to Stage 2.

5.1.9 Written records must be kept of the process and placed in the employee’s file.

5.2 POOR WORK PERFORMANCE

STAGE 2 (FORMAL INCAPACITY HEARING)

5.2.1 The employee must be given three (3) working days written notification prior to a formal incapacity hearing. Any request for extension of this period will be sanctioned by the ER manager or his/her designate.

5.2.2 The formal incapacity hearing will be convened under the chairmanship of the employee’s Manager (Promoter’s Promoter).
5.2.3 The merits of the incapacity of the employee will be presented by the Promoter.

5.2.4 The employee may provide an explanation which must be taken into account to establish whether the employee continues to perform below the standard of performance that can be reasonably required from him/her.

5.2.5 The standard of performance agreed to or found to be reasonably required from the employee will be recorded in writing as an action plan. The employee will be required to commit to the action plan. The action plan will comprise of agreed upon appropriate evaluation, instruction, training, guidance and/or counseling and a reasonable time period will be set for the employee to improve.

5.2.6 A period and process of monitoring the performance required will also be mutually agreed to and will be included in the action plan.

5.2.7 The process will be recorded and the action plan will be summarised in the form of a letter, a copy of which the employee will receive and a copy of which will be placed on the employee's personal record.

5.2.8 If the employee achieves the agreed upon level of performance, the process ceases.

5.2.9 If the employee fails to achieve the agreed level of performance, the process elevates to Stage 3.
5.3 POOR WORK PERFORMANCE

STAGE 3 (FORMAL INCAPACITY ENQUIRY)

5.3.1 At this stage the incapacity process will convert to a formal incapacity enquiry.

5.3.2 The chairperson of the enquiry, in determining whether dismissal for poor work performance is appropriate must consider:

5.3.2.1 whether or not the employee failed to meet a performance standard that can be reasonably expected of him/her; and

5.3.2.2 if the employee did not meet a performance standard that can be reasonably expected of him/her whether or not:

a) the employee was aware, or could reasonably be expected to have been aware, of the standard of performance that can be reasonably expected of him/her; and

b) the employee was given a fair opportunity to meet the standard of performance that can be reasonably expected of him/her.

5.3.3 It must be noted that dismissal will be the measure of last resort. Serious consideration must be given to reasonable alternatives which include placing the employee elsewhere (if possible and
practicable) or possible demotion if this could address the poor performance of the employee.

5.3.4 Should the employee be dissatisfied with the outcome of Stage 3, the employee is entitled to invoke the provisions of the Labour Relations Act, no 66 of 1995, as amended.

5.4 INCAPACITY DUE TO ILL HEALTH OR INJURY

STAGE 1 (FORMAL INCAPACITY CONSULTATION)

5.4.1 When the Promoter becomes aware that an employee is not performing to the standard that can be reasonably expected of the employee due to ill health or injury, the Promoter must investigate the extent of the incapacity or injury.

5.4.2 The employee must be given three (3) working days written notification prior to the formal incapacity consultation meeting. Any request for extension of this period will be sanctioned by the ER manager or his/her designate.

5.4.3 If a meeting cannot be convened, due to the ill health or injury of the employee, then a comprehensive written record of all events must be maintained. The events must be recorded in a chronological manner.

5.4.4 At the formal incapacity consultation meeting the employee must be given the opportunity of stating his/her case and be heard on all the issues that the promoter investigates. Relevant medical and other information must be considered.
5.4.5 The process will be recorded and the action plan will be summarised in the form of a letter, a copy of which the employee will receive and a copy of which will be placed on the employee's personal record.

5.4.6 The Promoter must ascertain if the incapacity for ill health or injury is temporary or permanent and the period of the time the employee is likely to be absent from work.

5.4.7 If the incapacity is temporary, the Promoter must consider:

5.4.7.1 the nature of the job;

5.4.7.2 the likely period of absence;

5.4.7.3 the seriousness of the illness or injury;

5.4.7.4 the possibility of securing a temporary replacement for the ill or injured employee if it is found that the employee is likely to be absent for a long period.

5.4.8 If the employee is temporarily disabled, due consideration may be given to adapting the employee's duties or work circumstances.

5.4.9 If the employee's temporary disablement due to the ill health or injury cannot be accommodated in terms of clauses 5.4.7.4 and 5.4.8 at this stage of the process, then Stage 2 will be invoked.

5.4.10 If the employee is permanently disabled, then Stage 3 will be invoked.
5.5 INCAPACITY DUE TO ILL HEALTH OR INJURY

STAGE 2 (FORMAL INCAPACITY HEARING)

5.5.1 The employee must be given written notification three (3) working days prior to a formal incapacity hearing. Any request for extension of this period will be sanctioned by the ER manager or his/her designate.

5.5.2 The formal incapacity hearing will be convened under the chairmanship of the employee’s manager (Promoter’s Promoter).

5.5.3 If a meeting cannot be convened, due to ill health or injury of the employee, then a comprehensive written record of all events must be maintained. The events must be recorded in a chronological manner.

5.5.4 The merits of the ill health or injury will be presented by the Promoter of the employee.

5.5.5 The employee must be given an opportunity to state his case and being heard on all relevant issues and to furnish medical documentation and other information of his/her ill health or injury.

5.5.6 If the nature of the employee's ill health or injury is of a permanent nature the chairperson must consider the possibility of:

5.5.6.1 securing alternative employment for the employee;
5.5.6.2 adapting the duties or work circumstances of the employee to accommodate the employee's disability; and
5.5.6.3 medical boarding on the grounds of ill health or injury.

5.5.7 If the employee has been placed in alternative employment or the duties or work circumstances of the employee have been adapted to accommodate the employee’s disability in terms of clauses 5.5.6.1 and 5.5.6.2 of this Agreement, the performance required by the employee will be reduced to writing in the form of an action plan, a copy of which the employee will receive and a copy placed on the employee’s personal record.

5.5.8 The employee will be required to commit to the action plan.

5.5.9 The action plan should comprise of agreed upon appropriate evaluation which could include medical reports, application for temporary disability benefits, and application of permanent disability benefits. The action plan could also provide for a program to re-introduce the employee into the workplace or other events.

5.5.10 The period and process of monitoring the required performance will also be mutually agreed to and be included in the action plan.

5.5.11 It must be noted that particular consideration should be given to employees who are injured at work or who are incapacitated by a work related illness.

5.5.12 If the employee achieves the agreed upon level of performance, then the process will cease.
5.5.13 If the employee fails to achieve the agreed level of performance or alternative employment cannot be secured for the employee or the duties or work circumstances of the employee cannot be adapted to accommodate the employee, the process elevates to Stage 3.

5.6 INCAPACITY DUE TO ILL HEALTH OR INJURY

STAGE 3 (FORMAL INCAPACITY ENQUIRY)

5.6.1 At this stage the incapacity process will convert to a formal incapacity enquiry.

5.6.2 It must be noted that the termination of the employee’s services will be the measure of last resort. If the nature of the employee's ill health or injury is of a permanent nature the chairperson must consider the possibility of:

5.6.2.1 securing alternative employment for the employee;
5.6.2.2 adapting the duties or work circumstances of the employee to accommodate the employee's disability; and
5.6.2.3 for medical boarding on the grounds of ill health or injury.

5.6.3 If the employee is permanently and totally disabled the employee may be dismissed if it is not possible to medically board the employee on grounds of ill health or injury.
5.6.4 Should the employee be dissatisfied with the outcome of Stage 3, the employee is entitled to invoke the provisions of the Labour Relations Act, no 66 of 1995, as amended.

6. GENERAL INCAPACITY CONSULTATION PRACTICES

6.1 Poor work performance

6.1.1 The Performance standards set must be clear and achievable.

6.1.2 The employee must be given a fair opportunity to meet the performance standard, which could include but is not limited to coaching and training.

6.2 Incapacity due to ill health or injury

6.2.1 If the employee’s ill health is due to alcohol or drug abuse, the company must:

6.2.1.1 counsel the employee;
6.2.1.2 encourage the employee to attend rehabilitation.

6.2.2 The Company may consider assisting any employee who intends to participate in a rehabilitation program.

6.2.3 If the employee fails to follow a formal program or to attend rehabilitation in order to address the problem of alcohol or drug abuse, the employer must give the employee a written notice and consult again with the employee before considering whether to dismiss the employee.
6.2.4 The duty of the Company to accommodate employees, who have become incapacitated as result of injury at work or by work-related illness, is more onerous under these circumstances.

6.2.5 In all other cases of incapacity due to ill health or injury, except for 6.2.1, dismissal will only be considered after the employee's sick leave has been exhausted.

7. GUIDELINES TO THE INCAPACITY PROCESS

7.1 Annexure A of this Agreement provides for a comprehensive Process Flow and Guidelines to each of the Stages in the Incapacity Procedure.

8. DURATION OF THIS AGREEMENT

This agreement shall come into operation on the date of execution hereof, and shall remain in force unless:

8.1 either party terminates it by giving the other two (2) months' notice in writing to that effect; or

8.2 no provisions of this Agreement shall be suspended, except by written notification. No provisions of this agreement shall be modified, cancelled or otherwise varied, except by means of a further written agreement, signed by the parties
9. DOMICILIA AND NOTICES

9.1 For the purpose of this Agreement, including the giving of notices and the serving of legal process during working hours, the Company and the Union choose *domicilium citandi et executandi* ("domicilium") as follows:

The Company at
Telkom Towers East
12\textsuperscript{th} Floor, 152 Proes Street
Pretoria
0001

The Union at
Solidarity Union
Cnr DF Malan and Eendracht
KLOOFSIG
PO Box 11760, CENTURION
0046
9.2 The Company or the Union may at any time change its address by notice in writing, provided that the new domicilium is or includes a physical address within the Republic of South Africa at which process can be served during office hours. It shall become effective upon receipt of such notice.

No amendment to this agreement shall be in force or effect unless reduced to writing and signed by both parties.

SIGNED at PRETORIA on this 5th day of September 2006

For TELKOM

duly authorized representative to sign this Agreement on behalf of the Company

For SOLIDARITY

(Duly authorised representatives to sign this Agreement)

WITNESSES:

1. [Signature]
2. [Signature]
INCAPACITY: PROCESS FLOW

Process Flow: This process is applicable to:
- Poor Work Performance, and
- Ill Health or Injury

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Employee

Investigative Counseling

Logistics

Not achieved

Process Flow

See Logistics: Stage 1

Stage 1: Formal Incapacity Counseling

See Process: Stage 1

Not achieved

Achieved

See Logistics: Stage 2

Stage 2: Formal Incapacity Hearing

See Process: Stage 2

Not achieved

Achieved

See Logistics: Stage 3

Stage 3: Formal Incapacity Enquiry

See Process: Stage 3

Achieved

Internal Process Ceases

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Incapacity Procedure: Solidarity
5 September 2006
1. Incapacity: Logistics/Process Flow: Stage 1

Formal Incapacity Consultation

<table>
<thead>
<tr>
<th>Step</th>
<th>Action</th>
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<tbody>
<tr>
<td>1.</td>
<td>Obtain a reference number from Regional Employee Relations Department</td>
</tr>
</tbody>
</table>
| 2.   | Notify the employee, using the appropriate form, three (3) working days in advance.  
  **Note:** Rights to representation, and Rights to interpreter on the form. |
| 3.   | Meeting convened by the employee's promoter. |
| 4.   | Meeting process:  
  - Introduction of parties;  
  - Roles of parties clarified;  
  - Promoter presents reason/s for convening the meeting;  
  - Employee presents barriers/explanation;  
  - Employee and the Promoter conclude a commitment in writing which indicates action steps, monitoring and review time-lines (Incapacity Consultation Required Performance Standard Form can be used);  
  - Promoter closes meeting. |
| 5.   | The Regional Employee Relations Department to be notified of the outcome. |

**Note**  
**WRITTEN RECORDS MUST BE KEPT**  
Promoter remains responsible.
2. Incapacity: Logistics/Process Flow: Stage 2

Formal Incapacity Hearing

<table>
<thead>
<tr>
<th>Step</th>
<th>Action</th>
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<tbody>
<tr>
<td>1.</td>
<td>Process elevated to Stage 2, Formal Incapacity Meeting if the Stage 1, Formal Incapacity Consultation did not achieve the desired outcome.</td>
</tr>
<tr>
<td>2.</td>
<td>Promoter of the employee to secure the services of the Promoter's Promoter to chair this stage of the process.</td>
</tr>
<tr>
<td>3.</td>
<td>Inform the Regional Employee Relations section that the matter is at stage 2. Quote Employee Relations reference number.</td>
</tr>
</tbody>
</table>
| 4.   | Secure the services of an Employee Relations Consultant (ERC) / Human Resource Consultant (HRC) to assist/advise during the meeting process.  
**Note:** Only if required. |
| 5.   | Arrange and confirm a venue, secretarial services and confirm the detail with the Chairperson (and ERC or HRC if required). |
| 6.   | Notify the employee, using the appropriate form, three (3) working days in advance.  
**Note:** Rights to representation and  
Rights to an interpreter are indicated on the form. |
| 7.   | Meeting convenes. |
| 8.   | Meeting process:  
- Introduction of parties;  
- Roles of parties clarified;  
- Establish when prior notice to the incapacity hearing was received (3 working days).  
- Promoter of the employee presents case (opening, witnesses, exhibits):  
  - Allow cross examination;  
  - Allow re-examination;  
  - Promoter closes case.  
- Employee presents case (opening, witnesses, exhibits): |
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</table>
|   | o Allow cross-examination;  
|   | o Allow re-examination;  
|   | o Employee closes case.  
|   | - Chairperson and employee conclude a commitment in writing which indicates action steps, monitoring and review time-lines. (Incapacity Consultation Required Performance Standard Form can be used).  
| 9. | Regional Employee Relations sections to be notified of the outcome.  
| Note | **WRITTEN RECORDS MUST BE KEPT**  
|   | Promoter remains responsible.  

Note: WRITTEN RECORDS MUST BE KEPT. Promoter remains responsible.
3. Incapacity: Logistics/Process Flow: Stage 3

Formal Incapacity Enquiry

<table>
<thead>
<tr>
<th>Step</th>
<th>Action</th>
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</thead>
<tbody>
<tr>
<td>1.</td>
<td>Process elevated to Stage 3, Formal Incapacity Enquiry if the Stage 2, Formal Incapacity enquiry did not achieve the desired outcome.</td>
</tr>
<tr>
<td>2.</td>
<td>Promoter of the employee to secure the services of the Promoter's Promoter of the employee to chair the process (preferably the same person as in Stage 2).</td>
</tr>
<tr>
<td>3.</td>
<td>Inform the Regional Employee Relations section that the matter is at Stage 3. Quote Employee Relations reference number.</td>
</tr>
<tr>
<td>4.</td>
<td>Secure the services of an Employee Relations Consultant (ERC) / Human Resource Consultant (HRC) to assist/advise during the enquiry process.</td>
</tr>
<tr>
<td>5.</td>
<td>Arrange and confirm a venue, secretarial services and confirm the detail with the Chairperson and ERC or HRC.</td>
</tr>
</tbody>
</table>
| 6.   | Notify the employee, using the appropriate form, three (3) working days in advance.  
**Note:** Rights to representation  
Rights to an interpreter are indicated on the form |
| 7.   | Enquiry convenes. |
| 8.   | Enquiry process:  
- Introduction of parties;  
- Roles of parties clarified;  
- Establish whether prior notice to the incapacity enquiry was received (3 working days);  
- Read the allegations made and clarify if they are understood by the employee;  
- Promoter presents case (opening, witnesses, exhibits):  
  - Allow cross examination;  
  - Allow re-examination;  
  - Promoter closes case. |
Employee presents case (opening, witnesses, exhibits):
  - Allow cross examination;
  - Allow re-examination;
  - Employee closes case.

Chairperson may caucus with ER/HR consultant and Employee Representative on whether all evidence was addressed;

Re-convene meeting;

Chairperson conveys finding;

Conclude the meeting:
  - If dismissal is the sanction, Chairperson informs the employee of rights:
    Refer to CCMA within 30 days of date of dismissal or 90 days if an unfair labour practice is alleged.

**Note**  
*Dismissal is by notice and the period is 30 days.*

- Chairperson to ensure the appropriate exit documents are provided to the employee (if required);
- Chairperson remains responsible to inform Regional Employee Relations Department and to ensure that all minutes/documentation are submitted.

**Note**  
*WRITTEN RECORDS MUST BE KEPT*

Chairperson remains responsible.