



STANDARD TERMS AND CONDITIONS

1. Definitions and Interpretation

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 "customers" means any party contracting with the PARTNER for the provision services;
 - 1.1.3 "PARTNER" means the party specified as PARTNER on the Application Form to which these Standard Terms and Conditions are attached;
 - 1.1.4 "Effective Date" means the date of signature of this Agreement by BVS Telecom;
 - 1.1.5 "BVS Telecom" means Blue Diamond Trading 226 cc (registration number 2006/086444/23) T/A BVS Telecom
 - 1.1.6 "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. In relation to BVS Telecom;
 - 1.1.7 "Service/s" means all the service/s provided by BVS Telecom to the PARTNER, and to be sold to the PARTNER's customers in terms of the PARTNER Programme;
 - 1.1.8 "Order Form" means the form provided to BVS Telecom by the PARTNER setting out the Services required in terms of the PARTNER Programme for sale to the PARTNER's customers;
 - 1.1.9 "ECNS provider" means an Electronic Communications Network Services provider licensed to provide those services in terms of the Electronic Communications Act 36 of 2005;
 - 1.1.10 "parties" means BVS Telecom and PARTNER collectively;
 - 1.1.11 "Prices List" means the list of prices and fees in respect of the Services, to be provided to the PARTNER by BVS Telecom;
 - 1.1.12 "VAT" means Value-Added Tax as defined in the Value-Added Tax Act 89 of 1991;
 - 1.1.13 "PARTNER Programme" means the BVS Telecom PARTNER programme, whereby PARTNERS are appointed to resell BVS Telecom Services.
- 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 Grant of PARTNERS

- 2.1 BVS Telecom grants the PARTNER the non-exclusive, non-transferable right to resell the Services on the terms and conditions set out in this Agreement.
- 2.2 Notwithstanding anything to the contrary, BVS Telecom reserves the right at any time to cancel the PARTNER Programme. In the event of such a cancellation, any discounts provided to the PARTNER shall cease upon termination of the Initial Period (or any renewed period thereafter) as set out in Clause 4 below.

3 Authority of PARTNER

- 3.1 The relationship established in respect of the PARTNER by this Agreement is solely that of a buyer and seller of the Services. Nothing in this Agreement is intended to or shall be construed to mean that PARTNER is the agent or representative of BVS Telecom for any purpose whatsoever. PARTNER is not granted any right or authority to assume or create any obligation or responsibility on behalf of BVS Telecom, or in the name of BVS Telecom.
- 3.2 The PARTNER acknowledges that it is, subject to the terms of this Agreement, granted the discounts as set out in Schedule A on the basis that the PARTNER will use all reasonable commercial efforts to deal exclusively with the Services of BVS Telecom, will meet billing targets and will use BVS Telecom as its preferred supplier of the Services. It is further acknowledged that these discounts are discretionary and are not provided to all of BVS Telecom' customers, and are only applicable to members of the PARTNER Programme.

4 Commencement and Duration

- 4.1 This Agreement shall commence upon the Effective Date and shall endure for an initial period of 24 (twenty-four) months from the Effective Date ("the Initial Period").
- 4.2 Subject to termination by BVS Telecom or PARTNER by way of 90 days' prior written notice of termination to be effective on any anniversary of the Effective Date, the duration of this Agreement shall automatically renew for successive periods of 24 (twenty-four) months each on the terms and conditions set out in this Agreement.
- 4.3 Save for the provisions in respect of any discounts offered under the PARTNER programme, the terms of this Agreement shall apply to all Services ordered by the PARTNER subsequent to the Effective Date and shall be applicable to the provision of such Services until such time as the durations in respect of each Service, as specified in the Separate PARTNER Order Forms submitted to BVS Telecom from time to time, expire, notwithstanding termination of this Agreement.

5 Charges and Payment

- 5.1 The prices for the respective Services shall be specified in each separate Order Form submitted to BVS Telecom by the PARTNER.

- 5.2 In the event of BVS Telecom providing PARTNER with a discount as set out in Clause 3.2 above, then the PARTNER shall be liable for payment to BVS Telecom of the List Price in respect of the Services less the applicable discount.
- 5.3 Invoicing, will be processed and delivered monthly in advance, and all invoices for Services shall be settled by PARTNER monthly within 7 days of the date of invoice, except in respect of call usage which will be invoiced monthly in arrears.
- 5.4 All prices in the Price List are based on Rand – US dollar exchange rate at the time of signature of this Agreement, and any movement in the exchange rate may result in a variation of prices, which will be passed on to the PARTNER on 30 (thirty) days' notice.
- 5.5 All prices specified in the Price List exclude:
- 5.5.1 VAT and any other taxes and duties including any regulatory surcharge, which PARTNER becomes obligated to pay by virtue of this Agreement, and
- 5.5.2 third party ECNS provider service fees, for which PARTNER agrees to make payment directly to the third party ECNS provider on such terms as are agreed between the third party ECNS provider and PARTNER, and shall at all times be the responsibility of the PARTNER.
- 5.6 In the event of any dispute arising as to the amount or calculation of any fee or charge to which BVS Telecom is entitled, the PARTNER shall make payment in respect of any undisputed amount. The disputed amount shall be referred for determination to BVS Telecom' auditors. They shall act as experts and their decision shall be final and binding on BVS Telecom and PARTNER. The cost of the determination shall be paid on demand by the party against whom the determination is made, or as determined by the said auditors.
- 5.7 Any amount falling due for payment by PARTNER to BVS Telecom 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 equal to the prime overdraft rate plus two percent (2%) charged by First National Bank Limited from time to time, monthly in arrears.
- 5.8 No discounts shall be applicable to any costs of any third party ECNS provider.

6 PARTNER's Obligations

The PARTNER agrees that BVS Telecom has a material interest in the professional and efficient performance of its obligations in terms of the Services. Accordingly, the PARTNER agrees to use its best endeavours to act in an efficient, professional and diligent manner in accordance with the provisions of this Agreement, all applicable laws, regulations and best industry practices. In particular, the PARTNER agrees to:

- 6.1 act loyally to BVS Telecom;
- 6.2 at all times and at its costs, establish and maintain the required infrastructure and operating systems as specified by BVS Telecom, including appropriate hardware, software, connectivity and all equipment, services, and resources Applicable thereto;
- 6.3 assume full responsibility for 1st line support, billing and administration to its Customers in respect of the Services. BVS Telecom will be entitled to measure and monitor the PARTNER's performance by way of customer satisfaction surveys in conjunction with the PARTNER.
- 6.4 ensure that all employees, sub-PARTNERS, installers and sub-contractors used by the PARTNER similarly comply with this Agreement and all requirements as prescribed by BVS Telecom from time to time;
- 6.5 keep full and proper books of accounts and records clearly showing all transactions relating to this Agreement, and in particular, all transactions undertaken by or through the PARTNER in relation to the Services, and allow BVS Telecom inspection of such books, accounts and records at all reasonable times;
- 6.6 allow BVS Telecom unhindered access to its Premises to inspect, review, audit and monitor the PARTNERS and the PARTNER's compliance with this Agreement;
- 6.7 when soliciting a customer ensure that Services to be rendered to the customer comply with the customer's requirements and that the customer understands the terms and conditions of the use of the Services;
- 6.8 be bound by BVS Telecom' Standard Terms and Conditions in respect of the Services subscribed to by the PARTNER for provision to the PARTNER's customers;
- 6.9 enter into agreements with its customers, which shall be consistent with the terms and conditions contained in this Agreement, and in accordance with BVS Telecom' terms and conditions in respect of the Services. It is the obligation of the PARTNER to ensure that all contracts are in place with its customers ensuring compliance with this Agreement, and BVS Telecom bears no responsibility for assisting the PARTNER or ensuring that the PARTNER and its customers contract for provision of services;
- 6.10 promote and market the Services and actively obtain orders for Services from customers, to the best advantage of BVS Telecom, so as to satisfy sales demands and to increase BVS Telecom' market share, good name and reputation;
- 6.11 defray all expenses of, and incidental to, the PARTNER, unless otherwise agreed in writing with BVS Telecom;
- 6.12 cooperate with BVS Telecom to meet any other reasonable standards of sales and support performance established by BVS Telecom,
- 6.13 maintain an adequate number of skilled and trained sales and support personnel to be in a position to properly provide support to all its customers in respect of the Services;
- 6.14 notify BVS Telecom of any proposed changes to the PARTNER including address, telephone number, bank account details, contact details, changes to the PARTNER entity, shareholders, members, director or office bearers, at least 10 (ten) days

prior to such change. BVS Telecom shall be entitled in its sole discretion to either approve such change or to terminate this Agreement by written notice to the PARTNER;

- 6.15 Prior to the allocation of any Services to any of the PARTNER's customers, the PARTNER shall obtain, maintain and retain the following customer details and where required in terms of any legislative or regulatory requirement or in terms of any court order or order of any competent authority, the PARTNER shall make such information available to BVS Telecom or to any third party authorised to receive such information: -

6.15.1 if that person is a juristic person –

- i) obtain from the person representing that juristic person –
 - (a) his or her full names, identity number, residential and postal address, whichever is applicable;
 - (b) the business name and address and, if registered as such in terms of any law, the registration number of that juristic person;
 - (c) a certified photocopy of his or her identification document on which his or her photo, full names and identity number, whichever is applicable, appear; and
 - (d) a certified photocopy of the business letterhead of, or another similar document relating to, that juristic person;
- ii) retain the photocopies obtained in terms of subparagraph (i)(c) and (d); and
- iii) verify the -
 - (a) photo, full names and identify number, whichever is applicable, of that person with reference to his or her identification document; and
 - (b) name and registration number of that juristic person with reference to its business letterhead or another similar document; or

6.15.2 if that person is a natural person –

- i) obtain from him or her –
 - (a) his or her full names, identity number, residential and business or postal address, whichever is applicable; and
 - (b) a certified photocopy of his or her identification document on which his or her photo, full names and identity number, whichever is applicable, appear;
- ii) retain the photocopy obtained in terms of subparagraph (i)(b) and
- iii) verify the photo, full names and identity number, whichever is applicable, of that person with reference to his or her identification document.

- 6.16 Subject to confirmation from the PARTNER that it has obtained the customer details as set out in this clause, the PARTNER shall be entitled to activate the Services supplied by it to its customers in accordance with the provisions of this Agreement.

- 6.17 Where BVS Telecom provides the PARTNER with access to its telecommunication infrastructure and/or to any systems attached or connected to such infrastructure in order to facilitate the connection or disconnection of the Services, the PARTNER shall at all times comply with such reasonable procedures and directions as BVS Telecom may set out or specify in writing from time to time. Where the PARTNER is granted access to BVS Telecom' telecommunication infrastructure or to any other system of BVS Telecom, the PARTNER shall ensure that it adheres to all of BVS Telecom' security requirements and procedures when effecting and maintaining such connections.

7 Expressly Prohibited Acts and Omissions by The PARTNER

- 7.1 Notwithstanding any other provisions in this Agreement, the PARTNER agrees and understands that the following acts or omissions will result in BVS Telecom suffering considerable damage to its good name and reputation, as well as considerable financial loss. The PARTNER undertakes not to engage in any of the prohibited acts or omissions as set out in this Clause below, failing which BVS Telecom will be entitled to immediately terminate this Agreement without further warning or notice and claim related damages from the PARTNER.

7.2 The PARTNER shall not commit nor attempt to commit any act or omission which directly or indirectly:

7.2.1 damages in any way BVS Telecom' technical infrastructure or any part thereof;

7.2.2 impairs or precludes BVS Telecom from being able to provide the Service/s in a reasonable and business-like manner;

7.2.3 constitutes an abuse or malicious misuse of the Service/s; or is calculated to have the abovementioned effect.

In such an event, should BVS Telecom incur expenses to remedy the situation, BVS Telecom reserves the right to charge the PARTNER the actual amount necessary to cover BVS Telecom' reasonable additional expenditure. Notwithstanding the above, BVS Telecom reserves the right to take any other appropriate action it may deem necessary to remedy the situation. In particular, PARTNER undertakes to familiarize itself and ensure that it is kept continuously apprised of all South African law in force from time to time which has any bearing on the Service and/or its use. PARTNER acknowledges that BVS Telecom has no obligation to assist PARTNER in this regard.

7.4 The PARTNER will not give any unauthorised warranties.

7.5 The PARTNER will not be entitled during the continuance of this Agreement, or for 24 (twenty-four) months subsequent to the termination of this Agreement to entice, solicit or offer employment, partnership, membership, shareholding, or conduct business dealings with any person having been employed by BVS Telecom during the preceding 24 (twenty-four) month period.

8 BVS Telecom's Obligations

8.1 BVS Telecom will act in good faith towards the PARTNER.

8.2 BVS Telecom will at its own expense supply the PARTNER with samples, documents, instruction books and technical pamphlets, as applicable, to enable the PARTNER to supply the Services.

- 8.3 BVS Telecom will make payment of any amounts due by it to the PARTNER promptly and in accordance with this Agreement.
- 8.4 BVS Telecom will provide training to the PARTNER and its nominated employees.
- 8.5 BVS Telecom will keep full and proper books of accounts and records clearly showing all transactions relating to this Agreement, and allow the PARTNER inspection thereof upon reasonable written notice.

9 Delivery of Services

- 9.1 All orders for the Services must be in terms of an Order Form signed by a duly authorised representative of the PARTNER.
- 9.2 PARTNER shall further comply with any requirements set out by BVS Telecom for the procurement of Services, including but not limited to the prescribed requirements for application for third party ECNS provider infrastructure lines.
- 9.3 The provision of Services by BVS Telecom shall be in accordance with BVS Telecom standard terms and conditions, as they may be updated from time to time, which shall be attached to an Order Form.
- 9.4 BVS Telecom may provide technical support through its help desk to PARTNER at the applicable prevailing rates, but has no obligation whatsoever to support PARTNER's customers.

10 Operations Manual

- 10.1 BVS Telecom will provide operation manuals were applicable for the specific services rendered.

11 Warranties

- 11.1 Save as expressly set out in this Agreement, BVS Telecom does not make any representations nor gives 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.
- 11.2 Without limitation to the generality of 11.1 above, BVS Telecom does not warrant or guarantee that any information transmitted by or available to PARTNER or its customers by way of the Service/s:
- 11.2.1 will be preserved or sustained in its entirety;
 - 11.2.2 will be delivered to any or all of the intended recipients;
 - 11.2.3 will be suitable for any purpose;
 - 11.2.4 will be free of inaccuracies or defects or bugs or viruses of any kind; or
 - 11.2.5 will be secured against intrusion by unauthorised third parties;

and BVS Telecom assumes no liability, responsibility or obligations in regard to any of the exclusions set forth in this clause 11.

12 Exclusion of Liability

- 12.1 Except as otherwise expressly provided herein to the contrary, BVS Telecom shall not be liable to PARTNER or its customers 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 BVS Telecom or against PARTNER 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.
- 12.2 Subject to clause 12.1 above, the entire liability of BVS Telecom and PARTNER's exclusive remedy for damages from any cause related to or arising out of this Agreement, regardless of the form of action, whether in contract or in delict, will not exceed the aggregate of the fees and charges paid by PARTNER under this Agreement for the period of 12 (twelve) months preceding PARTNER's written notice to BVS Telecom in respect of such claim.
- 12.3 PARTNER hereby indemnifies BVS Telecom against and holds BVS Telecom harmless from any claim by any third party (including but not limited to PARTNER's customers) 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 BVS Telecom is excluded in terms of clause 9.4 above.
- 12.4 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 BVS Telecom 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 9.4 above shall apply mutatis mutandis to such exclusion.
- 12.5 Where the Service/s provided include Hosting Services, then, notwithstanding anything to the contrary contained in this Agreement, BVS Telecom reserves the right in its absolute discretion and after the receipt by BVS Telecom 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 the PARTNER or PARTNER's customer's web site contains information that infringes against any third party's rights in terms of the Constitution of the Republic of South Africa, the Electronic Communications and Transactions Act, any other legislative enactment or regulation in force from time to time, or is defamatory in nature, to immediately give written notice to the PARTNER of BVS Telecom' intention to remove the offending information or any portion thereof from the PARTNER or PARTNER's customer's web site. Should such offending information not be removed from the web site by the PARTNER or the PARTNER's customer within 24 hours of written notice to that effect, BVS Telecom shall be entitled to immediately remove the offending information or any portion thereof from the PARTNER or PARTNER's customer's web site, or where it is not possible to remove such content, to terminate the Hosting Services of such PARTNER. Any removal or termination by BVS Telecom shall in no way constitute a breach by BVS Telecom of this Agreement.

13 Joint Prospective Customers

- 13.1 The parties agree that during the subsistence of this Agreement, should it be necessary for both of them to deal with a customer jointly, then they shall negotiate the manner in which that customer shall be serviced, which negotiations shall be reduced to writing and which shall form the subject matter of a separate agreement between the parties.
- 13.2 PARTNER undertakes not to contact any existing BVS Telecom customer without prior written approval from BVS Telecom. PARTNER shall supply BVS Telecom on a monthly basis with a list of prospective customers for the month in arrears and in the event that any customer on such list is a pre-existing BVS Telecom customer BVS Telecom shall inform PARTNER thereof within 7 days of receipt of such list, and PARTNER shall cease all dealings with such customer. Upon notice that PARTNER has approached an BVS Telecom customer, PARTNER shall allow BVS Telecom to continue on its own behalf with any negotiations commenced by PARTNER, unless the customer has requested otherwise. This clause shall survive the termination of this Agreement for a period of 3 (three) years.
- 13.3 BVS Telecom undertakes not to contact any existing customer of the PARTNER, without prior written approval from the PARTNER. This clause will be conditional upon the PARTNER furnishing BVS Telecom with complete and regular updates to the details of the PARTNER's customers.

14 Documentation

Any specifications, descriptive matter, drawings, and other documents, which may be furnished by BVS Telecom to PARTNER from time to time:

- 14.1 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;
- 14.2 shall remain the property of BVS Telecom and shall be deemed to have been imparted by it in trust to PARTNER for the sole use of PARTNER. All copyright in such documents vests in BVS Telecom. Such documents shall be returned to BVS Telecom on demand.

15 Migration of Services

- 15.1 PARTNER shall in the event of the termination of this Agreement by either party for any reason whatsoever, provide BVS Telecom with any reasonable assistance which may be required in order to ensure that the Services provided by PARTNER in terms of this Agreement are transferred either to a third party which BVS Telecom may appoint in substitution of the PARTNER, or to BVS Telecom, without undue inconvenience to BVS Telecom or the PARTNER's previous customers.
- 15.2 BVS Telecom and/or its servants, agents, and employees shall where necessary be entitled to reasonable access to all information and/or resources utilised by PARTNER in the provision of the Services, insofar as same is necessary to:
- 15.2.1 give effect to the provisions of sub-clause 12.1 above, and
- 15.2.2 ensure continuity in the provision of the Services in terms of this Agreement, as well as the accurate and efficient transfer of the Services to BVS Telecom or such third party as BVS Telecom may appoint in substitution of PARTNER.

16 Breach

- 16.1 Subject to the provisions of clause 13.2 to the contrary, if the PARTNER:
- 16.1.1 breaches any of the terms or conditions of this Agreement and fails to remedy such breach or pay such amount, as the case may be, within 7 (seven) days after the receipt of written notice from BVS Telecom;
- 16.1.2 sells services to its customers in contravention of Clause 3.2 above;
- 16.1.3 commits any act of insolvency in accordance with the provisions of the Insolvency Act 1936 as amended;
- 16.1.4 endeavours to compromise generally with its creditors or does or causes anything to be done which may prejudice BVS Telecom's rights hereunder or at all;
- 16.1.5 allows any judgement against it to remain unsettled for more than 10 (ten) days without taking immediate steps to have it rescinded and successfully prosecuting the application for rescission to its final end; or
- 16.1.6 is placed in liquidation or under judicial management (in either case, whether provisionally or finally) or, being an individual, his estate is sequestrated or voluntarily surrendered
- BVS Telecom shall have the right, without prejudice to any other right which it may have against the PARTNER, to:
- a) suspend or terminate the Services;
- b) treat as immediately due and payable all outstanding amounts which would otherwise become due and payable over the unexpired period of the Agreement, and to claim such amounts as well as any other amounts in arrears including interest and to cease
- c) performance of its obligations hereunder as well as under any other contract with the PARTNER until PARTNER has remedied the breach; and/or
- d) cancel this Agreement;
- in any event without prejudice to BVS Telecom's right to claim damages.
- 16.2 In the event of termination of this Agreement arising from a breach on the part of the PARTNER, then, without prejudice to any of the other rights which BVS Telecom may have and which are recorded in 16.1 above, BVS Telecom shall acquire an

option to continue to render the Services to the PARTNER's Customers in the future, and for this purpose to contract with the PARTNER's Customers directly. In the event of this option being exercised, the PARTNER undertakes to facilitate the cession of its customers to BVS Telecom as far as reasonably possible, including, but not being limited to, furnishing BVS Telecom with the names and contact details of its customer database, and furnishing BVS Telecom with copies of all agreements concluded with its customers up until the date of the breach.

- 16.3 PARTNER shall be liable for all costs incurred by BVS Telecom in the recovery of any amounts or the enforcement of any rights which it has hereunder, including collection charges and costs on an attorney and own client scale whether incurred prior to or during the institution of legal proceedings or if judgement has been granted, in connection with the satisfaction or enforcement of such judgement.
- 16.4 Subject to what is set out in Clause 16.1.1 above, BVS Telecom shall be entitled to suspend the provision of the Services where PARTNER breaches any provision of this Agreement or where any payment to BVS Telecom is overdue by more than 30 (thirty) days.

17 Intellectual Property

- 17.1 Notwithstanding anything set out in Clause 18 below, all intellectual property (including, without limitation, copyright, trademarks, designs and patents) relating to or used in connection with the Service/s provided under this Agreement shall belong to BVS Telecom. PARTNER 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 BVS Telecom, or any of its third-party suppliers.
- 17.2 PARTNER warrants that it shall not use or sell 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. PARTNER furthermore warrants that it has received all necessary permissions to make use of any intellectual property relating to third parties.

18 Protection of Proprietary Information

- 18.1 Each party will keep in confidence and protect Proprietary Information from disclosure to third parties and restrict its use to that which is provided for in this Agreement. Either party acknowledges that unauthorised disclosure or use of Proprietary Information may cause substantial economic loss.
- 18.2 All printed materials, containing Proprietary Information will be marked with "Proprietary" or "Confidential", or in a manner which gives notice of its proprietary nature. Proprietary Information shall not be copied, in whole or in part, except when essential for correcting, generating or modifying Proprietary Information for either party's authorized use. Each such copy, including its storage media, will be marked with all notices, which appear on the original.
- 18.3 Each party shall ensure that its employees comply with its obligations under this section 18.
- 18.4 This section 18 shall survive termination or cancellation of this Agreement.
- 18.5 This Agreement does not transfer to either party title to any intellectual property contained in any Proprietary Information of the other party.

19 Cession

PARTNER 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 BVS Telecom.

20 Force Majeure

- 20.1 BVS Telecom shall not be liable for non-performance under this Agreement to the extent to which the non-performance is caused by events or conditions beyond the control of BVS Telecom, provided that BVS Telecom makes all reasonable efforts to perform.
- 20.2 It is expressly recorded that for purposes of this clause the following shall be considered circumstances beyond the control of BVS Telecom and the force majeure provisions shall apply: -
- 20.2.1 a third party ECNS provider fault that affects the Service/s; and/or
- 20.2.2 the non-performance, inability to perform or delay in performance by the third party ECNS provider relating to the provisioning of equipment, services and/or facilities to BVS Telecom that affects the Service/s; and/or
- 20.2.3 acts or omissions of any government, government agency, provincial or local authority or similar authority, any laws or regulations having the force of law, civil strike, riots, insurrection, sabotage, acts or war or public enemy, illegal strikes, interruption of transport, lockouts, flood, storm or fire.

21 Governing Law and Jurisdiction

This Agreement will be governed by and construed in accordance with the laws of the Republic of South Africa and all disputes, actions and other matters relating thereto will be determined in accordance with South African law by a South African court having jurisdiction.

22 Disclosure of Personal Information

- 22.1 The PARTNER acknowledges that the personal information supplied by the PARTNER in the application form hereto may be used by BVS Telecom for the purposes of assessing the PARTNER's credit worthiness.
- 22.2 The PARTNER consents to BVS Telecom being entitled at all times to contact and request information from any persons, credit bureau or businesses to obtain any information relevant to the PARTNER's credit assessment, including but not

limited to, information regarding the amounts purchased from PARTNER's suppliers per month, length of time PARTNER has dealt with such supplier, type of goods or services purchased and manner and time of payment.

23 Suretyship

The signatory to this Agreement, as the authorized representative of the PARTNER, hereby binds himself/herself to BVS Telecom as personal surety and as co-principle debtor in solidum with the PARTNER for the due, punctual and proper fulfilment and performance by PARTNER of all its obligations in terms of this Agreement. The aforementioned signatory hereby renounces all benefits arising from the legal exceptions of non numeratae pecuniae, non-causa debiti, errore calculi and beneficio excussionis et divisionis, with the force and effect of which he/she hereby declares himself/herself to be fully acquainted

24 Domicilium Citandi Et Executandi

24.1 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, PARTNER 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. BVS Telecom chooses its domicilium citandi et executandi ("domicilium") at 484 Bradfield Drive, Fourways, Longpoint Office Park, South Africa. 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.

24.2 BVS Telecom will be entitled to distribute operational information, including (without being limited to) the Operations Manual, and amendments to financial and administrative arrangements to the PARTNER via electronic mail.

25 General

25.1 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 BVS Telecom and PARTNER.

25.2 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.

25.3 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 PARTNER and BVS Telecom or not.

25.4 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.

25.5 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.

25.6 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.

25.7 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 Clauses 17 and 18 above.

25.8 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 Price List shall prevail.

25.9 These terms and conditions, together with the Schedule(s), Annexures and attachments hereto, constitute the whole of the agreement between BVS Telecom and PARTNER relating to the subject matter hereof, notwithstanding anything in PARTNER's inquiry, specification, acceptance, order or other documentation or discussion to the contrary.