



**TERMS AND CONDITIONS FOR THE SALE OF EQUIPMENT  
in the "Territory"**

of

**Business Connexion (Proprietary) Limited**

(Registration Number 1993/003683/07)

(**"Business Connexion"**)

**1 DEFINITIONS**

In this Agreement, unless clearly inconsistent with or otherwise indicated by the context:

- 1.1 "Acceptance Certificate" means the certificate, in terms of which the Client certifies that Equipment and Supplied Software have been delivered, Installed/ Implemented and finally accepted by the Client. Business Connexion will require an Acceptance Certificate only in cases where it Installs/ Implements the Equipment;
- 1.2 "Acceptance Date" means the date on which Installation/ Implementation is completed, as reflected on the Acceptance Certificate, or as determined in terms of clause 4.6;
- 1.3 "Ancillary Services" means the buy-in services, ancillary to the sale of the Equipment, that Business Connexion may render to the Client in terms of this agreement;
- 1.4 "the/ this Agreement" means the agreement that arises upon Client's acceptance of Business Connexion's Quotation, which Agreement is constituted by the terms of the Quotation, read together with these terms and conditions;
- 1.5 "Business Connexion Group" means Business Connexion Group Limited, Registration Number 1988/005282/06, and its subsidiaries from time to time (as such terms are defined in the Companies Act, 2008);
- 1.6 "Business Day" means any day other than a Saturday, Sunday or any public holiday within the Republic of South Africa recognised as such under the Public Holiday Act, 1994 (Act no 36 of 1994);
- 1.7 "Client" means the Party who is accepted by Business Connexion after completion of all prescribed application forms and who purchases the Equipment from Business Connexion;
- 1.8 "Delivery" means the offloading of the Equipment and Supplied Software at the nearest access point to the Premises;
- 1.9 "Documentation" means all drawings, designs, specifications, reports and testing procedures, instruction manuals and all other documentation (excluding end user documentation) relating to the Equipment and the Supplied Software;
- 1.10 "Equipment" means the hardware sold to the Client, as specified in the Quotation;
- 1.11 "Implementation" or "Implement" means the configuration and integration, defined in the Scope of Work of the Equipment after it has been Installed.
- 1.12 "Implementation Fee" means the Implementation fee set out in the Quotation, as adjusted by Business Connexion in terms of clause 4.10
- 1.13 "Installation" or "Install" means the unpacking and assembly of the Equipment and the conducting of a power-on test thereof;
- 1.14 "Installation Fee" means the installation fee set out in the Quotation, as adjusted by Business Connexion in terms of clause 4.10.

- 1.15 "Intellectual Property" means all copyright, rights in business names, trademarks, trade names, service marks, patents, designs and/or inventions as well as all rights to source codes, trade secrets, confidential information, know-how and all other rights of a similar character (regardless of whether such rights are registered and/ or capable of registration) and all applications and rights to apply for protection of any of the same;
- 1.16 "Parties" means Business Connexion and the Client, collectively;
- 1.17 "Party" means either one of the Parties as the context may indicate;
- 1.18 "Premises" means the premises to which the Equipment is to be delivered, as specified in the Quotation;
- 1.19 "Prime Rate" means the publicly quoted overdraft interest rate (expressed as a % per annum, compounded monthly) at which ABSA Bank Limited lends funds.
- 1.20 "Products" means, collectively, the Equipment, Supplied Software, Documentation and Ancillary Services (including, if applicable, Installation or Implementation), or any combination thereof that Business Connexion sells/ provides to the Client in terms of this Agreement;
- 1.21 "Purchase Price" means the purchase price of the Products (which shall include, if applicable, the Installation Fee, the Implementation Fee, fees for any other Ancillary Services and the licence charge for the Supplied Software), as set out in the Quotation and amended in accordance with clause 9.7;
- 1.22 "Quotation" means a written quotation that Business Connexion has submitted to the Client for the provision of the Products. If the Quotation is accompanied by a proposal or a Scope of Work, then "Quotation" shall mean the Quotation and such proposal or Scope of Work, collectively;
- 1.23 "Sale Date" means the date of the Client's written, signed acceptance of the Quotation;
- 1.24 "Scope of Work" means the document that describes the nature of the work related to the Products if applicable, and that is attached to a Quotation;
- 1.25 "Signed" or "signature" means a handwritten signature, excluding any signature appended by electronic communication. "Electronic communication" has the meaning assigned to it in the Electronic Communications and Transactions Act, no. 25 of 2002;
- 1.26 "Software Media" means the media on which Supplied Software may be supplied to the Client;
- 1.27 "Specifications" means a Supplier's officially published specifications in respect of the Equipment and the Supplied Software;
- 1.28 "Supplied Software" means the configuration and/ or operating software that may be supplied with the Equipment;
- 1.29 "Supplier" means the manufacturer or supplier of the Equipment and the vendor of the Supplied Software;
- 1.30 "Supplier Warranty" means the warranty that the Supplier gives in respect of the Equipment and the Supplied Software;
- 1.31 "Territory" means the geographical area confined to the borders of the Republic of South Africa.
- 1.32 "VAT" means value added tax in terms of the Value Added Tax Act, 1991 or any similar tax on the supply or sale of goods and/ or services;
- 1.33 "Warranty Period" means the period for which a Supplier warrants its Equipment or Supplied Software; and
- 1.34 "writing" or "written" includes any handwritten, typewritten or facsimile communications but excludes any communication by way of a data message, unless use of a data message has been expressly authorised herein. The term "data message" has the meaning as defined in the Electronic Communications and Transactions Act, 25 of 2002.

## **2 SALE OF EQUIPMENT**

- 2.1 On the Sale Date Business Connexion sells to the Client and the Client purchases from Business Connexion the Products on these terms and conditions.
- 2.2 Terms and conditions contained on any order that the Client places on Business Connexion shall, notwithstanding that Business Connexion accepts such order, be of no force or effect, and such terms and conditions are replaced/ superseded by these terms and conditions.
- 2.3 The Client is solely responsible for selecting and determining the fitness of the Equipment, the Supplied Software and Ancillary Services for its needs. Business Connexion gives no warranties to the Client in this regard.
- 2.4 In addition, the Client assumes full responsibility for the overall suitability of the operating environment in which the Equipment is to function, and the absence of such environment does not constitute a valid reason for none acceptance of delivery as contemplated in clause 4.

## **3 SUPPLIED SOFTWARE**

- 3.1 Some Equipment will, depending on the nature of the Equipment, be supplied with Supplied Software. The Quotation will indicate if Supplied Software is supplied with the Equipment. If so, the Quotation will indicate if the Supplied Software:
  - 3.1.1 has been pre-loaded on the Equipment prior to delivery thereof to the Client; or
  - 3.1.2 if, Business Connexion will load the Supplied Software on the Equipment as part of Installation.
- 3.2 The Client shall conclude a licence directly with the owner of the Supplied Software for the use thereof. Business Connexion shall not be liable for any delay in Installation that arises from the Client's failure to do so.
- 3.3 If the Client requires Business Connexion to load any Supplied Software on the Equipment, the Client irrevocably appoints Business Connexion as its agent to accept any software licence in respect thereof before loading it.

## **4 DELIVERY, INSTALLATION, IMPLEMENTATION AND ACCEPTANCE**

### **Delivery**

- 4.1 Business Connexion shall at its sole discretion be entitled to split the delivery or performance of the Equipment and Supplied Software and Ancillary Services and shall deliver the Equipment and the Documentation (and, if applicable, the Software Media) to the Client at the Premises. Delivery shall be deemed to have been duly affected when the Client signs Business Connexion's delivery note.
- 4.2 If the Client fails to sign the delivery note within 2 (two) Business Days after the date on which the Equipment, and the Documentation were delivered to the Client, the Client shall, unless it has informed Business Connexion of any defect in the Equipment, the Documentation, the Supplied Software (or, if applicable, the Software Media) in writing before close of business on such second Business Day, be deemed to have signed the delivery note on the third day after the date of such delivery.

### **Installation and Implementation**

- 4.3 If Business Connexion must Install or Implement the Equipment, its obligations shall extend only to the Installation or Implementation thereof. The Client shall, on or before the Sale Date, at its own expense:
  - 4.3.1 make available a suitable place of Installation/ Implementation in accordance with the Specifications to enable Business Connexion to Install/ Implement the Equipment;
  - 4.3.2 provide the required suitable electric current to operate the Equipment.
- 4.4 Business Connexion shall notify the Client when the Installation/ Implementation has been completed by providing the Client with an Acceptance Certificate.

- 4.5 The Client shall sign the Acceptance Certificate and return it to Business Connexion within 2 (two) Business Days from the date on which Business Connexion submitted the Acceptance Certificate to the Client.
- 4.6 If the Client fails to sign and return the Acceptance Certificate to Business Connexion within 2 (two) Business Days, the Client shall, unless it has informed Business Connexion of any defect in the Equipment, the Documentation or the Supplied Software in writing before close of business on such second Business Day, be deemed to have done so on the day immediately following such second Business Day.
- 4.7 An Acceptance Certificate shall, save for manifest error, be prima facie proof of the delivery and Installation/ Implementation of the Equipment and the Supplied Software, final acceptance of the Equipment, the Documentation and the Supplied Software by the Client on the Acceptance Date and all other facts stated therein.
- 4.8 The Client shall at all reasonable times provide Business Connexion with full and free access to the Equipment, the Documentation and, if applicable, the Software Media, to enable Business Connexion to carry out its obligations under this Agreement.
- 4.9 The Client shall accept delivery and allow Installation/ Implementation of the Equipment and the Documentation when tendered by Business Connexion. However, as Business Connexion is dependent on the Suppliers for delivery of the Equipment and Documentation, Business Connexion cannot guarantee delivery and Installation/ Implementation dates.
- 4.10 Business Connexion may adjust the Installation Fee/ Implementation Fee if:
  - 4.10.1 the Scope of Work required for the Installation/ Implementation differs from the Scope of Work anticipated by Business Connexion in the Quotation; or
  - 4.10.2 the Installation/ Implementation takes longer or must be conducted outside of a period of 9 (nine) consecutive hours between 08h00 and 17h00 on a Business Day; or
  - 4.10.3 the Premises are outside a 100 km radius of one of Business Connexion's service centres.

## **5 ANCILLARY SERVICES**

Business Connexion shall render the Ancillary Services as defined in the applicable Quotation.

## **6 RESPONSIBILITIES OF THE CLIENT**

- 6.1 Until ownership passes to the Client in accordance with clause 7 or the end of the relevant Warranty Period, whichever is the later, the Client shall use the Equipment and the Supplied Software in accordance with the Specifications and not use the Equipment for any purpose other than that for which it is intended, designed and/ or reasonably suitable, and shall, at its own expense:
  - 6.1.1 Ensure that the Premises are ready and available to accept Delivery of the Equipment, Supplied Software and Ancillary Services, in accordance with paragraph 4;
  - 6.1.2 Prepare and maintain the environment in which the Equipment is located in accordance with the Specifications;
  - 6.1.3 Keep the Equipment in good working order and condition in accordance with the Specifications and make all necessary repairs and replacements in this regard (subject to the provisions of clause 6.1.6.2);
  - 6.1.4 Immediately notify Business Connexion in writing of any fault or malfunction in, damage to or loss of the Equipment arising from any cause whatsoever. Such notice shall set out the relevant details relating to fault, malfunction, damage or loss as well as the apparent cause thereof;
  - 6.1.5 Ensure that only authorised employees, contractors and/ or agents of the Client have access to and/ or make use of the Equipment, and that all such persons are properly managed and supervised;
  - 6.1.6 not, without the prior written consent of Business Connexion:

- 6.1.6.1 move the Equipment; or
- 6.1.6.2 make any alterations or add any attachments to the Equipment.
- 6.2 If the Premises are rented then, until ownership of the Equipment passes to the Client in accordance with clause 7 the Client shall:
  - 6.2.1 advise Business Connexion in writing of the name and address of the landlord as well as any changes thereto; and
  - 6.2.2 provide Business Connexion with written confirmation from the landlord that it is aware that the Equipment belongs to Business Connexion until ownership thereof passes to the Client and that the Equipment can therefore not, until such time, be subject to its lien or hypothec. Business Connexion may notify the landlord of this fact should the Client fail to do so.

## **7 OWNERSHIP**

- 7.1 The Products, shall remain the property of Business Connexion until receipt by Business Connexion of the full Purchase Price, inclusive of any price variations, exchange rate adjustments and applicable taxes and duties.
- 7.2 The Client warrants that, until ownership passes to it in terms of this Agreement, it shall keep the Products free and clear of all liens and encumbrances and shall not sell, transfer, sub-lease, charge, assign by way of security or otherwise deal in or encumber the Equipment and the Documentation and shall exercise the utmost good faith in its care of the Equipment and the Documentation.
- 7.3 If this Agreement is cancelled or terminated prior to the date of payment of the Purchase Price in full, the Client shall, at its own expense, return the Equipment (in the original packaging), the Documentation and any Software Media to Business Connexion, within 7 (seven) calendar days from such cancellation or termination, failing which Business Connexion may take possession of the Equipment, the Documentation and any Software Media, *mutatis mutandis* on the basis set out in clause 15.5.

## **8 RISK OF LOSS**

- 8.1 All risks of damage or loss to or destruction of the Equipment, the Documentation and any Software Media shall pass to the Client upon delivery, as contemplated in clause 4, thereof to the Client.
- 8.2 Until ownership of the Equipment passes to the Client in terms of clause 7, the Client shall at its expense:
  - 8.2.1 keep the Equipment insured, by carrying fire and extended coverage insurance for the full replacement value of the Equipment;
  - 8.2.2 ensure that its public liability insurance shall name Business Connexion as additional insured party; and
  - 8.2.3 furnish Business Connexion with a copy of each such insurance policy upon Business Connexion's request.
- 8.3 If the Client fails to pay any premiums or other payments in respect of any insurance policy in terms of this clause, Business Connexion may make such payments on the Client's behalf, and the Client shall reimburse Business Connexion on demand for any costs so incurred by Business Connexion.

## **9 PURCHASE PRICE AND PAYMENT TERMS**

- 9.1 The components of the Purchase Price that constitute the sale price of the Equipment, the licence charge/ s for the Supplied Software shall become due and payable on delivery of the Equipment to the Client or its agent.
- 9.2 The component of the Purchase Price that constitutes the fees for Installation/ Implementation, Ancillary Services and all other applicable charges shall become due and payable on the Acceptance Date.

- 9.3 The Client shall, subject to clauses 9.4, 9.5 and 9.7, pay to Business Connexion the amounts invoiced pursuant to clauses 9.1 and 9.2 within 30 (thirty) calendar days of date of Business Connexion's invoice, by direct transfer into the bank account advised by Business Connexion in writing from time to time.
- 9.4 The Purchase Price has been calculated on the basis that the Premises are within the Territory and Business Connexion may increase the Purchase Price with any additional cost occasioned by delivery outside of the Territory, if the Client so requires.
- 9.5 If a Supplier changes its prices of the Equipment prior to the expiry date of the Quotation, Business Connexion shall be entitled to submit an amended Quotation to the Client, based on such amended Supplier pricing. The submission of the aforementioned amended Quotation shall replace the original Quotation in its entirety and shall be submitted to the Client for consideration and acceptance.
- 9.6 The Client shall in addition to the Purchase Price be liable for VAT, all other taxes, rates, or governmental levies imposed in respect of the sale of the Equipment.
- 9.7 The price as contained in the quotation shall become the Purchase Price unless:
- 9.7.1 the Client instructs Business Connexion, in writing, to purchase a forward exchange contract and the difference between the quotation rate of exchange and the forward cover contract rate of exchange will be used to calculate the Purchase Price. Such written instruction shall be given at the same time as the Client places an order with Business Connexion, or 9.7.2 the Client instructs Business Connexion in writing not to purchase a forward exchange contract in which event the Client shall bear the risk of exchange rate fluctuations in the purchase price, which Business Connexion shall recalculate on the date it pays its Supplier. Any such variance will result in a credit note or an additional invoice being processed. Such written instruction shall be given at the same time as the Client places an order with Business Connexion, or
- 9.7.2 Business Connexion provides an amended quotation within 7 (seven) Business days of date of receipt of the Clients purchase order.
- 9.8 All payments in terms hereof shall be made in cash, in South African Rand, free of conditions, set-off, bank exchange, commission or any other deduction and neither Party may defer, adjust or withhold any payment lawfully due to the other.
- 9.9 The amounts to be paid in terms of this Agreement do not include taxes, sales, excise, gross receipts and withholding taxes, universal service fund fee and any similar tax or any government imposed fees or surcharges which may be applicable thereto and the Client agrees to pay all such applicable taxes or fees, which will be invoiced to the Client in accordance with the law where the Client is domiciled. The Client agrees to pay or reimburse Business Connexion for all such taxes, excluding tax on Business Connexion's income. In respect of withholding tax, the Client will pay such additional amounts as may be necessary, such that Business Connexion receives the amount it would have received had no withholding been imposed, except if the Client provides Business Connexion with a valid withholding tax certificate within 30 (thirty) days of date of payment of the charges or fees paid to Business Connexion under this Agreement.

## 10 WARRANTIES

- 10.1 The Suppliers provide Supplier Warranties in respect of the Equipment. Business Connexion shall furnish copies of the applicable warranties to the Client on delivery of the Equipment, alternatively, shall indicate to the Client where it may access the Supplier Warranties on the Suppliers' websites.
- 10.2 Business Connexion does not provide any warranties on the Equipment, but will, if required, assist the Client to exercise a Supplier Warranty in the following manner:
- 10.2.1 if any Equipment becomes defective, the Client may, with prior arrangement, deliver the defective Equipment to Business Connexion's offices or request Business Connexion to investigate the defect;
- 10.2.2 if the Client requests Business Connexion to investigate the defect:

- 10.2.2.1 Business Connexion shall despatch a technician to do so. Business Connexion shall endeavour to have the technician attend to the matter as soon as reasonably possible, but there shall be no service level associated with such attendance ("Best Effort Basis");
- 10.2.2.2 the Client shall pay Business Connexion for the technician's services on a time and material basis, accordance with Business Connexion's then applicable time and material rates;
- 10.2.2.3 the technician shall carry out highlevel diagnostics to determine whether the defect relates to the Equipment itself or to issues ancillary to the Equipment;
- 10.2.2.4 if the defect relates to issues ancillary to the Equipment, the technician shall, if the Client consents, remedy the defect on a Best Effort Basis;
- 10.2.2.5 if the technician determines that the defect relates to the Equipment itself, the technician shall remove the Equipment and deliver it to Business Connexion's offices;
- 10.2.3 when Business Connexion receives the defective Equipment (whether it is delivered by the Client or by Business Connexion's technician), Business Connexion shall determine if the Equipment is still subject to the Supplier Warranty. If not, Business Connexion shall inform the Client accordingly and obtain its instructions whether to have the Equipment repaired at the Client's cost, alternatively, to return it to the Client, at the Client's cost.
- 10.2.4 if the Equipment is still subject to the Supplier Warranty, Business Connexion shall apply to the Supplier for a return material authorization and return the Equipment to the Supplier for repair. Business Connexion does not make any representation regarding the period of time that the Supplier will take to repair the Equipment;
- 10.2.5 when Business Connexion receives the repaired Equipment from the Supplier it shall notify the Client accordingly. The Client may elect to collect the Equipment from Business Connexion or to request Business Connexion to deliver and Install it at the Client's premises. If the Client elects the latter course, it shall pay Business Connexion at Business Connexion's then current time and material rates for the delivery and Installation of the repaired Equipment.
- 10.3 The Client shall bear the risk of loss or damage to the defective Equipment while in Business Connexion's possession, except if the loss or damage is attributable to Business Connexion's negligence or wilful conduct.
- 10.4 Any Equipment or parts thereof replaced by Business Connexion or the Supplier shall upon replacement become the property of Business Connexion or the Supplier, as the case may be. The Client warrants that Business Connexion's or the Supplier's right to such replaced Equipment shall be free and unencumbered.
- 10.5 If the Supplier determines that the defect in the Equipment is not covered by the Supplier Warranty (for example if the defect were caused by abuse of the Equipment) it will repair the Equipment at the Client's cost and the Client undertakes to pay such repair cost to Business Connexion in accordance with the payment provisions of this Agreement.
- 10.6 The Client acknowledges that the terms of clauses 10.2 to 10.4 apply to Equipment that is not subject to a maintenance agreement between Business Connexion and the Client. If the Client enters into a maintenance agreement for any of the Equipment then, to the extent that there is any conflict between the terms of this Agreement and such maintenance agreement relating to the Supplier Warranties, the terms of such maintenance agreement shall prevail.
- 10.7 The Client acknowledges that the remedies referred to in this clause are the Client's only remedies in respect of any warranty claim.
- 10.8 Business Connexion does not expressly or impliedly give any warranty or guarantee in respect of any third party software, including warranties or guarantees as to functionality, fitness for a particular purpose, uninterrupted use, merchantability or absence of any error of code or media and any warranties imposed by law are similarly excluded. Business Connexion accepts no liability of any nature arising out of or caused by any defect or failure in/ of such software.

## 11 INTELLECTUAL PROPERTY

All rights, title and interest in and to all intellectual property relating to any equipment and/or software that form the subject matter of this Agreement shall remain the sole property of Business Connexion, the Client, the vendors or suppliers, who own such equipment and/or software.

## 12 MAINTENANCE AND SUPPORT

- 12.1 This Agreement places no obligation on Business Connexion with regard to the maintenance or support of the Equipment.
- 12.2 If the Client requires Business Connexion to render such services it shall conclude a separate maintenance agreement with Business Connexion.
- 12.3 If the Quotation specifies any maintenance charges, such charges shall constitute only an estimate for the purposes of any separate maintenance agreement to be concluded between the Client and Business Connexion, and Business Connexion shall not be bound by such estimate.

## 13 RIGHT OF FIRST REFUSAL

The Client shall not offer to sell any Equipment purchased in terms of this Agreement to any third party unless it has first offered in writing to sell that Equipment to Business Connexion on the following terms:

- 13.1 the price and the terms and conditions of sale shall be the same or more favourable than those on which it intends to sell to the third party;
- 13.2 the offer shall be open for acceptance by Business Connexion for a period of 30 (thirty) calendar days after Business Connexion receives the Client's offer; 13.3 If Business Connexion does not accept the offer within the 30 (thirty) day period, it shall lapse.

## 14 CONFIDENTIALITY

- 14.1 Each Party undertakes to the other Party, for the continuance of this Agreement and for a period of 2 (two) years from the expiry or termination thereof, as the case may be:
  - 14.1.1 to keep confidential all information whether written (including information contained in electronic format) or oral concerning the business and affairs of the other Party that it obtains or receives from the other Party or any third party, as well as the terms and conditions of this Agreement (“the Information”);
  - 14.1.2 not without the other Party's prior written consent to disclose the Information in whole or in part to any person save its employees, agents, contractors and/ or consultants involved in the implementation of this Agreement, and who have a need to know the Information;
  - 14.1.3 to use the Information solely in connection with the implementation of this Agreement and not for its own benefit or that of any third party.
- 14.2 The provisions of clause 14.1 shall not apply to Information to the extent that such Information is:
  - 14.2.1 already known to the recipient without obligation of confidence;
  - 14.2.2 independently developed by the recipient;
  - 14.2.3 publicly available without breach of this Agreement;
  - 14.2.4 lawfully received from a third party;
  - 14.2.5 released for disclosure by the disclosing Party with its written consent; or
  - 14.2.6 required to be disclosed in response to a valid order of court or other governmental agency or if disclosure thereof is otherwise required by law.

- 14.3 If a Party is obliged to divulge Information in terms of clause 14.2.6 it shall, provided that circumstances permit the time to do so, forthwith and before releasing the Information, inform the other Party of the obligation.
- 14.4 Each Party undertakes to the other to make all its relevant employees, agents, contractors and consultants aware of the confidentiality of the Information and the provisions of this clause 14 and to take all such steps as shall from time to time be necessary to ensure compliance by its employees, agents, contractors and consultants with the provisions of this clause 14.
- 14.5 Upon the expiry or termination of this Agreement for any reason, each Party shall promptly return to the other Party all documents, diskettes, drawings and any other medium containing the Information of the other Party (as well as all copies, notes or reproductions thereof) and delete and remove the Information from its electronic data bases and deliver to the other Party a certificate from a director of the Party deleting the Information that it has done so.
- 14.6 Save for compliance by a Party with the requirements of the JSE Securities Exchange and the Securities Regulation Panel, no Party may publish any announcement of this transaction without the prior written consent of the other Party, which approval shall not be unreasonably withheld.
- 14.7 Notwithstanding clause 14.1, Business Connexion may disclose the fact that the Client is a client of Business Connexion, without implying the Client's endorsement. However, Business Connexion may not disclose any other details of or related to this Agreement without the prior consent of the Client, which consent will not be unreasonably withheld.
- 14.8 No provision of this Agreement shall be construed as consent from a disclosing Party to a receiving Party to disclose any Information in response to a request for the Information, served on the receiving Party in terms of the Promotion to Access to Information Act, No 2 of 2000. The receiving Party shall notify the disclosing Party immediately if it receives such a request, to enable the disclosing Party to object and, if necessary, to seek judicial protection of its interests.

## 15 BREACH

- 15.1 If either Party:
  - 15.1.1 commits any breach of this Agreement other than a breach of a payment obligation and fails to remedy the breach within 30 (thirty) calendar days after receipt from the other Party of written notice calling upon it to do so;
  - 15.1.2 commits a breach of any payment obligation in terms of this Agreement and fails to make payment within 7 (seven) calendar days after receipt from the other Party of written notice calling upon it to do so;
  - 15.1.3 commits an act of insolvency within the ambit of Section 8 of the Insolvency Act, No 24 of 1936, is deemed unable to pay its debts within the ambit of any relevant legislation, as the case may be, is deregistered or applies for deregistration in terms of the Companies Act 2008, alternatively Section 26 of the Close Corporations Act, as the case may be, or is subject to application by a person other than a Party for the provisional winding up or judicial management of such Party, or a special resolution is passed for the winding up of such Party; or
  - 15.1.4 has judgment taken against it and fails to satisfy or apply to have same set aside within 7 (seven) calendar days of becoming aware thereof;

then the other Party may, in addition to and without prejudice to any other right it may have in law or in terms of this Agreement:

(a) enforce specific performance of the terms of this Agreement; or (b) subject to clause 15.2, cancel this Agreement; and (c) in either event (subject to clause 16.4), recover such damages as it may have sustained

- 15.2 An aggrieved Party may cancel this Agreement in terms of clause 15.1 only if the breach is material and is not capable of being remedied by payment of money or, if it is capable of remedy by payment of money, if the other Party fails to make payment within 14 (fourteen) calendar days after final determination of the amount.
- 15.3 The Client may not institute a claim against Business Connexion arising from the terms of this Agreement or performance in terms thereof more than 1 (one) year of the purported cause of action arising.
- 15.4 Any amount due by any Party, which is not paid on its due date, shall attract interest at Prime Rate, plus 2 (two) percentage points.
- 15.5 In the event of a default by the Client in terms of clause 15.1, Business Connexion may, without prejudice to any other remedies it may have, to:
  - 15.5.1 require the Client to return to Business Connexion, at the Client's cost, any Equipment and/ or Documentation and/ or Software Media of which ownership has not yet passed to the Client, and/ or to:
  - 15.5.2 enter upon the Premises and/ or any other premises under the control of the Client where the Equipment and/ or Documentation (or any part thereof) and/ or Software Media is located and to take possession and remove such Equipment and/ or Documentation without having to approach a court for an order.

## 16 FORCE MAJEURE AND LIMITATION

- 16.1 Neither Party shall have any claim against the other Party ("the Affected Party") for any delay or failure of the Affected Party to carry out any of its obligations under this Agreement arising from or attributable to acts of God, war, terrorism, government, labour action or unrest, failure of suppliers or contractors or any other cause whatsoever beyond the control of the Affected Party ("force majeure").
- 16.2 The performance of the obligations of the Affected Party shall, subject to clause 16.1, be suspended for the duration of the *force majeure*, which shall be deemed to commence only upon the date of written notice by the Affected Party that it is subject to *force majeure* sent the other Party. Upon cessation of the *force majeure*, this Agreement shall again become fully operative and the Affected Party shall immediately resume its performance.
- 16.3 If the suspension of performance continues for more than 60 (sixty) consecutive calendar days, then either Party may summarily terminate this Agreement by written notice to the other Party, prior to the cessation of the *force majeure*.
- 16.4 Any claim by the Client against Business Connexion howsoever arising shall in the aggregate be limited to 60 % (sixty percent) of the Purchase Price of the Equipment in respect of which the claim arose. In any event, Business Connexion will not be liable to the Client for: (a) indirect or special damages, and/or (b) loss of income or profit or anticipated savings, howsoever arising, whether or not caused by its employees, agents and/ or contractors, and regardless of form or cause of action. The provisions of this clause are also stipulated for the benefit of the employees, agents and/ or contractors of Business Connexion.

## 17 ARBITRATION AND DISPUTE RESOLUTION

- 17.1 If any dispute arises out of or in connection with this Agreement the Parties may at any time, by agreement, refer the dispute for resolution by way of Arbitration.
- 17.2 If the Parties agree to refer the dispute to Arbitration, each Party:
  - 17.2.1 agrees that the Arbitration will be held in Midrand in accordance with the then current rules of the Arbitration Foundation of South Africa ("AFSA") ("the Rules") by 1 (one) arbitrator appointed by agreement between the Parties. If the Parties cannot agree on the arbitrator within a period of 10 (ten) Business Days after the date on which the Parties agreed in writing to refer the dispute to arbitration the arbitrator shall be appointed by the Secretariat of AFSA;
  - 17.2.1 expressly consents to any arbitration in terms hereof being conducted as a matter of urgency; and
  - 17.2.2 irrevocably authorises the other Party to apply, on behalf of both Parties, in writing, to the Secretariat of AFSA, in terms of article 23(1) of the Rules, for the arbitration to be conducted on an urgent basis.

- 17.3 The decision or award resulting from the arbitration may be made an order of court at the instance of either Party. The Parties hereby irrevocably submit to the jurisdiction of the High Court of the Republic of South Africa should either Party wish to make the arbitrator's award an order of court. 17.4 There shall be a right of appeal as provided for in article 22 of the Rules.
- 17.4 The arbitration will be held *in camera*, in the English language and will be kept confidential by the Parties.
- 17.5 The provisions of this clause 17 shall not preclude any Party from access to an appropriate court of law for interim relief in the form of an interdict, *mandamus* or order for specific performance pending the outcome of the arbitration in terms of this clause 17 or in respect of such arbitration, for which purpose the Parties irrevocably submit to the jurisdiction of the High Court of the Republic of South Africa.

## 18 DOMICILIUM AND NOTICES

- 18.1 The Client chooses its *domicilium* address for all purposes hereunder at its address set out in the Quotation.
- 18.2 Business Connexion chooses its *domicilium* addresses for all purposes hereunder at the addresses set out hereunder:
- Physical address: 1021 Lenchen Avenue North, Centurion, Gauteng.
- Email: [legalservices@telkom.co.za](mailto:legalservices@telkom.co.za);
- Attention:            Group Executive: Legal Services
- 18.3 Any Party may, from time to time, by written notice to the other(s), to vary its *domicilium* address to any other address within the Republic of South Africa which is not a post office box or poste restante.
- 18.4 All notices given in terms of this Agreement shall be in writing and any notice given by any Party to another ("the addressee") which:
- 18.4.1 is delivered by hand, shall be deemed to have been received by the addressee on the date of delivery;
- 18.4.2 is transmitted by email, shall be deemed to have been received by the addressee on the first Business Day after the date of the read receipt of the receiving instrument;
- 18.4.3 is posted by pre-paid registered post from an address within the Republic of South Africa to the addressee at its *domicilium* address for the time being shall be deemed to have been received by the addressee on the 10<sup>th</sup> (tenth) Business Day after the date of such posting.
- 18.5 It shall not be permissible to give any notice relating to a dispute, demand, breach, legal proceedings, renewal, cancellation or termination by e-mail.

## 19 GENERAL

- 19.1 This Agreement constitutes the entire Agreement between the Parties with regard to the subject matter hereof.
- 19.2 The terms and conditions contained on either Party's purchase order, order acceptance forms and/ or invoices shall not apply to, supplement or supersede any provisions of this Agreement.
- 19.3 No alteration or variation to, or consensual cancellation of this Agreement shall be of any force or effect, unless it is recorded in writing and signed by all the Parties.
- 19.4 The provisions of clauses 7, 10 and 14 to 20 shall survive the expiry, cancellation or termination of this Agreement for any reason.
- 19.5 Nothing in this Agreement constitutes either Party as the agent, principal, representative or partner of the other, and no Party may hold out to any third party that the relationship between the Parties is that of a partnership, joint venture or the like.

- 19.6 No failure or delay by a Party to enforce any provision of this Agreement shall constitute a waiver or suspension of such provision or affect in any way a Party's right to require performance of any such provision at any time in the future, nor shall the waiver of any right arising from any subsequent breach nullify the effectiveness of the provision itself.
- 19.7 Neither Party may cede its rights and/ or delegate its obligations under this Agreement without the prior written consent of the other Party, provided that Business Connexion may cede its rights and/ or delegate its obligations under this Agreement to any company in the Business Connexion Group without the consent of the other Party.
- 19.8 In the event that any of the terms of this Agreement are found to be invalid, unlawful or unenforceable, such terms will be severable from the remaining provisions, which shall remain of full force and effect. If any invalid term is capable of amendment to render it valid, the Parties agree to negotiate in good faith an amendment to remove the invalidity.
- 19.9 If any conflict arises in respect of the provisions contained in this Agreement and any annexure attached hereto, the provisions contained in this Agreement shall take precedence.
- 19.10 Unless otherwise agreed in writing between the Parties, no Party shall for the duration of this Agreement and for a period of 12 (twelve) months after expiry or termination thereof for its own benefit or as a representative of or agent for any third party, persuade, induce, encourage, procure or solicit (or procure such persuasion, inducement, encouragement, procurement or solicitation of) the personnel of the other Party or of the Business Connexion Group:
- 19.10.1 to become employed, or interested, directly or indirectly in any manner whatsoever, by it or in any business which is in competition with the business carried on by the other Party or by the Business Connexion Group; or
- 19.10.2 to terminate his/ her employment with the other Party or with the Business Connexion Group; or
- 19.10.3 to disclose any Intellectual Property of the other Party or the Business Connexion Group to any person not authorised by the owner of the Intellectual Property to receive it.
- 19.11 This Agreement may be signed in two or more counterparts, one or more of which may be delivered via telefax, and the signed counterparts, taken together, shall constitute a binding agreement between the Parties.
- 19.12 Each Party acknowledges that it does not enter into this Agreement on the basis of and does not rely on any representation, warranty or other provision, whether express or implied, except as expressly provided in this Agreement. All conditions, warranties or other terms implied by statute or common law are excluded to the fullest extent permitted by the law of the Republic of South Africa.
- 19.13 Each Party warrants that it is acting as principal and not as agent for any other person, whether disclosed or otherwise.
- 19.14 This Agreement shall be governed by, construed and interpreted in accordance with the laws of the Republic of South Africa.
- 19.15 The Parties shall each pay their own costs of negotiating, drafting, preparing and implementing this Agreement and any annexure to it. If any Party is awarded costs by an arbitrator or court, he shall be entitled to be reimbursed by the other Party on the basis of Attorney and own client charges.
- 19.16 If the Client fails to pay any undisputed amount due and payable to Business Connexion in terms of this Agreement for the rendering of any services or the delivery of products, then Business Connexion may, without prejudice to any other rights it may have, suspend the rendering of further services or provision of products until payment thereof.

## 20 INTERPRETATION

- 20.1 In this Agreement, unless the context requires otherwise:

- 20.1.1 words importing any one gender shall include the other two genders;
- 20.1.2 the singular shall include the plural and *vice versa*;
- 20.1.3 a reference to natural persons shall include created entities (incorporated or unincorporated) and *vice versa*;
- 20.1.4 any reference to an enactment is to that enactment as at the Date of Signature, as amended or re-enacted from time to time;
- 20.1.5 if any provision in a definition is a substantive provision conferring rights or imposing obligations on any Party, effect shall be given to it as if it were a substantive provision in the body of this Agreement, notwithstanding that it is only in the definition clause;
- 20.1.6 when any number of days (whether Business Days or calendar days) is prescribed in this Agreement, that number of days shall be reckoned exclusively of the first and inclusively of the last day, unless the last day (in the case of calendar days) falls on a Saturday, Sunday or official public holiday in the Republic of South Africa, in which event the last day shall be the next succeeding Business Day;
- 20.1.7 when any number of days is prescribed and it is not specified whether those days are Business Days or calendar days, they shall be deemed to be calendar days; and
- 20.1.8 expressions or words defined in this Agreement shall bear the same meaning in the annexures to this Agreement which do not themselves contain definitions for such expressions or words;
- 20.1.9 the headings in this Agreement have been inserted for convenience only and shall not be used for nor assist or affect its interpretation;
- 20.1.10 words and expressions defined in any sub-clause shall, for the purposes of the clause of which that sub-clause forms part, bear the meaning assigned to such words and expressions in that subclause;
- 20.1.11 if reference is made in this Agreement to any other document for the purpose of defining words and/ or phrases used in this Agreement, the applicable definition or description in such document shall be read and interpreted in terms of this Agreement as if specifically incorporated herein.