

## **TERMS AND CONDITIONS FOR THE CONTRACTING PARTY PROVIDING SERVICES TO MULTICHOICE AFRICA LIMITED AND ITS SUBSIDIARIES (the “MultiChoice Africa Group)**

In addition to the provisions herein, incorporate all changes that are adopted in respect of the Terms and Conditions for Supply of Services to the MultiChoice Africa Group.

### **1. Definitions and interpretation**

1.1 In these Terms and Conditions, the following words will, unless otherwise stated or inconsistent with the context in which they appear, have the following meanings:

- |       |                                   |  |
|-------|-----------------------------------|--|
| 1.1.1 | <b>"Affiliate"</b>                | in relation to MultiChoice means any person that is controlled by MIH or controls MIH, is under common control with MIH;   |
| 1.1.2 | <b>"Agreement"</b>                | has the meaning ascribed to it in paragraph 2;   |
| 1.1.3 | <b>"Applicable Law"</b>           | any applicable law in the Territory, including <i>inter alia</i> , statutes, by-laws, rules, regulations, orders, ordinances, protocols, codes, standards, guidelines, treaties, policies, notices, practices, administrative interpretations, directions, decrees, judgments, awards or requirements which have been duly enacted, issued or promulgated by any authority having jurisdiction in the Territory; |
| 1.1.4 | <b>"Business Day"</b>             | any day other than a Saturday, Sunday or official public holiday in the Territory;   |
| 1.1.5 | <b>"Commencement Date"</b>        | has the meaning ascribed to it in the Term Sheet;  |
| 1.1.6 | <b>"Confidential Information"</b> | has the meaning ascribed to it in paragraph 21.1;  |
| 1.1.7 | <b>"Contracting Party"</b>        | has the meaning ascribed to it in the Term Sheet;  |



- 1.1.8            **"Contract Period"**      has the meaning ascribed to it in the Term Sheet;
- 1.1.9            **"Consideration"**            the price payable by MultiChoice to the Contracting Party in respect of the Services to be provided under this Agreement, as calculated in the manner set out in the Term Sheet;
- 1.1.10           **"Good Industry Practice"**      in relation to an obligation, undertaking, activity or a service, the exercise of the degree of skill, speed, care, diligence, judgment, prudence and foresight and the use of practices, controls, systems, technologies and processes, which would be expected from a skilled, experienced and market leading service and product provider that is an expert in performing the same or similar obligation, undertaking, activity or service and utilising and applying skilled resources with the requisite level of expertise, while complying with Applicable Laws;
- 1.1.11           **"MIH"**                            MIH Holdings Proprietary Limited, a private company incorporated in accordance with the laws of the Republic of South Africa, registration number 1993/005613/07;
- 1.1.12           **"MultiChoice"**                has the meaning ascribe to it in the Term Sheet;
- 1.1.13           **"Parties"**                        MultiChoice and the Contracting Party and **"Party"** shall mean any one of them as the context requires;
- 1.1.14           **"Personnel"**                    an employee, agent, consultant, sub-contractor or other representative of either Party;



- 1.1.15            **"Services"**            the services to be rendered by the Contracting Party to MultiChoice as set out in the Term Sheet or in terms of the relevant Service Order;
- 1.1.16            **"Service Order"**        has the meaning ascribed to it in paragraph 6.1;
- 1.1.17            **"Tax Invoice"**            has the meaning given to it in the relevant tax legislation in the Territory, to the extent applicable;
- 1.1.18            **"Term Sheet"**            the customer and supplier term sheet concluded between the Parties, as amended from time to time;
- 1.1.19            **"Termination Date"**    has the meaning ascribed to it in the Term Sheet;
- 1.1.20            **"Territory"**             has the meaning ascribed to it in the Term Sheet;
- 1.1.21            **"VAT"**                    value-added tax levied in terms of the relevant tax legislation in the Territory; and
- 1.1.22            **"VAT Act"**                the piece of legislation governing value added tax in the Territory, to the extent applicable.

## 2. Introduction

These Terms and Conditions read with the Term Sheet are the terms and conditions upon which the Contracting Party will render, and MultiChoice will accept, the Services ("**Agreement**").

## 3. Appointment

- 3.1            MultiChoice appoints, with effect from the Commencement Date, the Contracting Party as its non-exclusive provider of the Services in the Territory in terms of this Agreement.
- 3.2            Except as otherwise specifically provided for in this Agreement, MultiChoice will be entitled to procure services which are or may be identical or similar to the Services from any party other than the Contracting Party.



#### 4. **Commencement and Duration**

This Agreement will commence on the Commencement Date, and will endure until the Termination Date, unless terminated earlier in accordance with the provisions of the Term Sheet and/or this Agreement.

#### 5. **Relationship**

It is specifically recorded that the business operated by each Party is separate from that operated by the other and the only relationship between the Parties will be that of supplier and customer. No agency, employment, partnership or joint venture will be deemed to exist between the Parties by virtue of this Agreement and neither Party will have the authority to act for the other, unless otherwise provided for in this Agreement (and if so provided, to the extent provided for in this Agreement).

#### 6. **Service Orders**

6.1 MultiChoice may submit requests for services by issuing written service orders ("**Service Orders**") at any time during the Contract Period.

6.2 If MultiChoice issues a Service Order, then:

6.2.1 the Contracting Party must supply and deliver the Services on the terms and conditions contained in the Service Order and perform all other obligations of the Contracting Party in accordance with this Agreement; and

6.2.2 MultiChoice shall pay the Contracting Party the Fee and perform all other obligations of MultiChoice in accordance with this Agreement.

6.3 Each Service Order will be regarded as a separate, indivisible Service Order and will specify *inter alia* the Services ordered (including the variety of Services to be so rendered), the applicable Fee, the place where the Services are to be rendered by the Contracting Party, and the date of provision of the Services.

6.4 Within 48 hours of receipt of a Service Order, the Contracting Party will notify MultiChoice in writing if it cannot comply with any part of the Service Order and state the reasons therefor. In such event, MultiChoice will be entitled, but



not obliged to withdraw the Service Order in whole or in part, and the Contracting Party will have no claim of whatsoever nature against MultiChoice as a result. If the Contracting Party does not notify MultiChoice as aforesaid, the Contracting Party will be bound to supply the Services in accordance with the Service Order, on the terms of this Agreement and any direction by MultiChoice in relation to the Service Order.

## **7. Contracting Party's Obligations**

7.1 In providing the Services, the Contracting Party must (without limiting any other obligation under this Agreement):

7.1.1 comply with all Applicable Laws;

7.1.2 undertake the Services in accordance with Good Industry Practice;

7.1.3 not unduly interfere with MultiChoice's business;

7.1.4 ensure that any goods supplied as part of the Services, if applicable, are fit for the purpose for which such goods are intended and of merchantable quality; and

7.1.5 insofar as the Services are performed on MultiChoice's premises, comply with any requirements of MultiChoice, including any environmental, health and safety and management plans, and ensure that any area occupied by the Contracting Party is left in a clean, safe and secure condition.

7.2 The Contracting Party is responsible for providing all superintendents, labour, equipment and all other things, whether of a temporary or permanent nature, and obtaining all consents and authorisations required to provide the Services.

7.3 The Contracting Party assumes full responsibility for the actions of its Personnel in performing the Services and will be solely responsible for their supervision, direction and control, payment of salary, workers' compensation, disability benefits and the like.

7.4 The Contracting Party must ensure that:



7.4.1 it has an adequate number of Personnel available to render the Services; and

7.4.2 all Personnel are appropriately experienced and qualified to render the Services,

in accordance with the provisions of this Agreement.

7.5 The Contracting Party is responsible:

7.5.1 for the transportation of its Personnel to and from the site where the Services are to be performed. The Contracting Party will ensure that all vehicles and drivers used for this purpose are properly licensed and comply with the requirements of any Applicable Law, including road, safety and traffic laws; and

7.5.2 for the health and safety of its Personnel.

7.6 The Contracting Party will at all times take all necessary precautions to prevent any unlawful, riotous or disorderly conduct by or among its Personnel, and to preserve peace and protection of persons and property at or near the place at which the Services are being performed.

## 8. Completion

8.1 Upon completion of the Services, the Contracting Party will notify MultiChoice accordingly.

8.2 MultiChoice will promptly inspect the Services performed. If the Services rendered by the Contracting Party do not comply with:

8.2.1 the description of the Services as per the Term Sheet;

8.2.2 the Service Order; or

8.2.3 the requirements of this Agreement generally,

MultiChoice may, acting reasonably, in its option, and without prejudice to its rights under this Agreement or at law (including without limitation the right to



termination under clause 16), require the Contracting Party, at its own cost, to re-perform the Services or make good any non-compliance.

## 9. Tax Invoices

9.1 The Contracting Party will submit original Tax Invoices to MultiChoice in respect of the Services rendered by the Contracting Party in each relevant month by no later than the 10<sup>th</sup> day of the month immediately following the month in which the Services were so rendered.

9.2 Each Tax Invoice will be in a format which complies with requirements of applicable legislation in the Territory and MultiChoice's requirements from time to time and will include, as a minimum:

9.2.1 the relevant Service Order number;

9.2.2 the Consideration payable for the Services rendered;

9.2.3 any adjustments to the Consideration pursuant to the provisions of the Agreement;

9.2.4 the total VAT amount in the lawful currency of the Territory or if payment is required in any currency other than the lawful currency of the Territory, the equivalent amount excluding the VAT amount as the case may be; and

9.2.5 the Contracting Party's registered company name, registered address and VAT number or the equivalent of a VAT number, as the case may be,

failing which MultiChoice will be entitled to withhold payment of the relevant Tax Invoice until such time as it has received a replacement Tax Invoice.

9.3 The Contracting Party will promptly provide any information reasonably required by MultiChoice to substantiate a Tax Invoice. In the event that a Tax Invoice and any supporting documentation are incomplete or incorrect, payment of such Tax Invoices will be delayed until the date of receipt of a correct Tax Invoice and the relevant supporting documentation (if any) by MultiChoice.



9.4 MultiChoice will be entitled to dispute any Tax Invoice reflecting any Service, Consideration, rebate, discount or condition at variance with the relevant Service Order and this Agreement, unless MultiChoice has given its prior written consent to such variation.

9.5 Representatives elected by MultiChoice and the Contracting Party from time to time will have discussions after MultiChoice has rejected any Tax Invoice to try and resolve such dispute. Should the aforementioned representatives fail to resolve the dispute within 10 Business Days after such meeting, the dispute will be referred to arbitration in terms of paragraph 22.

## 10. Payment

10.1 In consideration for the Contracting Party rendering the Service in accordance with this Agreement, MultiChoice will pay the Contracting Party the Consideration, as evidenced by valid Tax Invoices.

10.2 Subject to paragraphs 9.3, 9.4, 9.5 and 10.3, all Tax Invoices will be paid by MultiChoice to the Contracting Party within 30 days from the end of the month in which MultiChoice received the relevant Tax Invoice from the Contracting Party. MultiChoice will at all times be entitled to the Contracting Party's standard discount for prompt payment, if any.

10.3 Should MultiChoice be dissatisfied with the Services rendered or any part thereof, at any time, during the Contract Period, it may, on written notification to the Contracting Party, withhold payment of the Consideration or any part thereof to the Contracting Party until the dispute in relation thereto is resolved. Should the Parties be unable to resolve the dispute within 10 Business Days, then the Parties will refer such matter to arbitration in terms paragraph 22.

10.4 The Consideration will be inclusive of all costs, taxes, charges or liabilities incurred by the Contracting Party in supplying the Services and cover all of the Contracting Party's obligations under this Agreement. The Contracting Party will be deemed to have satisfied itself as to the correctness and sufficiency of the Consideration.

10.5 Notwithstanding the provisions of any Applicable Law to the contrary, the Contracting Party will not be entitled to recover in addition to the Consideration



any sum in consequence of or arising out of any duty or increase thereon imposed in terms of any legislation relating to customs and excise, VAT, royalties, and any taxes (excluding taxes which are for the Contracting Party's account), including withholding taxes.

- 10.6 Any dispute arising out of or in connection with the Consideration or any adjustment or proposed adjustment to the Consideration will be referred to arbitration in terms of paragraph 22.

## 11. Warranties

- 11.1 The Contracting Party acknowledges that MultiChoice relies on the Contracting Party's specialised knowledge and expertise in the provision of the Services, and accordingly, the Contracting Party warrants at the Commencement Date and at all times during the Contract Period that:

- 11.1.1 it is a company, duly incorporated under the laws of the Territory or any other territory and that it has the power to own its assets and carry on its business as it is being conducted;
- 11.1.2 it has the power and has taken all necessary corporate action to authorise the entry into, performance and rendering of the Services in terms of this Agreement;
- 11.1.3 all accreditations, authorisations, consents, licenses and permits required to have been obtained by or under any Applicable Law in order to enable the Contracting Party lawfully to enter into and perform the obligations expressed to be assumed by it in this Agreement have been obtained and will be maintained by the Contracting Party for the Contract Period at its sole cost and expense;
- 11.1.4 the Contracting Party will be responsible for obtaining and maintaining all applicable quality accreditation, certification, notices, licences, authorisations and permits required in connection with the performance of the Services and will also have the financial responsibility for, and will pay, all fees and taxes associated with such accreditation, certification, notices, licences, authorisations and permits;

- 11.1.5 the Agreement constitutes, or when executed in accordance with its terms will constitute, legal, valid and binding obligations;
- 11.1.6 it has the appropriate expertise necessary for the proper performance of the Services;
- 11.1.7 it and each member of its Personnel rendering the Services is familiar with the duties and obligations imposed on them by this Agreement and all Applicable Law;
- 11.1.8 it will perform the Services (i) in strict compliance with the Service Order; (ii) in accordance with Applicable Law; and (iii) in accordance with the service levels stipulated by MultiChoice from time to time;
- 11.1.9 the performance of the Services does not and will not infringe the rights of any third party or cause a third party to suffer any losses;
- 11.1.10 the Services performed by it under this Agreement will be performed by a sufficient number of appropriately experienced, qualified, competent, trained and efficient Personnel;
- 11.1.11 it has an adequate number of Personnel available, and the Personnel are appropriately experienced and qualified, to perform the Services in accordance with the Service Order;
- 11.1.12 the material and equipment necessary for the performance of the Services in accordance with a Service Order will:
- 11.1.12.1 be free of defects (latent and patent) in design, workmanship and material; and
- 11.1.12.2 be fit for their intended purpose;
- 11.1.13 it possesses, and will continue to so possess, all necessary authorisations, consents, licences, permits and qualifications required to be held by a person rendering the Services in terms of this Agreement; and

- 11.1.14 its assets exceed its liabilities and it can satisfy its liabilities as and when they fall due.
- 11.2 The Contracting Party acknowledges that MultiChoice is entering into this Agreement in reliance upon each of the warranties set out in clause 11.1 ("**Warranties**") and that the Warranties are given with the intention of inducing MultiChoice (which has been so induced) to enter into this Agreement.
- 11.3 Each Warranty will be:
- 11.3.1 deemed to be material;
- 11.3.2 a continuing representation and Warranty and will survive the termination of this Agreement; and
- 11.3.3 a separate Warranty and in no way limited or restricted by any reference to, or inference from, the terms of any other Warranty or by any other provision in this Agreement.
- 11.4 The fact that the Contracting Party has given the Warranties listed above will not in any way be construed as relieving the Contracting Party from any liability which it may have at common law arising out of a failure to disclose any fact to MultiChoice affecting this Agreement or the Services performed thereunder.

## 12. Indemnities

The Contracting Party indemnifies and keeps indemnified MultiChoice and its Affiliates against all losses of whatsoever nature suffered or incurred by MultiChoice under contract, delict, breach of duties (statutory or otherwise) or any other basis and howsoever arising as a result of:

- 12.1 a negligent, fraudulent or wrongful act or omission by the Contracting Party or its Personnel under or in relation to this Agreement;
- 12.2 the Contracting Party or its Personnel breaching or failing to comply with any Applicable Law (or MultiChoice being held liable or deemed to have breached or failed to comply as a direct result of a breach or failure by the Contracting Party);



12.3 any breach by the Contracting Party or its Personnel of any of the terms, conditions, representations or Warranties contained in this Agreement,

except to the extent that the loss, damage, liability, cost or expense is directly attributable to the fraud, wilful default or gross negligence of MultiChoice.

### 13. Intellectual Property

13.1 All intellectual property rights in and to any products of the Services (including reports, presentations, documents) shall vest in MultiChoice on the date of the creation of the said products.

13.2 Nothing contained in the Agreement will confer any right of ownership in, lien, or right of use in and to a Party's intellectual property (in the case of MultiChoice, this includes without limitation intellectual property incidental to the Services) to the other Party.

13.3 As a Party has no rights of ownership of any nature in and to the intellectual property of the other Party, each Party undertakes that it will not assert that it has any such rights therein or perform any act which may jeopardise the rights of the other Party and/or any third party proprietor in and to intellectual property. Should any such rights at any time accrue to a Party by operation of law or otherwise, such Party hereby cedes, assigns and makes over to the other Party all such rights and will at its own expense forthwith on demand by the other Party do all such things and execute all such documents as the other Party will deem necessary to vest such rights absolutely in the other Party or such third party proprietor as the other Party may direct.

13.4 Each Party will:

13.4.1 immediately notify the other Party of any actual or threatened infringement of any of the other Party's intellectual property which may come to its notice; and

13.4.2 at the request and cost of the other Party, cooperate fully and promptly in all such matters as the other Party will from time to time consider reasonably necessary for the protection of the intellectual property of the other Party.



- 13.5 The Contracting Party will use its best endeavours:
- 13.5.1 not to allow or participate in any tampering with the Services and will immediately report any such activity which comes to its attention and the attention of its Personnel, to MultiChoice; and
- 13.5.2 to procure that should any member of its Personnel discover or be notified of instances of acts of piracy, MultiChoice is notified of those instances as soon as possible in writing of that information (in this regard time being deemed to be of the essence). The Contracting Party will grant to MultiChoice or the proprietor of the intellectual property, as the case may be, such reasonable assistance, at the cost of MultiChoice, as may be required to bring the infringement to an end.
- 13.6 The Contracting Party warrants and represents that the performance by it of its obligations in terms of this Agreement will not now or in the future infringe the rights, including, without limitation, the intellectual property rights, of any third party, or cause any third party to suffer any damages.
- 13.7 The Contracting Party indemnifies MultiChoice against any claim by any third party that the performance by the Contracting Party of its obligations or any material, report or document created and/or provided by it to MultiChoice in terms of this Agreement infringes the rights, including the intellectual property rights, of any third party or cause any third party to suffer damages. To this end, the Contracting Party shall indemnify MultiChoice against any damages (together with all costs and expenses), which may be awarded or agreed to be paid to such third party in respect of any such claim.

#### 14. **Compliance with laws**

The Contracting Party is required to at all times and in all respects comply with all Applicable Laws relating to its obligations under this Agreement, and will not do anything or allow anything to be done which does or is likely to cause a contravention of any provision of the Applicable Laws.



## 15. Breach

If any Party breaches any material provision or term of this Agreement (other than those provisions which contain their own remedies or limit the remedies in the event of a breach thereof) and fails to remedy such breach within 10 Business Days of receipt of written notice from an aggrieved Party requiring it to do so (or if it is not reasonably possible to remedy the breach within 10 Business Days, within such further period as may be reasonable in the circumstances, provided that the Party in breach furnishes evidence within the aforementioned period of 10 Business Days, reasonably satisfactory to the aggrieved Party, that it has taken whatever steps are available to it to commence remedying the breach), then the aggrieved Party will be entitled without notice, in addition to any other remedy available to it at law or under this Agreement (including obtaining an interdict) to claim specific performance without prejudice to the aggrieved Party's rights to claim damages.

## 16. Termination

16.1 Notwithstanding anything to the contrary contained herein:

16.1.1 MultiChoice may elect to terminate this Agreement for its convenience by providing the Contracting Party with 30 days' prior written notice stating MultiChoice's election to terminate for its convenience and the effective date of such termination; and

16.1.2 the Parties may mutually agree in writing to terminate this Agreement at any time.

16.2 If either Party:

16.2.1 breaches any material provision of this Agreement and fails to remedy the breach within 30 days of written notice to do so;

16.2.2 commits, or is the subject of, an act of insolvency; or

16.2.3 takes steps to deregister itself or is deregistered,

that Party will be in default.

16.3 If the Contracting Party:



- 16.3.1 supplies Services that are, in the reasonable opinion of MultiChoice, of poor or inferior standards;
- 16.3.2 ceases or threatens to cease wholly or substantially to carry on its business, otherwise than for purposes of a reconstruction, restructuring or amalgamation without insolvency; or
- 16.3.3 undergoes a change of control,
- the Contracting Party will be in default.
- 16.4 If a Party is in default the other Party will be entitled, in addition to all other remedies in terms of this Agreement or at law:
- 16.4.1 to demand specific performance of this Agreement and to take such action as may be necessary in order to implement and fulfil its rights in terms hereof and to recover any damage which it may suffer as a result of the defaulting Party's default; or
- 16.4.2 forthwith to cancel this Agreement and claim such damages as the aggrieved Party may have suffered as a result of the other Party's default.
- 16.5 In addition to all other rights of the Parties to terminate this Agreement, MultiChoice will be entitled to terminate this Agreement immediately by written notice in the case of the Contracting Party:
- 16.5.1 falsifying any documents or records or committing any act of fraud or dishonesty in respect of its dealings with MultiChoice or matters arising from the terms of this Agreement; and/or
- 16.5.2 assigning or purporting to assign or transferring or purporting to transfer the obligations or benefits of this Agreement.

## 17. Consequences of Termination

- 17.1 Upon termination or expiry of this Agreement in whole or in part for any reason whatsoever:



- 17.1.1 MultiChoice will settle any outstanding valid invoice in respect of Services rendered by the Contracting Party;
- 17.1.2 each Party will immediately cease any and all use of any confidential information and will return to the other Party all confidential information of that Party in its possession or under its control which is capable of being so returned; and
- 17.1.3 each Party will immediately delete, erase or destroy (and certify such deletion, erasure or destruction) all confidential information of the other Party in its possession or under its control which is not capable of being returned to the other Party as contemplated in paragraph 17.1.2.
- 17.2 Subject to paragraph 17.1, termination of this Agreement will be without prejudice to any rights that have accrued to a Party as at the Termination Date, including without limitation the right to claim damages.

## 18. **Force Majeure**

A Party will not be deemed to be in breach of these Terms and Conditions or otherwise liable to the other Party as a result of any delay or failure in the performance of its obligations under the Agreement, if and to the extent that such delay or failure is caused as a result of an event outside a Party's control, including but not limited to any strike, lockout, shortage of labour or materials, delays in transport, accidents of any kind, any default or delay by a sub-contractor or supplier of a Party, riot, political or civil disturbances, the elements, an act of the state or government, any delay in securing any permit, consent or approval required by a Party for the supply of the products or any other authority or any other cause whatsoever beyond a Party's control ("**Force Majeure Event**") and the time for performance of the relevant obligation(s) of such Party will be extended for the period of such Force Majeure Event.

## 19. **Cession and assignment**

Save for MultiChoice being entitled to cede or assign the Agreement or any part thereof to any of its Affiliates, neither Party will be entitled to cede, assign or otherwise transfer or dispose of its rights and/or obligations under this Agreement to



any third party/ies unless the prior written approval of the other Party has been obtained.

## 20. **Limitation of liability**

- 20.1 The Contracting Party will supply and deliver the Services in a manner which minimises the risk of harm, loss or damage to MultiChoice and its property.
- 20.2 Neither MultiChoice nor any of its Affiliates or related persons will in any manner whatsoever be liable to the Contracting Party in respect of any losses which may be suffered and/or incurred by the Contracting Party arising from or in connection with the supply and/or delivery of Services or in any other way related to this Agreement, except to the extent that such losses are due to the fraud, wilful default or gross negligence of MultiChoice.

## 21. **Confidentiality**

- 21.1 The Parties hereby acknowledge that during the course of their relationship with each other confidential and/or proprietary information relating to each Party's business practices, personnel, business processes, systems and any other information of a confidential nature which is not generally available to outside parties or in the public domain or which would be understood, exercising reasonable business judgment, to be confidential, may be disclosed to or may otherwise come to the attention of the other, including the information contained in this Agreement ("**Confidential Information**").
- 21.2 Such Confidential Information will be treated as private and confidential and will be safeguarded in the same manner and with the same endeavours which a reasonable person would employ to protect his own confidential information.
- 21.3 Such Confidential Information will be used only for purposes of fulfilling the obligations under this Agreement and for no other purpose, and will not during the period of this Agreement or at any time thereafter be disclosed, either directly or indirectly, to any third party in any manner whatsoever, except to those authorised representatives of a Party on a "need to know" basis and who are aware of the disclosing Party's confidentiality obligations in terms of this Agreement.

- 21.4 The Parties agree that immediately on request therefor in writing from the disclosing Party, all such Confidential Information will be either returned to the disclosing Party or destroyed, and the receiving Party will, within 7 days of the aforementioned request, issue and deliver to the disclosing Party a certificate signed by all of the directors of the receiving Party to the effect that all of the disclosing Party's Confidential Information has been so returned or destroyed, as the case may be, and confirming that neither the receiving Party nor its representatives is in possession of any such Confidential Information.
- 21.5 The Parties agree that such steps will be taken as are necessary or desirable to prevent any Confidential Information of the disclosing Party from being disclosed or used to the current, future, actual or potential commercial, financial or competitive disadvantage or prejudice of the disclosing Party.
- 21.6 The receiving Party will procure compliance by each of its directors, officers and Personnel with the provisions of this paragraph 21. A breach of this paragraph 21 by any of the aforementioned persons will be deemed to be a breach by the receiving Party.
- 21.7 The provisions of this paragraph will not apply to information which can be shown to be part of the public domain or information which is lawfully in the possession of the receiving Party or acquired from a third party otherwise than as a result of a breach hereof or information which is disclosed or released to satisfy an order of a court or to otherwise comply with the provisions of the Applicable Law.

## 22. **Arbitration**

### 22.1 **Separate, divisible agreement**

22.1.1 This paragraph is a separate, divisible agreement from the rest of the Agreement and will:

22.1.1.1 not be or become void, voidable or unenforceable by reason only of any alleged misrepresentation, mistake, duress, undue influence, impossibility (initial or supervening), illegality, immorality, absence of consensus, lack of authority or other cause relating in substance to the rest of the Agreement and not to this paragraph.



The Parties intend that any such issue will be subject to arbitration in terms of this paragraph; and

22.1.1.2 remain in effect even if the Agreement terminates or is cancelled.

## 22.2 **Disputes subject to arbitration**

Any dispute arising out of or in connection with this Agreement or the subject matter of this Agreement, including, without limitation, any dispute concerning:

22.2.1 the existence of these Terms and Conditions apart from this paragraph;

22.2.2 the existence of the Term Sheet;

22.2.3 the interpretation and effect of this Agreement;

22.2.4 the Parties' respective rights or obligations under this Agreement;

22.2.5 the rectification of this Agreement;

22.2.6 the breach, termination or cancellation of this Agreement or any matter arising out of the breach, termination or cancellation of this Agreement;

22.2.7 damages in delict, compensation for unjust enrichment or any other claim, whether or not the rest of this Agreement apart from this paragraph is valid and enforceable,

will be decided by arbitration as set out in this paragraph 22.

## 22.3 **Appointment of arbitrator**

Such arbitration will be by a single arbitrator who will be elected by agreement between the Parties within 20 Business Days of either Party calling for agreement, failing such agreement, nominated by the chairman for the time being of the foundation or body elected by MultiChoice pursuant to paragraph 22.4, on the application of either Party.

## 22.4 **Arbitration proceedings**

22.4.1 Arbitration will be conducted in accordance with the commercial arbitration rules of the:



- 22.4.1.1 Arbitration Foundation of Southern Africa;
- 22.4.1.2 London Court of International Arbitration; or
- 22.4.1.3 leading commercial arbitration foundation in the Territory,  
as elected by MultiChoice (the “**Arbitration Body**”), in its sole discretion,  
at the time of the dispute arising.
- 22.4.2 Either Party may appeal against the decision of the arbitrator to a panel of 3 arbitrators, one appointed by each Party to the dispute and a third by agreement between the arbitrators appointed by the Parties to the dispute (or failing such agreement, by the Arbitration Body).
- 22.5 **Place of arbitration**
- Arbitration will take place in the location specified by MultiChoice in writing at the time the dispute is referred to arbitration.
- 22.6 **Urgent relief**
- Nothing contained in this paragraph 22 will prevent either Party from applying to a court of competent jurisdiction for urgent relief.
- 22.7 **Award binding**
- For purposes of 22.6 and for purposes of having any award made by the arbitrator being made an order of court, each of the Parties hereby submits itself to the non-exclusive jurisdiction of the courts in the Territory.
- 22.8 **Confidentiality of arbitration proceedings**
- 22.8.1 The Parties, any arbitrator, and their agents or representatives, will keep confidential and not disclose to any non-party the existence of the arbitration, non-public materials and information provided in the arbitration by another party, and orders or awards made in the arbitration, except to the extent necessary to enforce the order or award.
- 22.8.2 This confidentiality provision survives the termination of this Agreement and the termination of any arbitration brought pursuant to this

Agreement. This confidentiality provision may be enforced by an arbitral tribunal or any court of competent jurisdiction, and an application to court to enforce this provision will not waive or in any way derogate from the agreement to arbitrate.

## 23. Anti Corruption

23.1 Each Party hereby –

23.1.1 represents and warrants that it and its Personnel, have not, at any time, directly or indirectly, promised or offered; and

23.1.2 undertakes not to, directly or indirectly, promise or offer, and to procure that its Personnel, do not, directly or indirectly, promise or offer,

donations, gifts or other benefits whatsoever in order to influence any Personnel of the other Party in the exercise of discretionary authority, in connection with the Services or any matter covered by this Agreement.

23.2 Each Party shall not do, or omit to do, any act that will cause such Party to be in breach of applicable laws in the Territory, and in doing so shall not give or receive any bribes and shall procure that its Personnel, do not give or receive any bribes.

23.3 If at any time after the Signature Date –

23.3.1 MultiChoice has a reasonable suspicion that the Contracting Party has, in respect of the Services or any matter covered by this Agreement, directly or indirectly, promised or offered donations, gifts or other benefits whatsoever to the persons and for the purposes contemplated in Clause 23.1 above, the Contracting Party shall be in breach of this Agreement and MultiChoice shall be entitled, by written notice to the Contracting Party, to forthwith terminate this Agreement without any further liability to the Contracting Party, and the Contracting Party shall indemnify MultiChoice against any costs, claims and liabilities arising as a result of such breach; and

23.3.2 if a Party breaches its obligations under Clause 23.2, the other Party shall be entitled, by written notice to the Party in breach, to forthwith



terminate this Agreement without any further liability to the other Party, and the Party in breach shall indemnify the other Party against costs, claims and liabilities arising as a result of the breach.

#### 24. **General**

- 24.1 This Agreement will be governed, interpreted, construed and executed in terms of the laws of the Territory and will, subject to paragraph 22 above, be subject to the jurisdiction of any competent court in the Territory. All disputes, actions and other matters relating to this Agreement will be determined in accordance with such law.
- 24.2 This Agreement constitutes the whole agreement between the Parties as to the subject matter hereof and no agreements, representations or warranties between the Parties regarding the subject matter hereof other than those set out herein are binding on the Parties. In the event that any other terms and conditions of MultiChoice are signed, this Agreement will override such other terms and conditions to the extent of any conflict.
- 24.3 No addition to or variation, consensual cancellation or novation of this Agreement, and no waiver of any right arising from this Agreement or its breach or termination will be of any force or effect unless reduced to writing and signed by all the Parties or their duly authorised representatives, it being recorded that this expressly excludes any variation or cancellation.
- 24.4 No latitude, extension of time or other indulgence which may be given or allowed by any Party to the other Party in respect of the performance of any obligation hereunder, and no delay in the enforcement of any right of any Party arising from this Agreement, and no single or partial exercise of any right by any Party under this Agreement, will in any circumstances be construed to be an implied consent or election by such Party or operate as a waiver or a novation of or otherwise affect any of the Party's rights in terms of or arising from this Agreement or estop or through an email, text or similar data message preclude any such Party from enforcing at any time and without notice, strict and punctual compliance with each and every provision or term hereof.

24.5 Unless specifically agreed otherwise in writing by the Parties, no provision of this Agreement constitutes a stipulation for the benefit of a third person (ie a *stipulatio alteri*) which, if accepted by the person, would bind any Party in favour of that person.

