

**STANDARD TERMS AND CONDITIONS FOR THE SUPPLY BY THE CONTRACTING PARTY OF PRODUCTS 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 Products 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 **"Affiliate"** in relation to MultiChoice means any person that is controlled by MIH, controls MIH; or is under common control with MIH;
- 1.1.2 **"Agreement"** has the meaning ascribed to it in clause 2;
- 1.1.3 **"Applicable Law"** any applicable law in the Territory, including *inter alia*, 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 **"Business Day"** any day other than a Saturday, Sunday or official public holiday in the Territory;
- 1.1.5 **"Commencement Date"** has the meaning ascribed to it in the Term Sheet;
- 1.1.6 **"Confidential Information"** has the meaning ascribed to it in clause 20.1;



- 1.1.7            **"Contracting Party"**    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 Products supplied by the Contracting Party under this Agreement, as calculated in the manner set out in the Term Sheet or in terms of the relevant Purchase Order;
- 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          **"Marks"**                    the trade marks, logos, names, brand names, symbols, emblems, and get-up related to and incidental to the Products and/or the Parties;
- 1.1.12          **"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;
- 1.1.13          **"MIH Group"**              MIH and its Affiliates;
- 1.1.14          **"MIH Intelprop"**         MIH Intelprop Holdings Limited, a private company incorporated in accordance with the



		laws of the Republic of Mauritius, registration number 18876/3422;
1.1.15	<b>"MultiChoice"</b>	has the meaning ascribed to it in the Term Sheet;
1.1.16	<b>"Parties"</b>	MultiChoice and the Contracting Party and "Party" shall mean any one of them as the context requires;
1.1.17	<b>"Personnel"</b>	an employee, director, agent, consultant, sub-contractor or other representative of either Party;
1.1.18	<b>"Products"</b>	the products supplied by the Contracting Party to MultiChoice as set out in the Terms Sheet or in terms of the relevant Purchase Order;
1.1.19	<b>"Purchase Orders"</b>	has the meaning ascribed to it in clause 6.1;
1.1.20	<b>"Tax Invoice"</b>	has the meaning ascribed to it in the relevant tax legislation in the Territory, to the extent applicable;
1.1.21	<b>"Terms and Conditions"</b>	these terms and conditions, as amended from time to time;
1.1.22	<b>"Term Sheet"</b>	the customer and supplier term sheet concluded between the Parties, as amended from time to time;
1.1.23	<b>"Termination Date"</b>	has the meaning ascribed to it in the Term Sheet;
1.1.24	<b>"Territory"</b>	has the meaning ascribed to it in the Term Sheet;
1.1.25	<b>"VAT"</b>	value-added tax levied in terms of the VAT Act in the Territory; and



- 1.1.26            **"VAT Act"**                    the piece of legislation governing value added tax in the Territory, to the extent applicable.

## 2.    **Introduction**

These Terms and Conditions, read together with the Term Sheet, are the terms and conditions upon which the Contracting Party sells, and MultiChoice purchases, the Products ("**Agreement**").

## 3.    **Appointment**

- 3.1            MultiChoice appoints, with effect from the Commencement Date, the Contracting Party as its non-exclusive supplier of the Products in the Territory in terms of this Agreement.
- 3.2            Except as otherwise specifically provided for in this Agreement, MultiChoice will be entitled during the Term to procure goods which are or may be identical or similar to the Products 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 or by the other, unless otherwise provided for by this Agreement (and if so provided, to the extent provided for in these Terms and Conditions).

## 6.    **Purchase Orders**

- 6.1            MultiChoice may issue written Purchase Orders at any time during the Contract Period.



- 6.2 If MultiChoice issues a Purchase Order, then:
- 6.2.1 the Contracting Party must supply and deliver the Products on the terms and conditions contained in the Purchase Order and perform all other obligations of the Contracting Party in accordance with this Agreement; and
- 6.2.2 MultiChoice must pay the Contracting Party the Consideration.
- 6.3 Each Purchase Order will be regarded as a separate, indivisible Purchase Order and will specify *inter alia* the Products ordered (including the quantity of Products to be so supplied), the applicable Consideration, the delivery point(s) where the Products are to be delivered by the Contracting Party, and the date of delivery.
- 6.4 Within 48 hours of receipt of a Purchase Order, the Contracting Party will notify MultiChoice in writing if it cannot comply with any part of the Purchase Order and state the reasons therefor. In such event, MultiChoice will be entitled, but not obliged to withdraw the Purchase 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 Products in accordance with the Purchase Order, on the terms of this Agreement and any direction by MultiChoice in relation to the Purchase Order.
- 6.5 The Contracting Party agrees and acknowledges that:
- 6.5.1 MultiChoice is not obliged to issue any Purchase Orders to the Contracting Party during the Contract Period;
- 6.5.2 MultiChoice does not guarantee any level of purchases from the Contracting Party during the Contract Period; and
- 6.5.3 in entering into this Agreement, the Contracting Party has not relied on any estimate provided by or on behalf of MultiChoice as to the amount of Products MultiChoice will purchase from the Contracting Party during the Contract Period.



## 7. Tax Invoices

7.1 The Contracting Party will submit original Tax Invoices to MultiChoice in respect of the Products supplied 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 Products were so supplied.

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

7.2.1 the relevant Purchase Order number (where applicable);

7.2.2 the quantity of Products supplied and the Consideration owed for the Products supplied;

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

7.2.4 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

7.2.5 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.

7.3 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 effected not later than 15 Business Days following the date of receipt of a correct Tax Invoice and the relevant supporting documentation (if any) by MultiChoice.



- 7.4 MultiChoice will be entitled to dispute any Tax Invoice reflecting any Products, Consideration, rebate, discount or condition at variance with the relevant Purchase Order and this Agreement, unless MultiChoice has given its prior written consent to such variation.
- 7.5 Representatives elected by MultiChoice and the Contracting Party from time to time will have discussions within 5 Business Days 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 clause 21.

## 8. Payment

- 8.1 In consideration for the Contracting Party supplying the Products in accordance with this Agreement, MultiChoice will pay the Contracting Party the Consideration, as evidenced by valid Tax Invoices.
- 8.2 Subject to clauses 7.3, 7.4, 7.5 and 8.3, 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.
- 8.3 Should MultiChoice be dissatisfied with the Products supplied 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 20 Business Days, then the Parties will be entitled to refer such matter to arbitration in terms clause 21.
- 8.4 The Consideration will be inclusive of all costs, taxes, charges or liabilities incurred by the Contracting Party in supplying the Products 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.



- 8.5 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.
- 8.6 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 clause 21.
- 8.7 MultiChoice will be entitled to claim set-off or deduction in respect of any payment due by it to the Contracting Party for Products supplied.

## 9. **Delivery**

- 9.1 Proper delivery of Products will be deemed to have taken place when the Contracting Party delivers the Products ordered to the premises of MultiChoice and the designated employee of MultiChoice signs the delivery note or invoice. Notwithstanding their delivery, ownership of the Products will only pass upon full payment of the Products to the Contracting Party.
- 9.2 A carrier or transporter engaged by the Contracting Party to deliver the Products on its behalf will be deemed to be the agent of the Contracting Party and the risk of the Products will only pass to MultiChoice upon proper delivery of the Products to MultiChoice by the carrier or transporter.
- 9.3 Should the Contracting Party make a request to withhold or postpone delivery of the Products to MultiChoice, the Contracting Party will be required to pay the costs of storage, insurance and any other charges occasioned by the withholding or postponement of such delivery, in the event that MultiChoice agrees to such withholding or postponement of delivery.

## 10. **Warranties**

The Contracting Party warrants that:



- 10.1 it can comply with all its obligations under this Agreement and agrees that MultiChoice has relied upon such representations in entering into this Agreement;
- 10.2 the Products are free from any defects and comply with technical and functional specifications stipulated by MultiChoice
- 10.3 it has the right and authority to supply the Product(s) and transfer title, where title is required to pass;
- 10.4 all persons employed by it have the skills, expertise and experience necessary to carry out all of its obligations under this Agreement generally, and in respect of each Purchase Order specifically (where applicable);
- 10.5 it will operate in full compliance with all Applicable Laws; and
- 10.6 it has obtained or will be able to obtain all the necessary consents, permits, permissions, licences or authorities necessary in order to effect delivery of the Products.

## 11. 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:

- 11.1 a negligent, fraudulent or wrongful act or omission by the Contracting Party or its Personnel under or in relation to this Agreement;
- 11.2 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);
- 11.3 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.

## 12. Intellectual Property

- 12.1 MIH Intelprop is the registered owner of the MultiChoice related Marks. MIH Intelprop has granted MultiChoice a right of use in respect of its Marks and has further granted MultiChoice the right to sub-licence the use of the Marks to third parties.
- 12.2 Nothing contained in the Agreement will confer any right of ownership in, lien, or right of use in and to the Marks of a Party and/or of its Affiliates or any of its intellectual property (in the case of MultiChoice, this includes without limitation intellectual property incidental to the Products) to the other Party.
- 12.3 A Party and/or its Affiliates' Marks will not be used in advertising material of any kind by the other Party, without the prior written consent of the relevant Party in respect of each such advertisement. A Party will be entitled to withdraw such consent at any time by prior written notice to the other Party.
- 12.4 No Party has any rights of ownership of any nature in and to the Marks of the other Party and/or of its Affiliates, and 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 the Marks. 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, and on demand by the other Party, do all such things and execute all such documents as the other Party may deem necessary to vest such rights absolutely in the other Party or such third party proprietor as the other Party may direct.
- 12.5 Save as otherwise specifically provided in terms of the Agreement, nothing contained herein will confer upon the Contracting Party any right of ownership in the names "DStv" "MultiChoice", or any other Marks of the MIH Group.
- 12.6 Save as contemplated in terms of the Agreement, neither Party will challenge the Marks or use the Marks of the other Party and/or of its Affiliates in any



modified form or represent in any way that it has any right, title or interest in and to the ownership of the Marks or the use thereof.

12.7 Each Party will:

12.7.1 immediately notify the other Party of any actual or threatened infringement of any of the Marks of the other Party and/or of its Affiliates which may come to its notice; and

12.7.2 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 Marks of the other Party and/or of its Affiliates.

12.8 The Contracting Party will use its best endeavours not to allow or participate in any tampering with the Products and will immediately report any such activity which comes to its attention or the attention of its Personnel, to MultiChoice.

### 13. **Compliance with laws**

The Contracting Party is required to comply with all Applicable Laws relating to its obligations under this Agreement at all times and in all respects, and must 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.

### 14. **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.

## 15. Termination

15.1 Notwithstanding anything to the contrary contained herein:

15.1.1 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 the Agreement and the effective date of such termination; and

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

15.2 If either Party:

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

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

15.2.3 takes steps to deregister itself or is deregistered,

that Party will be in default.

15.3 If the Contracting Party:

15.3.1 supplies Products that are, in the reasonable opinion of MultiChoice, of poor or inferior quality;

15.3.2 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

15.3.3 undergoes a change of control,

the Contracting Party will be in default.

15.4 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:



- 15.4.1 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
- 15.4.2 immediately to cancel this Agreement and claim such damages as the aggrieved Party may have suffered as a result of the other Party's default.
- 15.5 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:
- 15.5.1 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
- 15.5.2 assigning or purporting to assign or transferring or purporting to transfer its obligations or benefits in terms of the Agreement.

## 16. Consequences of Termination

- 16.1 Upon termination or expiry of this Agreement in whole or in part for any reason whatsoever:
- 16.1.1 MultiChoice will settle any outstanding Purchase Order in respect of Products supplied by the Contracting Party;
- 16.1.2 each Party will immediately cease any and all use of any Confidential Information and/or Marks 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
- 16.1.3 each Party will immediately delete, erase or destroy (and certify such deletion, erasure or destruction) all Confidential Information and/or Marks 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 clause 16.1.2.



- 16.2 Subject to clause 16.1, 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.

**17. 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, 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.

**18. 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.

**19. Limitation of liability**

- 19.1 The Contracting Party will supply and deliver the Products in a manner which minimises the risk of harm, loss or damage to MultiChoice and its property of harm, loss or damage.

- 19.2 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 Products 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.



19.3 Notwithstanding anything to the contrary herein contained, MultiChoice shall under no circumstances whatsoever be liable to the Contracting Party for any consequential, incidental, indirect, punitive or special damages in connection with or arising out of this Agreement, howsoever caused, including without limitation loss of business and loss of profits.

## 20. Confidentiality

20.1 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**").

20.2 Such Confidential Information will be treated as private and confidential and be safeguarded in the same manner and with the same endeavours which a reasonable person would employ to protect his own confidential information.

20.3 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.

20.4 The Parties agree that immediately on request therefor in writing from the disclosing Party, all such Confidential Information will be 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.



- 20.5 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.
- 20.6 The receiving Party will procure compliance by each of its directors, officers and Personnel with the provisions of this clause 20. A breach of this clause 20 by any of the aforementioned persons will be deemed to be a breach by the receiving Party.
- 20.7 The provisions of this clause 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.

## 21. Arbitration

### 21.1 Separate, divisible agreement

21.1.1 This clause is a separate, divisible agreement from the rest of the Agreement and will:

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

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

### 21.2 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:



- 21.2.1 the existence of these Terms and Conditions apart from this clause;
- 21.2.2 the existence of the Term Sheet;
- 21.2.3 the interpretation and effect of this Agreement;
- 21.2.4 the Parties' respective rights or obligations under this Agreement;
- 21.2.5 the rectification of this Agreement;
- 21.2.6 the breach, termination or cancellation of this Agreement or any matter arising out of the breach, termination or cancellation of this Agreement;
- 21.2.7 damages in delict, compensation for unjust enrichment or any other claim, whether or not the rest of this Agreement apart from this clause is valid and enforceable,

which cannot be resolved amicably between the Parties, will be decided by arbitration as set out in this clause 21.

### 21.3 **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 clause 21.4, upon the application of either Party.

### 21.4 **Arbitration proceedings**

- 21.4.1 Arbitration will be conducted in accordance with the commercial arbitration rules of the:
    - 21.4.1.1 Arbitration Foundation of Southern Africa;
    - 21.4.1.2 London Court of International Arbitration; or
    - 21.4.1.3 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.



21.4.2 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).

21.5 **Place of arbitration**

Arbitration will take place in the location specified by MultiChoice in writing at the time the dispute is referred to arbitration.

21.6 **Urgent relief**

Nothing contained in this clause 21 will prevent either Party from applying to a court of competent jurisdiction for urgent relief.

21.7 **Award**

For purposes of 21.6 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.

21.8 **Confidentiality of arbitration proceedings**

21.8.1 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 order or awards made in the arbitration, except to the extent necessary to enforce the order or award.

21.8.2 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.



## 22. Anti Corruption

22.1 Each Party hereby –

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

22.1.2 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.

22.2 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.

22.3 If at any time after the Signature Date –

22.3.1 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 22.1 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

22.3.2 if a Party breaches its obligations under Clause 22.2, 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.

## 23. General



- 23.1 This Agreement will be governed, interpreted, construed and executed in terms of the laws of the Territory and will, subject to clause 21 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.
- 23.2 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.
- 23.3 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.
- 23.4 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.
- 23.5 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.

