

STANRDARD TERMS AND CONDITIONS FOR THE SUPPLY BY MULTICHOICE AFRICA LIMITED AND ITS SUBSIDIARIES OF PRODUCTS TO THE CONTRACTING PARTY (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 by 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, as amended from time to time;

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 **"Competing Product"** has the meaning ascribed to it in clause 3.2.1;



1.1.7	"Confidential Information"	has the meaning ascribed to it in clause 18.1;
1.1.8	"Contracting Party"	has the meaning ascribed to it in the Term Sheet;
1.1.9	"Contract Period"	has the meaning ascribed to it in the Term Sheet;
1.1.10	"Distribution Centre"	has the meaning ascribed to it in clause 11.2;
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 Intelprop"	MIH Intelprop Holdings Limited, a private company incorporated in accordance with the laws of the Republic of Mauritius, registration number 18876/3422;
1.1.14	"MultiChoice"	has the meaning ascribed to it in the Term Sheet;
1.1.15	"Parties"	MultiChoice and the Contracting Party, and "Party" shall mean any one of them as the context requires;
1.1.16	"Personnel"	an employee, director, agent, consultant, sub-contractor or other representative of either Party;
1.1.17	"Products"	the products supplied by MultiChoice to the Contracting Party as set out in the Term Sheet or in terms of the relevant Purchase Order;
1.1.18	"Purchase Orders"	has the meaning ascribed to it in clause 5.1;
1.1.19	"Returned Product"	has the meaning ascribed to it in clause 11.1;



- 1.1.20 **"Revised Order"** has the meaning ascribed to it in clause 5.4;
- 1.1.21 **"Term Sheet"** the customer and supplier term sheet concluded between the Parties, as amended from time to time; and
- 1.1.22 **"Territory"** has the meaning ascribed to it in the Term Sheet.

2. Introduction

This Agreement, read together with the Term Sheet, sets out the terms and conditions upon which MultiChoice sells, and the Contracting Party purchases, the Products ("**Agreement**").

3. Appointment

- 3.1 The Contracting Party has appointed MultiChoice as its supplier (and, if applicable, installer) of the Products in the Territory in terms of this Agreement.
- 3.2 The Contracting Party agrees that it will not, without first obtaining the prior written consent of MultiChoice:
- 3.2.1 supply or be directly or indirectly engaged or interested in supplying any goods manufactured or imported by any entity, for retail and/or use in the broadcast industry, in or outside the Territory, which are of a similar nature to the Products ("**Competing Products**");
- 3.2.2 hold any Competing Products in stock;
- 3.2.3 solicit or be directly engaged or interested in soliciting orders for any Competing Products; or
- 3.2.4 install or be directly engaged and interested in supplying or holding in stock any Competing Products for installation in any of the Products.
- 3.3 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).

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. **Purchase Orders**

- 5.1 The Contracting Party will be required to place written purchase orders ("**Purchase Orders**") with MultiChoice for the Products it requires from time to time. All Purchase Orders, including verbal orders, will be deemed to be offers to purchase.
- 5.2 All Purchase Orders will be subject to confirmation and acceptance by MultiChoice, and such acceptance will be confirmed by MultiChoice by the dispatch of the Products forming the subject matter of the Purchase Order, and/or confirmation in writing by MultiChoice.
- 5.3 Purchase Orders accepted by MultiChoice are irrevocable and may not be varied or cancelled (in whole or in part) by the Contracting Party, except with the prior written consent of MultiChoice.
- 5.4 The Contracting Party acknowledges that the supply of the Products by MultiChoice to the Contracting Party is not on an exclusive basis and; therefore MultiChoice may be unable to supply all the Products as per any Purchase Order, and in accordance with the timeframes set out in such Purchase Order. Consequently, as soon as possible, but in any event within 10 Business Days after placement of any Purchase Order, MultiChoice will notify the Contracting Party of its acceptance or rejection of such Purchase Order, indicating the reasons for any rejection, and proposing a revised Purchase Order ("**Revised Order**"). The Contracting Party must notify MultiChoice of its acceptance or rejection of the Revised Order within 5 Business Days after receipt thereof from MultiChoice.



6. Invoicing and payment

- 6.1 The price of the Products will be set out in the Purchase Order and/or official MultiChoice forms sent by MultiChoice to the Contracting Party, from time to time.
- 6.2 Prices charged by MultiChoice for the Products are subject to change without notice, and the prices ruling at the time of confirmation of a Purchase Order by MultiChoice will apply.
- 6.3 Payment is to be made within 30 days from the date on which the Product(s) are delivered.
- 6.4 All amounts quoted in respect of invoices issued will be exclusive of applicable sales taxes and/or value-added tax leviable on such amounts in the Territory.
- 6.5 Any account not paid on the due date, in accordance with the date of payment as prescribed in the relevant invoice sent by MultiChoice to the Contracting Party pursuant to a Purchase Order that has been processed, will be subject to interest being levied thereon from the due date to the actual date of payment at the maximum rate of penalty interest permissible under the laws of the Territory.
- 6.6 The Contracting Party will not be entitled to claim set-off or deduction in respect of any payment due by it to MultiChoice for Products supplied.

7. Delivery

- 7.1 MultiChoice will have the right to suspend deliveries of any Products ordered pursuant to Purchase Orders if any amount due by the Contracting Party to MultiChoice is unpaid.
- 7.2 Proper delivery of Products will be deemed to have taken place when MultiChoice delivers the Products ordered to the Contracting Party's premises and any employee of the Contracting Party signs the delivery note or invoice. Notwithstanding their delivery, ownership of the Products will only pass upon full payment of the Products to MultiChoice.



- 7.3 A carrier or transporter engaged by MultiChoice on behalf of the Contracting Party will be deemed to be the agent of the Contracting Party, and the risk of the Products will pass to the Contracting Party upon delivery by MultiChoice to the carrier or transporter.
- 7.4 Should MultiChoice, at the request and on behalf of the Contracting Party, agree to engage a carrier or transporter to transport the Products to the Contracting Party, MultiChoice will engage the carrier or transporter on such terms and conditions as it deems fit and the Contracting Party indemnifies MultiChoice against all demands and claims which may be made against it by the carrier or transporter, arising out of the transportation of the Products to the Contracting Party.
- 7.5 Where MultiChoice is requested by the Contracting Party to withhold or postpone delivery of the Products, 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.

8. **Passing of risk, benefit and ownership**

Notwithstanding that, in the ordinary course, all risk in and to all Products sold by MultiChoice to the Contracting Party will pass on delivery, ownership in all Products sold and delivered to the Contracting Party will remain vested in MultiChoice until the purchase price therefor has been paid in full by the Contracting Party.

9. **Warranties**

The Contracting Party warrants that:

- 9.1 it has represented that it can comply with all its obligations under this Agreement and agrees that MultiChoice has relied upon such representations in entering into this Agreement;
- 9.2 it has the right and authority to purchase the Product(s) and accept the transfer of title, where title is required to pass;



- 9.3 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);
- 9.4 it will operate in full compliance with all Applicable Laws; and
- 9.5 it has obtained or will be able to obtain all the necessary consents, permits, permissions, licences or authorities necessary in order to accept delivery of the Products.

10. Insurance

The Contracting Party is required to fully insure all Products purchased from MultiChoice against loss or damage until the full purchase price therefor has been paid by the Contracting Party. Pending payment to MultiChoice for the Products purchased, all benefits in terms of the insurance policy relating to the insurance of such Products must be ceded to MultiChoice, and MultiChoice's interest will be noted on such insurance policy.

11. Returns

- 11.1 Subject to the Applicable Laws, the Contracting Party may exchange a Product that has a manufacturing fault ("**Returned Product**"), as provided for in this clause 11; provided that the Product is not physically damaged and such Product is returned, together with all accessories and packaging, within a period of 30 days (or such other period as may be stipulated by MultiChoice) from the date of delivery of the Products by MultiChoice to the Contracting Party.
- 11.2 The Contracting Party will be responsible for the safe return of all Returned Products, at its own cost, to its distribution centre, the location of which must be provided by the Contracting Party to MultiChoice ("**Distribution Centre**").
- 11.3 The Distribution Centre will (i) provide the serial numbers of the Returned Products to MultiChoice, (ii) obtain a returns authorisation number from MultiChoice, and (iii) arrange a date and time for MultiChoice to collect the Returned Products from the Distribution Centre. During the collection process of the Returned Products from the Distribution Centre, representatives of both



Parties will count the Returned Products and if the Contracting Party's proof of delivery is signed by the MultiChoice representative, the count specified in the proof of delivery will be the final count for the Returned Products.

- 11.4 The Contracting Party will receive a credit in an amount equal to the amount paid for the Returned Products by the Contracting Party, in accordance with the invoice.

12. Limitation of Product liability

- 12.1 Subject to the Applicable Laws:

12.1.1 MultiChoice's liability to the Contracting Party for any claims brought against, or any damages sustained by, the Contracting Party in connection with the Products will, in any event and under all circumstances, be limited to the original Product specific warranty provided with the Product. MultiChoice's liability will be limited to the replacement of that Product only.

12.1.2 MultiChoice will in no circumstances whatsoever be liable for any loss of profit, any and all claims, liabilities, losses, proceedings, expenses and/or any damage, direct or indirect, consequential or otherwise sustained by the Contracting Party arising from or in connection with the sale of the Product or from any other cause whatsoever. The Contracting Party hereby indemnifies MultiChoice and its Personnel against all claims of whatsoever nature that may be made against MultiChoice, arising from the use of the Products.

13. Intellectual Property

13.1 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.

13.2 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 its Affiliates or any of their



intellectual property (in the case of MultiChoice, this includes without limitation intellectual property incidental to the Products) to the other Party.

13.3 The Marks of a Party and/or its Affiliates 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.

13.4 No Party has any rights of ownership of any nature in and to the Marks of the other Party and/or 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.

13.5 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" or "MultiChoice", or any other Mark of the MIH Group.

13.6 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.

13.7 Each Party will:

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

13.7.2 at the request and cost of the other Party, cooperate fully and promptly in all such matters as the other Party may from time to time consider reasonably necessary for the protection of the Marks of the other Party and/or its Affiliates.



13.8 The Contracting Party will use its best endeavours:

13.8.1 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; and

13.8.2 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 (in this regard time being deemed to be of the essence). The Contracting Party will grant to MultiChoice or the proprietor of the Mark, as the case may be, such reasonable assistance, at the cost of MultiChoice, as may be required to bring the infringement to an end.

14. **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.

15. **Breach and termination**

15.1 In the event of a material breach by the Contracting Party of any of the provisions of the Terms and Conditions, and a failure by the Contracting Party to remedy such breach within 30 days after receipt of a written demand by MultiChoice to effect such remedy, MultiChoice will be entitled to terminate the Agreement immediately without notice to the Contracting Party, and such termination will be without prejudice to any right of MultiChoice to recover, *inter alia*, any costs, damages or expense arising from or consequent upon such breach.

15.2 Upon notice of termination of the Agreement being received by the Contracting Party pursuant to clause 15.1 above, MultiChoice will be entitled to cancel any Purchase Orders which have then already been placed and/or concluded, as the case may be, by means of delivering written notice thereof to the Contracting Party within 5 Business Days of the date on which the termination notice was received by the Contracting Party. If any Purchase



Orders are so cancelled, any Products delivered pursuant thereto will be returned to MultiChoice at the Contracting Party's risk and expense.

16. **Force Majeure**

A Party will not be deemed to be in breach of this Agreement 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 reasonable 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 reasonable 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.

17. **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.

18. **Confidentiality**

- 18.1 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**").



- 18.2 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.
- 18.3 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.
- 18.4 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.
- 18.5 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.
- 18.6 The receiving Party will procure compliance by each of its Personnel with the provisions of this clause 18. A breach of this clause 18 by any of the aforementioned persons will be deemed to be a breach by the receiving Party.
- 18.7 The provisions of this clause 18 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.



19. Arbitration

19.1 Separate, divisible agreement

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

19.1.1.1 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

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

19.2 Disputes subject to arbitration

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

19.2.1 the existence of this Agreement apart from this clause;

19.2.2 the existence of the Term Sheet;

19.2.3 the interpretation and effect of this Agreement;

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

19.2.5 the rectification of this Agreement;

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

19.2.7 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 19.

19.3 **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 19.4, upon application by either Party.

19.4 **Arbitration proceedings**

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

19.4.1.1 Arbitration Foundation of Southern Africa;

19.4.1.2 London Court of International Arbitration; or

19.4.1.3 a 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.

19.4.2 Either Party may appeal against the decision by 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).

19.5 **Place of arbitration**

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

19.6 **Urgent relief**

Nothing contained in this clause 19 will prevent either Party from applying to a court of competent jurisdiction for urgent relief.



19.7 **Award**

For purposes of 19 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.

19.8 **Confidentiality of arbitration proceedings**

19.8.1 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.

19.8.2 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.

20. **Anti Corruption**

20.1 Each Party hereby –

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

20.1.2 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.

20.2 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.

- 20.3 If at any time after the Signature Date a Party breaches its obligations under Clause 20 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.

21. General

- 21.1 This Agreement will be governed, interpreted, construed and executed in terms of the laws of the Territory and will, subject to clause 19 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.
- 21.2 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.
- 21.3 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.
- 21.4 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.

- 21.5 No provision of these Terms and Conditions 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.

