

# TERM SHEET STANDARD TERMS AND CONDITIONS

## 1. DEFINITIONS

1.1. In this Agreement, unless a contrary intention clearly appears, the following words and expressions shall have the meanings assigned to them below and cognate expressions shall have corresponding meanings:

1.1.1. "Affiliate" means in relation to a party, means any person which is

1.1.1.1. Controlled by that party;

1.1.1.2. Controls that party; or

1.1.1.3. is under common Control with that party;

1.1.2. "Agreement" means collectively the Term Sheet, these terms and any annexure or schedule for the delivery of Products and/or Services;

1.1.3. "Applicable Data Protection Laws" means the General Data Protection Regulation - Regulation (EU) 2016/679 (EU GDPR), as amended from time to time and relevant local data protection laws insofar as they do not conflict with the GDPR;

1.1.4. "Applicable Law" in relation to a party, shall include any and all; 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.

1.1.5. "Appropriate Technical and Organisational Measures" mean with respect to a given goal, the technical and organisational efforts that a reasonable person in the position of the processor would use to achieve that goal as quickly, effectively, and efficiently as possible;

1.1.6. "Business Day" means any day other than a Saturday, Sunday or official public holiday in the relevant Territory;

1.1.7. "Claims" means all claims, losses, damages, expenses, causes of action, events, suits, judgments and liability of every kind, including without limitation all expenses of litigation, court costs and reasonable attorney's fees arising from this Term Sheet or the Products and/or Services provided hereunder;

1.1.8. "Control", means the power to direct the management or policies of a Person, directly or indirectly, whether through the ownership of shares or other securities, by contract or otherwise, provided always that the direct or indirect ownership of more than 50% (fifty

percent) of the voting share capital of a Person will be deemed to constitute Control of that Person and “Controlling” and “Controlled” shall have corresponding meanings;

- 1.1.9. “Governing Law” means the laws of the Territory;
- 1.1.10. “Incoterms” rules or International Commercial Terms are a series of pre-defined commercial terms published by the International Chamber of Commerce (ICC) relating to international commercial law. Incoterms rules are intended primarily to clearly communicate the tasks, costs, and risks associated with the transportation and delivery of goods. Incoterms inform sales contract defining respective obligations, costs, and risks involved in the delivery of goods from the seller to the buyer;
- 1.1.11. “Intellectual Property Rights” means patents, rights to inventions, copyright and related rights, trademarks, trade names and domain names, trade dress, rights in get-up, rights in goodwill or to sue for passing off, rights in designs, rights in computer software (source or object code), database rights, rights in confidential information (including know-how and trade secrets) and any other intellectual property rights, in each case whether registered or unregistered and including all applications (or rights to apply) for, and renewals or extensions of, such rights and all similar or equivalent rights or forms of protection which may now or in the future subsist in any part of the world;
- 1.1.12. “MultiChoice” means MultiChoice Africa Holdings B.V., with registration number 34272155, a company incorporated in accordance with the laws of The Netherlands and having its registered address at Taurus Avenue, 105 – 2132 LS – Hoofddorp, The Netherlands, with a branch at Dubai Media City, Shatha Tower, Offices 1805-08, Dubai Media City, Dubai, United Arab Emirates;
- 1.1.13. “MultiChoice Group” means MultiChoice, SSI Intelprop and M-Net Intelprop;
- 1.1.14. “M-Net Intelprop” means M-Net Intelprop Limited, a company incorporated in Mauritius and having its registered address at IFS Court, Bank Street, TwentyEight CyberCity, Ebène;
- 1.1.15. “Personal Data” means any information about a living human being, provided that someone is capable of identifying them from that information, more specifically any information relating to an identified or identifiable natural person (‘Data Subject’); an identifiable natural person is one who can be identified, directly or indirectly, in particular by reference to an identifier such as a name, an identification number, location data, an online identifier or to one or more factors specific to the physical, physiological, genetic, mental, economic, cultural or social identity of that natural person;

- 1.1.16. "Personnel" means any director, employee, or other person who works (permanently or temporarily) under the Supplier's supervision or person who renders services to the processor for purposes of the processor obligations under this Agreement as their agent, consultant, contractor, or other representative;
- 1.1.17. "Products" includes the equipment, materials or other items specified in the Term Sheet, including design, delivery, installation, inspection and testing required to be completed or performed in connection with the goods;
- 1.1.18. "Process" and "Processing" means doing anything with Personal Data, including gathering it, disclosing it, or combining it with other information;
- 1.1.19. "SSI Intelprop Holdings" – SSI Intelprop Holdings Limited, a company incorporated in Mauritius and having its registered address at IFS Court, Bank Street, TwentyEight CyberCity, Ebène;
- 1.1.20. "Services" includes the work, services or other items specified in the Term Sheet, including design, delivery, installation, inspection and testing required to be completed or performed in connection with the services;
- 1.1.21. "Sub-Processor" means any downstream processor that the Supplier engages to process Personal Data in accordance with the Agreement and as those documents permit;
- 1.1.22. "Supplier" means the company executing this Term Sheet with MultiChoice or providing Products and/or Services to MultiChoice. The Supplier shall include its parent or affiliated companies and their respective officers, directors, employees, and subcontractors;
- 1.1.23. "Taxes" means all forms of taxes, duties, imposts, charges, withholdings, rates, levies and any other governmental impositions of whatever nature and by whatever authority imposed, assessed or charged together with all costs, charges, interest, penalties, fines, expenses and other additional statutory charges, incidental or related to the imposition;
- 1.1.24. "Term Sheet" is the standard MultiChoice document describing the Products and/or Services to be provided by the Supplier and stipulating the price payable by MultiChoice to the Supplier within the contracted payment terms; and
- 1.1.25. "Territory" means the country in which the Products and/or Services will be provided.

## 2. APPLICABILITY

- 2.1. This Agreement will only apply to transactions where MultiChoice has issued a Term Sheet which has been executed and signed by both parties.
- 2.2. If there is a conflict between this Agreement, the standard terms and conditions affixed to the Term Sheet and/or the terms and conditions set out in any annexure or schedule identified in the Term Sheet, including that accompanying the purchase order from the vendor (where

applicable), then these standard terms and conditions will prevail, unless expressly indicated otherwise in the Term Sheet.

### 3. APPOINTMENT AND COMMENCEMENT

3.1. MultiChoice appoints the Supplier and the Supplier accepts such appointment to provide the Products and/or Services with effect of the date recorded on the Term Sheet (“Commencement Date”), on a non-exclusive basis, for the duration of the Term Sheet on the terms of this Agreement.

3.2. The Supplier acknowledges and agrees that MultiChoice may engage any other party to supply Products and/ or Services of a similar nature to the Products and/or Services being supplied by the Supplier in terms of this Agreement.

### 4. GOODS AND/OR SERVICES

4.1. MultiChoice may request the Supplier to provide the Products and/or Services from time to time and on acceptance of the quotation provided by the Supplier, the parties will enter into a Term Sheet for the Products and/or Services.

4.2. For physical Products, the Term Sheet will specify the nature and quantity of the Products, price, point(s) and date(s) of delivery. The price includes all applicable Taxes and/or duties, packaging, loading and securing the goods on the carrier’s equipment at the shipping point.

4.3. For Services, the price agreed will be indicated on the Term Sheet along with a full description of Services including term of Services, completion date, and all Taxes and duties applicable. MultiChoice shall not accept any Services other than that specified in the Term Sheet.

### 5. NON-COMPLIANCE WITH PURCHASE ORDER

5.1. The Supplier will notify MultiChoice in writing within 48 hours of receipt of a Term Sheet if it cannot comply with any part of the Term Sheet and state the reasons therefore. In such event, MultiChoice will be entitled, but not obliged to withdraw the Term Sheet in whole or in part, and the Supplier will have no claim of whatsoever nature against MultiChoice. If the Supplier does not notify MultiChoice as aforesaid, the Supplier will be bound to supply the Products and/or Services in accordance with the Term Sheet and these terms and conditions as well as any direction by MultiChoice in relation to the Term Sheet.

5.2. The Supplier shall complete its obligations in terms of this Agreement by the delivery dates specified, or within 7 (seven) days of MultiChoice’s written demand after a reasonable time has elapsed if no delivery date is specified in the Term Sheet. Delays in the Supplier’s performance or delivery due to defaults of MultiChoice in meeting its obligations under this Agreement as a result of acts of God, or, strikes or other similar causes beyond the Supplier’s control (“Force Majeure Occurrence”), which the Supplier could not have reasonably

prevented or foreseen, shall be excused. In such event, the Supplier shall promptly notify MultiChoice of any such delay and at no additional cost to MultiChoice, the Supplier shall take all reasonable steps to honor this Agreement. The date of delivery or performance will be extended for a period equal to the duration of the delay, but the Supplier shall not be entitled to any additional compensation for such delay. In the event that Force Majeure Occurrence delays delivery more than 30 (thirty) days from any scheduled delivery date, MultiChoice shall have the right to cancel the Term Sheet or any part thereof. In the event that the time of delivery is not affected by a Force Majeure Occurrence or MultiChoice's default, then the failure by the Supplier to deliver the Products and/or Services, by such specified delivery date or within 7 (seven) days of MultiChoice's notice if no such delivery date is specified, shall permit MultiChoice to cancel this Agreement or any part thereof without any cost to MultiChoice.

## 6. PRICE

- 6.1. The Supplier shall provide the Products and/or Services at the price set out in the Term Sheet and corresponding invoices.
- 6.2. The price is inclusive of all costs, taxes, charges, vehicle service costs or liabilities incurred by the Supplier in providing the Products and/or Services and cover all of the Supplier's obligations under this Agreement.
- 6.3. The price shall be fixed and not subject to adjustments unless otherwise mutually agreed between the Supplier and MultiChoice in writing and noted on the Term Sheet. Variations between exchange rates ruling at the time of acceptance of the Term Sheet and the time of delivery of the Products and/or rendering of the Services will be at the Supplier's own risk. The Customer will pay the fixed purchase price as indicated on the Term Sheet and will not be liable for any other costs whatsoever and howsoever arising.

## 7. INVOICE AND PAYMENT

- 7.1. The Supplier must issue invoices and statements to MultiChoice for the payment of the fees, as set out in the Term Sheet, which to the extent that the provision of the Products and/or Services have been completed shall be paid by MultiChoice within 30 (thirty) days from the date of receipt of the relevant tax invoice and statements by MultiChoice.
- 7.2. MultiChoice shall not be liable for any interest for late payments unless expressly agreed in writing by MultiChoice. MultiChoice may refuse payment if it contests the validity of an invoice or statement or if MultiChoice is dissatisfied with the Products and/or Services supplied or any part thereof. The Supplier indemnifies MultiChoice against all losses, Claims, liabilities, damages or expenses which MultiChoice may incur or be exposed to as a result of, or which

may be attributable to any liability of the Supplier for any and all Taxes in respect of payments made in terms of the Term Sheet.

- 7.3. Should MultiChoice be dissatisfied with the Products and/or Services rendered or any part thereof, at any time, during the Term, it may, on written notification to the Supplier, withhold payment of the fees or any part thereof to the Supplier until the dispute in relation thereto is resolved. Should the Parties be unable to resolve the dispute within 10 (ten) Business Days, then the Parties shall refer such matter for dispute resolution in accordance with clause 24.

## 8. WITHHOLDING TAXES

- 8.1. MultiChoice may, in relation to any payment it is required to make to the Supplier, withhold from that payment any amount it is required to withhold as Tax under the Applicable Law of the Territory concerned.
- 8.2. If any consideration paid to the Supplier by MultiChoice under or in connection with this Agreement is paid free of withholding tax, and at any time after such payment, MultiChoice becomes aware (either by notification from a regulatory authority or otherwise), that an amount of Tax should have been withheld from such payment, MultiChoice will be entitled to recover from the Supplier that amount of Tax and any subsequent amount MultiChoice may be required to pay to a regulatory authority for failing to withhold (including any amounts required to be withheld). Such payments must be paid to MultiChoice within 30 (thirty) days of receipt of notice from MultiChoice.

## 9. OWNERSHIP AND RISK

- 9.1. The Supplier warrants good title to all Products, free and clear of any and all liens, restrictions, reservations, security interests, encumbrances and Claims of others.
- 9.2. Irrespective of the earlier passage of title, and unless specified to the contrary in the Term Sheet, the risk in the Products shall not pass to MultiChoice until physical delivery of the Products has been made to MultiChoice at MultiChoice's specified point of delivery and acceptance of the goods by an authorised MultiChoice representative or as per agreed Incoterms 2010 ® stipulated on the Term Sheet. Acceptance of the delivery by MultiChoice shall not constitute a waiver of any warranty.
- 9.3. Ownership to all Products shall pass to MultiChoice on delivery by the Supplier at the location specified by MultiChoice, or on the terms as set out in Term Sheets from time to time.

## 10. DELIVERY

- 10.1. The following clause will apply to the purchase of Products.
- 10.2. Unless expressly excluded in the Term Sheet, the Supplier will be liable for the delivery of the Products to a location as nominated by Multichoice and shall appoint and pay a carrier

to transport the Products. To this extent, any carrier transporting the Products will be deemed to be the agent of the Supplier.

10.3. If the Products are being imported, the Supplier will at its own cost obtain and maintain all necessary import and export permits. The Supplier will provide MultiChoice with copies of all such permits upon request thereof. The Supplier will furthermore be responsible for all costs relating to import clearance, import duties and taxes, delivery and insurance of such goods.

10.4. All documents, cases, crates, packages and the like must be clearly marked or labeled with the order number specified on the Term Sheet and all Products will be appropriately packaged so as to prevent damage to the Products.

## 11. REQUIREMENTS, SPECIFICATIONS AND SERVICE LEVELS

11.1. The Supplier acknowledges that time is of the essence to provide the Products and/or Services and will provide the Products and/or Services in accordance with the requirements, specifications and/or service levels as set out in the Term Sheet.

## 12. CHANGES

12.1. MultiChoice shall have the right to make changes to the requirements for the Products and/or Services. If such changes affect either the delivery date or price of the Products and/or Services, an equitable adjustment to the price and/or delivery date shall be mutually agreed between MultiChoice and the Supplier to reflect such change.

12.2. The Supplier shall continue work during any discussion concerning such change and shall implement such change if directed to do so in writing by MultiChoice. Additional compensation or changes to the delivery date shall only be made if agreed to in writing by MultiChoice. If the Supplier believes a change has been made (that was not mutually agreed upon), the Supplier shall give MultiChoice notice of such change within 7 (seven) days after it has occurred (or the Supplier became aware of the change), failing which it shall be deemed that the Supplier has waived any claim for an adjustment in price or delivery time for the Products and/or Services.

## 13. WARRANTY

13.1. The Supplier warrants that all Products and/or Services will from the date of delivery:

13.1.1. meet the requirements specifications and/or service levels as set out on the face of the Term Sheet;

13.1.2. to the extent applicable, comprise new materials and be in good working conditions on the date of delivery thereof;

13.1.3. be free from defects in material and workmanship;

- 13.1.4. be fit for the purpose intended or represented and will conform with all relevant requirements of any statute, law, regulation or legal requirement which may be in force in the Territory; and
- 13.1.5. it has the necessary expertise, experience, resources and infrastructure to provide the Products and/or Services in accordance with industry practice.
- 13.2. These warranties are in addition to any other express, implied and/or statutory warranties applicable to the provision of the Products and/or Services.

#### 14. REJECTION AND REMEDY

- 14.1. If within 3 (three) months from date of delivery or within 6 (six) months from date of first intended use, whichever occurs first, MultiChoice discovers any breach of any warranty as to the Products and/or Services, then the Supplier shall promptly repair or replace the Products and/or reperform the Services in question after MultiChoice's written notice of breach, without cost to MultiChoice. If the Supplier fails, after 7 (seven) days' notice, to adhere to the notice, then MultiChoice may repair or replace such Products or reperform the Services and charge all related costs to the Supplier without prejudice to any warranties herein.
- 14.2. In addition, if emergency repairs are required, not allowing time for the Supplier to make such repairs where defective goods will affect operational capabilities, MultiChoice may nevertheless proceed and make such repairs or replacements and charge the cost to the Supplier. The Supplier warrants for a period equal to the end of the initial warranty period, to correct defects in the Products and/or Services that the Supplier has repaired or replaced.
- 14.3. MultiChoice shall have the right to inspect the Products and/or Services at any time. MultiChoice's failure to inspect the Products and/or Services shall not: affect its's right to reject non-conforming or defective Products and/or Services; and/or constitute acceptance of the Products and/or Services if MultiChoice reasonably determines that all or a portion of the Products and/or Services are nonconforming or defective or of low quality and standard and not fit for purpose.

#### 15. BRIBERY

- 15.1. Each party undertakes to the other party that it has, throughout the negotiation of this Agreement, and will continue during the course of this Agreement to:
  - 15.1.1. comply with (and shall procure that each person associated with it who is performing under this Agreement shall comply with) all applicable anti-bribery laws, including, but not limited to, the U.S. Foreign Corrupt Practices Act 1977, the U.K. Bribery Act 2010 and any other



applicable anti-bribery and corruption laws (“the Anti-Bribery Laws”), in respect of the performance of this Agreement;

- 15.1.2. have, and maintain in place adequate policies and procedures, to ensure compliance with the Anti-Bribery Laws (and shall procure that persons associated with it in connection with this Agreement, or other persons who are performing services on its behalf in connection with this Agreement shall have, and shall maintain, such policies and procedures);
- 15.1.3. be responsible for (and shall ensure) the observance, performance and compliance with the Anti-Bribery Laws by each person associated with it who is performing in connection with this Agreement and shall be directly liable to the other party for any breach by such persons of any of the Anti-Bribery Laws;
- 15.1.4. immediately report to the other party:
  - 15.1.4.1. any knowledge or suspicion of any violations by the party, its officers, employees, or any person associated with it of any of the Anti-Bribery Laws; or
  - 15.1.4.2. any requests or demands for any undue financial or other advantage of any kind received by the party in connection with the other party’s continued business.
- 15.2. Each party warrants and represents that neither it nor any of its officers, employees, or, having made reasonable enquiries, so far as it is aware, other persons associated with it in connection with this Agreement:
  - 15.2.1. have been convicted of any offence involving bribery, corruption, fraud or dishonesty;
  - 15.2.2. have been or is the subject of any investigation, inquiry or enforcement proceedings by any governmental, administrative or regulatory body regarding any offence or alleged offence under the Anti-Bribery Laws; or
  - 15.2.3. Have been or is involved in any activity which may violate the Anti-Bribery Laws in respect of the conduct of business processes and/or negotiations that resulted in the conclusion of this Agreement.
- 15.3. Notwithstanding anything to the contrary in this Agreement, a breach by a party of any of its obligations under this clause shall entitle the other party to forthwith terminate this Agreement upon written notice to the other party and to claim such damages as it may have suffered as a result of such breach.

## 16. CONFIDENTIALITY

- 16.1. All information and data acquired (“Confidential Information”) directly or indirectly by the Supplier from MultiChoice relating to this Agreement or in connection with the performance of this Agreement, excluding information or data in the public domain through no default of the Supplier, shall be held strictly confidential and not be reproduced or used for any

purpose unrelated to the Term Sheet or disclosed to any third party without MultiChoice's written consent.

16.2. The Supplier agrees that such Confidential Information will be treated as private and confidential and be safeguarded in accordance with the highest legal standards.

16.3. The provisions of this clause shall survive the termination and expiry of this Agreement.

## 17. DATA PROTECTION

17.1. Save as agreed to otherwise in this Agreement:

17.1.1. the Personal Data shall only be Processed for the duration of this Agreement or the specific schedules, as applicable;

17.1.2. the nature and purpose of the Processing shall be that of providing the Services;

17.1.3. the type of Personal Data will include a name, an identification number, location data or any other data that may be shared by MultiChoice or its Affiliates which may constitute Personal Data and;

17.1.4. Personal Data may not be Processed to reveal racial or ethnic origin, political opinions, religious or philosophical beliefs, or trade union membership, or data concerning a natural person's sex life or sexual orientation.

17.2. The Processor will only Process the Personal Data on MultiChoice's documented instructions and in accordance therewith.

17.3. The Processor may not subcontract or assign its obligations to another Processor without MultiChoice's prior written authorisation (provided that the Processor informs the Controller of the details of any processor that they intend to subcontract or assign their obligations to and provides the Controller with an opportunity to object thereto). To the extent that the Processor is authorised to sub-contract the Processing, it will ensure that its agreement with the Sub-Processor contains the obligations imposed on it as set out herein. The Processor will remain fully liable to MultiChoice for the performance of the Sub-Processor's obligations where the Sub-Processor fails to fulfil them.

17.4. The Processor guarantees that it will implement Appropriate Technical and Organisational Measures in a way that any Processing meets the requirements of Applicable Data Protection Laws and protects the Data Subject's rights. This will include but not be limited to implementing security measures to safeguard the Processing of the Personal Data and informing MultiChoice of any change in the status of a Sub-Processor.

17.5. The Processor may only transfer Personal Data to a third Country or international organisation on MultiChoice's documented instructions, unless required to do so by applicable law. To the extent that applicable law requires the Personal Data to be transferred

across borders, the Processor must inform MultiChoice about the legal requirement before transferring the Personal Data, unless the applicable law prohibits the Processor from doing so in the public interest.

- 17.6. The Processor must ensure that its Personnel authorised to Process the Personal Data have committed themselves to confidentiality or are under an appropriate statutory obligation of confidentiality.
- 17.7. The Processor must return all Personal Data to MultiChoice upon termination of this Agreement for whatsoever reason and delete all existing copies unless the applicable law requires it to continue to store those copies.
- 17.8. The Processor must on a monthly basis or upon written request, make all information necessary available to MultiChoice to confirm its compliance with the obligations set out herein and to facilitate any queries submitted by Data Subjects with regard to the Processing of Personal Data. In addition, the Processor must allow for and contribute to audits (including inspections) by MultiChoice or another auditor appointed by MultiChoice.
- 17.9. The Processor must notify MultiChoice after becoming aware of a Personal Data breach without undue delay.
- 17.10. Any breach by the Processor, its Personnel or any Sub-Processor of the obligations set out in this clause, will be deemed to be a material breach of this Agreement by the Processor and shall entitle, but not oblige, MultiChoice to terminate this Agreement (or any schedule(s) thereto) with immediate effect on written notice to the Supplier.
- 17.11. The Processor hereby indemnifies and holds harmless MultiChoice and its Affiliates from and against all losses which MultiChoice or its Affiliates may incur or suffer pursuant to any and all claims arising directly or indirectly as a result of, or related to, a breach by the Processor of its obligations under this Agreement.
- 17.12. The Processor warrants and undertakes that it shall at all times strictly comply with all Applicable Data Protection Laws and with all provisions and requirements of any of the MultiChoice's policies and procedures which may be in force from time to time.
- 17.13. Without derogating from or limiting its further obligations in this Agreement, the Processor further warrants that it shall ensure that its infrastructure, including all systems on which the Personal Data is Processed, shall at all times be at the standard required by Applicable Data Protection Laws and applicable law and be of a standard no less than the standard used by MultiChoice as at the Commencement Date, or as otherwise may be agreed between the parties in writing, in relation to the control and use of the Personal Data.

17.14. The Processor will furnish MultiChoice with quarterly audits of its systems certifying its compliance with the terms set out in this Agreement.

17.15. The obligations in this clause shall apply and extend to any Personal Data disclosed to or received by the Processor prior to the Commencement Date.

## 18. INTELLECTUAL PROPERTY

18.1. The Parties acknowledge and agree that Intellectual Property or Intellectual Property Rights vested in or owned by a party or held by such party under any licensing agreement with any independent third party will be and will remain the sole property of such party and/or the relevant licensors respectively.

18.2. The parties acknowledge and agree that all Intellectual Property Rights vested in or owned by a party or held by such party under any licensing agreement with any independent third party will be and will remain the sole property of such party and/or the relevant licensors respectively.

18.3. The Supplier undertakes and acknowledges that:

18.3.1. it shall use the Intellectual Property Rights of the MultiChoice Group and/or its Affiliates strictly in accordance with the terms and conditions hereof and in particular, in accordance with the specifications and directives of any member of the MultiChoice Group and/or any of its Affiliates (excluding the Supplier) from time to time;

18.3.2. it shall not publish nor use nor broadcast material containing or referring to the Intellectual Property Rights of the MultiChoice Group and/or its Affiliates without such material having been approved in advance by a member of the MultiChoice Group and/or any of its Affiliates (excluding the Supplier) or its advertising agency, from time to time;

18.3.3. it shall permit duly authorised representatives of the MultiChoice Group at all reasonable times to inspect the products covered by the registration of the Intellectual Property Rights and the Supplier shall, upon the request of the proprietor, submit to MultiChoice or its duly authorised representatives samples of the said products for the purpose of verifying that the Supplier is complying with the requirements of this Agreement;

18.3.4. upon termination of this Agreement, it shall deliver to MultiChoice all samples, copies, signage, publicity and promotional material, stationery and all other material that contains any of the Intellectual Property Rights belonging to the MultiChoice Group and/or its Affiliates and shall no longer enjoy any rights of use, granted to it in terms of this clause, in respect thereof;

18.3.5. without derogating from or limiting the further rights and remedies of the MultiChoice Group and/or its Affiliates, it shall fully compensate MultiChoice to the full extent of the

- Supplier's profit and the loss suffered by the MultiChoice Group and/or its Affiliates arising from any use by the Supplier which is not permitted by this Agreement, and the Supplier agrees to indemnify the MultiChoice Group and/or its Affiliates from any liability incurred to third parties for use of the Intellectual Property Rights belonging to the MultiChoice Group and/or its Affiliates otherwise than as permitted by this Agreement;
- 18.3.6. it shall not claim ownership of any Intellectual Property Rights of the MultiChoice Group and/or its Affiliates;
- 18.3.7. it shall not apply for registration of any Intellectual Property Rights of the MultiChoice Group and/or its Affiliates in its own or any third party's name in the Territory or elsewhere;
- 18.3.8. it shall not challenge or otherwise contest the ownership of any Intellectual Property Rights of the MultiChoice Group and/or its Affiliates;
- 18.3.9. it shall not permit the use of any Intellectual Property Rights of the MultiChoice Group and/or its Affiliates in such a way as to give the impression that they are the property of the Supplier; and
- 18.3.10. it shall not engage in any activity that may contest, dispute, dilute or otherwise impair the right, title, interest or goodwill of the MultiChoice Group and the third party content providers in the Intellectual Property Rights including, without limitation, any action to prevent or cancel the registration of any of the Intellectual Property Rights.
- 18.4. The Supplier acknowledges that it has no rights of any nature to the Intellectual Property Rights except such rights of use as arise in terms of this clause.
- 18.5. Nothing contained in this Agreement shall confer any right of ownership in the names "MultiChoice" or "MultiChoice Africa" or "DStv" on the Supplier. Use of any of these names shall be subject to and limited to the provision of the Products and/or Services in the Territory as set out in this Agreement any subsequent agreement that may be concluded between the parties in terms hereof.
- 18.6. In this Agreement the term "Work Product" shall mean all work product generated by the Supplier, solely or jointly with others in the performance of the services within the scope of this Agreement, including, but not limited to, any and all information, notes, material, drawings, logos, artwork, cinematograph films, records, diagrams, formulas, processes, technology, firmware, software, know-how, designs, ideas, discoveries, inventions, improvements, copyrights, trademarks, trade secrets and economic rights.
- 18.7. The Supplier agrees to assign and does hereby assign to MultiChoice all right, title and interest in and to the Work Product and MultiChoice accepts such assignment. All Work Product shall be the sole and exclusive property of MultiChoice and the Supplier will not

have any rights of any kind whatsoever in such Work Product, except for any rights that may not be assigned or waived as a matter of law.

- 18.8. The Supplier agrees, at the request and cost of MultiChoice, to promptly sign, execute, make and do all such deeds, documents, acts and things as MultiChoice may reasonably require or desire to perfect MultiChoice's entire right, title, and interest in and to any Work Product, or to further assign such rights to any third party.
- 18.9. The Supplier will not make any use of any of the Work Product in any manner whatsoever without MultiChoice's prior written consent. All Work Product shall be promptly communicated to MultiChoice.
- 18.10. License: In the event that the Supplier integrates any work that was previously created by the Supplier into any Work Product, the Supplier shall grant to, and MultiChoice is hereby granted, a worldwide, royalty-free, perpetual, irrevocable license to exploit the incorporated items, including, but not limited to, any and all copyrights, patents, designs, trade secrets, trademarks, economic exploitation rights or other intellectual property rights, in connection with the Work Product in any manner that MultiChoice deems appropriate. The Supplier warrants that it shall not incorporate into any Work Product any material that would infringe any Intellectual Property Rights of any third party.
- 18.11. To the extent that the Supplier does not comply with the provisions of this clause, MultiChoice may suspend this Agreement on immediate written notice to the Supplier.

## 19. INDEMNITY

- 19.1. The Supplier indemnifies and keeps indemnified MultiChoice from and against any claim, legal suit, liability and 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:
- 19.1.1. a negligent, fraudulent or wrongful act or omission by the Supplier under or in relation to this Agreement;
- 19.1.2. the Supplier 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 Supplier);
- 19.1.3. any breach by the Supplier of any of the terms, conditions, representations or warranties contained in this Agreement; and
- 19.1.4. a claim that the manufacture, use or sale of any Products and/or Services, or any part thereof supplied, constitutes infringement of any patent, trademark, copyright or other proprietary right of others.

19.2. The foregoing provision shall not apply to any Products and/or Services, or any part thereof, to the extent of being manufactured to designs furnished or required by MultiChoice or to the extent that the loss, damage, liability, cost or expense is directly attributable to the fraud, wilful default or gross negligence of MultiChoice.

## 20. INSURANCE AND LIMITATION OF LIABILITY

20.1. The Supplier will obtain and maintain for the duration of this Agreement comprehensive insurance cover for the provision of the Products and/or Services.

20.2. MultiChoice will not in any manner whatsoever be liable to the Supplier in respect of any losses which may be suffered and/or incurred by the Supplier arising from or in connection with the supply and/or delivery of Products and/or 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. Notwithstanding anything to the contrary herein contained, MultiChoice shall under no circumstances whatsoever be liable to the Supplier 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.

## 21. SUSPENSION AND TERMINATION

### 21.1. Suspension

21.1.1. In the event of a breach by either Party of any of the obligations under this Agreement, this Agreement, including payment of any fees, shall be suspended pending discussions and agreement between the parties on how to resolve the matter. To this end this Agreement will only recommence once the parties have reached written agreement on how to resolve the matter. Should the Parties fail to reach an agreement, MultiChoice may elect to terminate this Agreement as set out herein.

### 21.2. Termination

21.2.1. This Agreement may be terminated in writing by MultiChoice, if:

21.2.1.1. the Supplier breaches any provision hereof and fails to remedy such breach within 30 (thirty) days of written notice to do so (or if it is not reasonably possible to remedy the breach within the period stipulated herein, within such further period as may be reasonable in the circumstances and agreed to with MultiChoice);

21.2.1.2. or immediately, if the Supplier becomes insolvent or is declared bankrupt or is placed under provisional or final liquidation (other than for the purposes of a bona fide corporate restructuring) or under provisional or final receivership or judicial management.

21.3. In addition to the foregoing, MultiChoice reserves the right to terminate this Agreement for its convenience at any time for any reason on written notice to the Supplier. In such event, the Supplier will be paid for all Products and/or Services authorised and satisfactorily performed, delivered or received prior to said termination.

## 22. EFFECTS OF TERMINATION

22.1. Upon termination:

22.1.1. each party will immediately cease any and all use of any Confidential Information and/or Intellectual Property 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 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 which is not capable of being returned to the other party;

22.1.2. MultiChoice will pay the Suppliers the fees due and owing to the Supplier for Products and/or Services provided until the date of termination; and

22.1.3. the Supplier shall refund MultiChoice any fees received for Products and/or Services not delivered within 14 (fourteen) days of termination.

## 23. ASSIGNMENT

23.1. The Supplier shall not be entitled to cede, delegate, assign, or in any other manner dispose of or transfer any of its rights or obligations in terms of this Agreement, without the prior written consent of MultiChoice, which consent will not be unreasonably withheld or delayed.

23.2. MultiChoice shall be entitled to cede, delegate, assign, or in any other manner dispose of or transfer any of its rights or obligations in terms of this Agreement to its Affiliates, without the prior written consent of the Supplier.

## 24. APPLICABLE LAW AND DISPUTE RESOLUTION

24.1. This Agreement shall be interpreted, construed and enforced in accordance with the laws of England and Wales.

24.2. The parties shall refer disputes to the senior management of the parties for resolution failing which within 10 (ten) days of the date of such referral, the dispute will be referred for arbitration which will be governed by the arbitration rules of the London Court of International Arbitration ("Rules") in force from time to time, which Rules are deemed to be incorporated by reference into this clause.

24.3. The arbitration shall be held at such location as MultiChoice may specify in writing, in the English language in front of a single arbitrator appointed in accordance with the Rules.

24.4. The arbitrator's award shall be final and binding on the parties.



24.5. Notwithstanding the foregoing, nothing in this clause shall be construed as precluding either party from applying to court for an interim interdict or other relief of an urgent nature. For these purposes, the parties hereby consent and submit to the exclusive jurisdiction of the courts of England and Wales.

24.6. The provisions of this clause shall survive the cancellation or termination of this agreement for any reason.

## 25. DOMICILIUM

25.1. The parties choose for all purposes under this Agreement, whether in respect of court process, notices or other documents or communications of whatsoever nature, the addresses as set out in the Term Sheet.

25.2. Unless the contrary is proved by the addressee, any notice to a party -

25.2.1. delivered by hand during ordinary business hours at such party's chosen physical address shall be deemed to have been received on the day of delivery; or

25.2.2. sent by email during ordinary business hours to such party's chosen email address shall be deemed to have been received on the date of despatch.

25.3. Notwithstanding anything to the contrary herein contained, a written notice or communication actually received by a party shall be an adequate written notice or communication to it notwithstanding that it was not sent to or delivered at its chosen physical or email address.

## 26. SEVERABILITY

26.1. In the event any provision, clause, sentence or part of this Agreement is inconsistent with or contrary to any Applicable Law, same shall be deemed to be modified to the extent required to comply with said law (it being the intention of both parties to enforce to the fullest extent all terms of this Agreement) and as so modified, this Agreement shall continue in full force and effect. In the event any such provision, clause, sentence or part of this Agreement cannot be modified to comply with the Applicable Law, then said provision, clause, sentence or portion of this Agreement shall be deemed to be deleted from the Agreement and the remaining terms and conditions shall remain in full force and effect.

## 27. SUBCONTRACT

27.1. The Supplier shall not subcontract the whole or portions of this Agreement without the prior written consent of MultiChoice. The Supplier shall be responsible for the acts or defaults of any subcontractor, his agents or employees, as if they were the acts or defaults of the Supplier.

## 28. NON-WAIVER

28.1. No failure by a party to enforce any provision of this Agreement will constitute a waiver of such provision or affect in any way a party's right to require the performance of such provision at any time in the future.

## 29. RELATIONSHIP

29.1. 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).

## 30. ENTIRE AGREEMENT

30.1. This Agreement constitutes the entire agreement between the Parties with regard to the matters dealt with herein. Each of the Parties confirms that in entering into this Agreement it has not relied upon any representation, warranty or undertaking (whether contractual or otherwise) not recorded herein, and accordingly may not, and waives the right to, rely on any provision or representation (which allegedly induced that Party to enter into this Agreement) not expressly contained in this Agreement. Nothing in this clause has the effect of limiting or restricting any liability of a Party arising as a result of any fraud.

## 31. NO STIPULATION FOR THE BENEFIT OF A THIRD PERSON

31.1. Save as is expressly provided for elsewhere in this Agreement, 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.