



GOtv Sales Channel Partner Terms and Conditions

Kenya

1. Definitions and Interpretation

- 1.1. The provisions of this Agreement have been drafted for the benefit of the Parties, and accordingly, the rule of construction that the contract shall be interpreted against or to the disadvantage of the Party responsible for the drafting or preparation of the agreement (i.e., the *contra proferentem* rule), shall not apply.
- 1.2. For purpose of this Agreement reference to the following shall mean:
 - 1.2.1. **"Affiliates"** means, in relation to a Party, any person that is Controlled by that Party, Controls that Party, or is under common Control with that Party;
 - 1.2.2. **"Agreement"** means the agreement between the SCP and GOtv for the supply of the Services as evidenced by the application form completed by the SCP and the written communication from GOtv to the SCP approving the SCP's application to supply the Services, and these conditions;
 - 1.2.3. **"Applicable Data Protection Laws"** means the relevant local data protection laws and the General Data Protection Regulation - Regulation (EU) 2016/679 (GDPR) to the extent applicable, as amended from time to time. In the absence of local data protection laws, the GDPR shall constitute contractual obligations under this Agreement;
 - 1.2.4. **"Application Form"** means the form to be completed by prospective sales channel partners, setting out the Service(s) which the sales channel partners wish to provide to GOtv;
 - 1.2.5. **"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;
 - 1.2.6. **"Business Day"** means any day other than a Saturday, Sunday or gazetted national public holiday in Kenya;

- 1.2.7. **“Confirmatory Response”** means the email or written communication from GOtv recording that your application as sales channel partner has been approved;
- 1.2.8. **“Control”** means, in relation to any person, the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a person, whether through the ownership of voting securities, by contract or otherwise;
- 1.2.9. **“Data Subject”** means an identifiable natural or legal person 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, where applicable, physiological, genetic, mental, economic, cultural or social identity of that natural person;
- 1.2.10. **“Intellectual Property”** or **“Intellectual Property Rights”** means rights recognized under relevant local laws, which includes all patents, 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;
- 1.2.11. **“GOtv Group”** means GOtv and its Affiliates;
- 1.2.12. **“GOtv”** means the GOtv Kenya Limited, referenced in the Application Form and Confirmatory Response;
- 1.2.13. **“Parties”** means the parties to this Agreement, being GOtv and the SCP and **“Party”** shall mean any one of them, as the context may require;
- 1.2.14. **“Personal Data”** means any information about an identified or identifiable natural person, provided that someone is capable of identifying them from that information, more specifically any information relating to an identified or identifiable natural or legal person;
- 1.2.15. **“Personnel”** means any director, employee, or another person who works (permanently or temporarily) under the SCP’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 another representative;
- 1.2.16. **“Prime Rate”** means the rate of GOtv’s bankers in Kenya;

- 1.2.17. **“Process”, “Processing”** and **“Processed”** means doing anything with Personal Data, including gathering it, disclosing it, or combining it with other information;
- 1.2.18. **“SCP”** means the named Party in the Application Form who has requested to provide the Services to GOtv;
- 1.2.19. **“Sub-Processor”** means any downstream processor that the SCP engages to process Personal Data in accordance with this Agreement;
- 1.2.20. **“Tax”** includes, without limitation, any present or future tax, levy, duty, charge, deduction or withholding of any nature and whatever called (including stamp, documentary, registration or other like duty) together with any penalties, fines or interest imposed thereon, imposed, levied, collected, withheld or assessed by any person on any person in the country and with respect to anything and the terms **“Taxes”** and **“Taxation”** and other cognate terms shall bear corresponding meanings; and
- 1.2.21. **“Territory”** means Kenya.

2. Introduction

- 2.1. GOtv provides subscriber television services under the brand name ‘GOtv’ to customers in Kenya.
- 2.2. This Agreement will commence on the date of the Confirmatory Response and unless terminated as provided herein, it shall continue to be in full force and effect for a period of one (1) year, whereafter it may be renewed upon written agreement under the same terms and conditions as set out herein.
- 2.3. This Agreement supersedes in its entirety any previous agreements or understandings between the Parties or its Affiliates relating to the matters dealt with herein and shall remain in force until expired, terminated or superseded by another written agreement.

3. Relationship between the Parties

- 3.1. The SCP shall fulfil its obligations in terms of this Agreement to GOtv as an independent service provider. Nothing in this Agreement shall be deemed to create a relationship of employer and employee, partnership or joint venture between the SCP and GOtv and/or their respective Personnel. The SCP shall save as specifically contemplated in this Agreement, not hold itself out as being an agent or partner of GOtv or as being in a joint venture with GOtv.
- 3.2. Save as otherwise expressly provided in this Agreement, neither Party shall be entitled to bind the other Party to any obligation of any nature whatsoever or to incur any liability on behalf of the other Party, whether in contract or otherwise. For the avoidance of doubt, the SCP shall not be entitled to enter into any agreement, contract or other binding obligation on behalf of GOtv, or otherwise bind GOtv, without GOtv's prior written consent.

- 3.3. The SCP shall not subcontract the whole or portions of this Agreement without the prior written consent of GOtv. In the event, GOtv approves the SCP to subcontract this agreement, the SCP 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 SCP.

4. Services

- 4.1. The SCP shall, amongst others as indicated on the Application Form, Confirmatory Response to the extent permitted by GOtv, provide any of the following subscriber management services ("**Services**"):

- 4.1.1. collection of standard subscription fees payable by subscribers, and the remittance thereof to GOtv by no later than the next business day; and/or
- 4.1.2. upgrading and/or downgrading subscribers' bouquets; and/or
- 4.1.3. subject to the applicable restrictions on data protection, creating and updating subscriber details and accounts; and/or
- 4.1.4. activating new subscribers and re-connecting subscribers' access to the GOtv service; and/or
- 4.1.5. sale of equipment required to access the GOtv service according to the prices annexed hereto, as may be amended by GOtv from time to time; and/or
- 4.1.6. installation and/or repair of GOtv equipment; and/or
- 4.1.7. swapping of faulty equipment; and /or
- 4.1.8. marketing and promoting the GOtv services using the advertising material provided by GOtv for this purpose. For the avoidance of doubt, the SCP shall not create its own marketing material whatsoever to promote and/or market the GOtv service,

to subscribers of the GOtv service in your Territory.

- 4.2. GOtv may recommend a resale price at which to sell the GOtv equipment, however, this recommended price is not binding on the SCP who is free to determine the price at which it sells the GOtv equipment. The SCP shall not, however, sell GOtv equipment at a price that exceeds the retail price recommended by GOtv.
- 4.3. In performing the Services, the SCP shall adhere to the document(s) compiled, published and amended by GOtv which sets out the policies, processes, procedures and related aspects with which the SCP is required to comply in providing the Services ("**Operations Manual**").

5. Order of equipment, delivery and payment

Order

- 5.1. Save as agreed otherwise between the Parties, the SCP shall order GOtv equipment from GOtv by issuing purchase orders to GOtv, which purchase orders must contain such information as prescribed in the Operations Manual.

Delivery and returns

- 5.2. Save as agreed otherwise, GOtv shall deliver the GOtv equipment to the address specified by the SCP in accordance with the Operations Manual.
- 5.3. Unless expressly excluded in the purchase order, GOtv will be liable for the delivery of the GOtv equipment to a location as nominated by the SCP and shall appoint a carrier to transport the GOtv equipment, and the party responsible for the costs associated therewith will be agreed between the Parties. To this extent, any carrier transporting the GOtv equipment will be deemed to be the agent of GOtv.
- 5.4. Returns of any GOtv equipment will be governed by the Operations Manual.

Payment

- 5.5. The SCP shall pay GOtv the fees for the provision and delivery of GOtv equipment within 30 (thirty) calendar days from receipt of invoices from GOtv.

6. Service fees and billing

- 6.1. In consideration for providing the Services as set out herein, the SCP may receive a service fee as set out in the Confirmatory Response in respect of the subscriptions collected by it from GOtv subscribers during a calendar month (less withholding tax and plus value-added tax).
- 6.2. GOtv shall pay the SCP the undisputed fees as indicated on statements, within 30 (thirty) calendar days of receipt thereof, provided that the SCP provides GOtv with supporting documents to evidence its calculation of such fees.
- 6.3. GOtv may request an at intervals of not less than 30 (thirty) calendar days. Upon receipt of such request, the SCP shall provide the invoice within 5 (five) Business Days.
- 6.4. The SCP shall have no recourse against GOtv or any of its Affiliates for any other payments other than as agreed herein.
- 6.5. In the event that GOtv disputes any amounts due to the SCP, the matter shall be referred to dispute resolution as set out in clause 18 and GOtv shall be entitled to withhold payment of the disputed service fees subject to the dispute being resolved without suspension of the Services.
- 6.6. In the event that the SCP fails to remit the subscription fees and/or any other amounts collected by it to GOtv, GOtv shall be entitled to:
 - 6.6.1. immediately suspend this Agreement; and/or

- 6.6.2. charge interest on all amounts due to it and not paid by the SCP, calculated at the Prime Rate plus 2% (two percent) and applied from the due date for payment until the date of payment; and/or
- 6.6.3. set off and deduct any overdue payments in respect of amounts due to GOtv which the SCP has not paid in accordance with these terms against any service fees owing to the SCP by GOtv from time to time; and/or
- 6.6.4. drawdown on the bank guarantee or insurance policy.

7. Taxes

- 7.1. In accordance with the relevant local laws, and to the extent that the SCP is registered for value added tax, will value added tax be levied on the fee due from GOtv to the SCP, therefore the fee shall be increased by the amount of such value-added tax and shown separately in the invoice for the provisions of Services.
- 7.2. To the extent required by local laws, GOtv shall, in relation to any payment it is required to make to the SCP, withhold from that payment a tax amount required to be withheld under the relevant local laws and GOtv will furnish the SCP with proof of payment of withholding tax remittances/ withholding tax certificate as issued by the relevant local authority.

8. Security deposit and guarantee arrangements

- 8.1. GOtv may, from time to time, request the SCP (at the SCP's cost) to provide it with a security deposit or guarantee, in respect of any GOtv equipment acquired by the SCP, any subscription fees and other amounts collected by the SCP or otherwise in respect of the SCP's obligations under the Agreement.
- 8.2. Should the SCP fail to provide the requested security deposit or guarantee, within 7 (seven) Business Days, or such longer period as may be agreed to by the Parties in writing, GOtv shall be entitled, in its sole discretion, to suspend and/or terminate this Agreement.

9. Ownership, risk and warranty

Ownership

- 9.1. Ownership of the GOtv equipment shall pass to the SCP once payment for such GOtv equipment has been made to GOtv in full.

Risk

- 9.2. Risk in the GOtv equipment shall pass to the SCP on delivery by GOtv (or its nominated carrier) at the location specified by the SCP, or on the terms as set out in purchase orders from time to time. To this end, the SCP shall obtain and maintain comprehensive insurance cover on the GOtv equipment until such time as the SCP has made payment to GOtv in full therefore.

Warranty

- 9.3. GOtv will provide the SCP with the same warranties as provided by the manufacturers of the GOtv equipment, as may be set out in the Operations Manual.

10. GOtv's obligations

- 10.1. GOtv agrees, in addition to those obligations set out elsewhere in this Agreement and at its own cost, to:
- 10.1.1. furnish the SCP with the material in its possession and/or under its control that is reasonably required to provide the Services;
 - 10.1.2. subject to the SCP providing the Services in accordance with the Agreement, make payment to the SCP as set out in this Agreement; and
 - 10.1.3. not unduly delay communicating to the SCP any matter which may impact the provision of the Services; and
 - 10.1.4. subject to the applicable restrictions on data protection, provide the SCP with such access to:
 - 10.1.4.1. the computerised business system used by GOtv and its Affiliates from time to time to, *inter alia*, create and update subscriber accounts, process subscriber transactions and queries and produce subscriber reports and other information relevant to GOtv services ("**GOtv Business System**") (or parts thereof;) and/or
 - 10.1.4.2. other items or equipment, and on such conditions and terms, as GOtv considers necessary and appropriate to enable the SCP to operate and maintain the GOtv Business Systems and/or render the Services in accordance with GOtv's instructions.

11. The SCP's obligations

- 11.1. In addition to the obligations set out elsewhere in this Agreement, the SCP agrees and warrants to provide the Services set out herein:
- 11.1.1. properly and with the utmost good faith and professionalism, towards GOtv in accordance with best industry practice;
 - 11.1.2. by providing, at its own expense, all requisite Personnel, resources and equipment;
 - 11.1.3. complies with the relevant local laws, at all times;
 - 11.1.4. reasonably undertake/honour requests from GOtv. Such requests and specifications shall once be furnished in writing to the SCP, be deemed to form part of the terms of this Agreement and be treated as such in all respects.

12. The SCP's Personnel

- 12.1. The SCP assumes full responsibility for the actions of its Personnel in respect of the provision of the Services (and any related services or products) and shall be solely responsible for their conduct, supervision, direction and control, payment including without limitation their salaries, taxes and benefits. In this regard, GOtv shall not be liable or responsible for any payments to or claims made in respect of any amounts which may be payable to the SCP's Personnel in relation to or arising from, this Agreement.

13. Intellectual property

- 13.1. 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.
- 13.2. The SCP undertakes and acknowledges that:
 - 13.2.1. it shall use the Intellectual Property Rights of the GOtv 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 GOtv Group and/or any of its Affiliates (excluding the SCP) from time to time;
 - 13.2.2. it shall not publish nor use nor broadcast material containing or referring to the Intellectual Property Rights of the GOtv Group and/or its Affiliates without such material having been approved in advance by a member of the GOtv Group and/or any of its Affiliates (excluding the SCP) or its advertising agency, from time to time;
 - 13.2.3. it shall permit duly authorised representatives of the GOtv Group at all reasonable times to inspect the products covered by the registration of the Intellectual Property Rights and the SCP shall, upon the request of the proprietor, submit to GOtv or its duly authorised representatives' samples of the said products for the purpose of verifying that the SCP is complying with the requirements of this Agreement;
 - 13.2.4. upon the termination of this Agreement, it shall deliver to GOtv all samples, copies, signage, publicity and promotional material, stationery and all other material that contains any of the Intellectual Property Rights belonging to the GOtv 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;
 - 13.2.5. without derogating from or limiting the further rights and remedies of the GOtv Group and/or its Affiliates, it shall fully compensate GOtv to the full extent of the SCP's profit and the loss suffered by the GOtv Group and/or its Affiliates arising from any use by the SCP which is not permitted by this Agreement, and the SCP agrees to indemnify the GOtv Group and/or its Affiliates from any liability incurred to third parties for use of the Intellectual Property Rights belonging to

- the GOtv Group and/or its Affiliates otherwise than as permitted by this Agreement;
- 13.2.6. it shall not claim ownership of any Intellectual Property Rights of the GOtv Group and/or its Affiliates;
- 13.2.7. it shall not apply for registration of any Intellectual Property Rights of the GOtv Group and/or its Affiliates in its own or any third party's name;
- 13.2.8. it shall not challenge or otherwise contest the ownership of any Intellectual Property Rights of the GOtv Group and/or its Affiliates;
- 13.2.9. it shall not permit the use of any Intellectual Property Rights of the GOtv Group and/or its Affiliates in such a way as to give the impression that they are the property of the SCP; and
- 13.2.10. it shall not engage in any activity that may contest, dispute, dilute or otherwise impair the right, title, interest or goodwill of the GOtv 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.
- 13.3. The SCP 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.
- 13.4. Nothing contained in this Agreement shall confer any right of ownership in the GOtv Group names on the SCP. Use of any of these names shall be subject to and limited to the provision of the Services as set out in this Agreement and/or any subsequent agreement that may be concluded between the Parties in terms hereof.
- 13.5. The SCP agrees to assign and do hereby assign to GOtv all right, title, obligations and interest in and to the Work Product and GOtv accept such cession and assignment. All Work Product shall be the sole and exclusive property of GOtv and the SCP will not have any rights of any kind whatsoever in such Work Product, except for any rights and obligations that may not be ceded, assigned or waived as a matter of law.
- 13.6. The SCP agrees, at the request and cost of GOtv, to promptly sign, execute, make and do all such deeds, documents, acts and things as GOtv may reasonably require or desire to perfect GOtv's entire right, title, and interest in and to any Work Product, or to further cede or assign such rights to any third party.
- 13.7. The SCP will not make any use of any of the Work Product in any manner whatsoever without GOtv's prior written consent. All Work Products shall be promptly communicated to GOtv.
- 13.8. License: In the event that the SCP integrates any work that was previously created by the SCP into any Work Product, the SCP shall grant to, and GOtv is hereby granted, a non-exclusive, 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 GOtv deems appropriate. The SCP warrants that it shall not incorporate into any Work Product any material that would infringe any Intellectual Property Rights of any third party and undertakes to indemnify and keep GOtv indemnified against any claims may be made against, and any damages and costs that may be suffered by, GOtv to the full extent possible arising from or incidental to such infringement.

- 13.9. To the extent that the SCP does not comply with the provisions of this clause, GOtv may, without prejudice to any other SCP rights it may have, suspend this Agreement on immediate written notice to the SCP.

14. Data Protection

- 14.1. Save as agreed to otherwise in this Agreement, the terms as set out in the Data Protection Terms and Conditions available <https://www.multichoice.com/multichoice-group-site-contracts-africa/dataprotection-tcs> will apply to this Agreement and is hereby incorporated into this Agreement.
- 14.2. Save as agreed to otherwise in this agreement:
- 14.2.1. the Personal Data shall only be Processed for the duration of this agreement or the specific schedules, as applicable;
- 14.2.2. the nature and purpose of the Processing shall be that of providing the Services;
- 14.2.3. the type of Personal Data will include a name, an identification number, location data or any other data that may be shared by GOtv or its Affiliates which may constitute Personal Data; and
- 14.2.4. 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.
- 14.3. The SCP will only Process the Personal Data on GOtv's documented instructions and in accordance therewith.
- 14.4. The SCP may not subcontract or assign its obligations to another Processor without GOtv's prior written authorisation (provided that the SCP informs GOtv of the details of any processor that they intend to subcontract or assign their obligations to and provides GOtv with an opportunity to object thereto). To the extent that the SCP 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 SCP will remain fully liable to GOtv for the performance of the Sub-Processor's obligations where the Sub-Processor fails to fulfil them.
- 14.5. The SCP 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 GOtv of any change in the status of a Sub-Processor.

- 14.6. The SCP may only transfer Personal Data to a third country or international organisation on GOtv'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 SCP must inform GOtv about the legal requirement before transferring the Personal Data, unless the applicable law prohibits the SCP from doing so in the public interest. The SCP 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.
- 14.7. The SCP must return all Personal Data to GOtv 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.
- 14.8. The SCP must on a monthly basis or upon written request, make all information necessary available to GOtv 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 SCP must allow for and contribute to audits (including inspections) by GOtv or another auditor appointed by GOtv.
- 14.9. The SCP must notify GOtv after becoming aware of a Personal Data breach without undue delay.
- 14.10. Any breach by the SCP, 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 SCP and shall entitle, but not oblige, GOtv to terminate this agreement (or any schedule(s) thereto) with immediate effect on written notice to the SCP.
- 14.11. The SCP hereby indemnifies and holds harmless GOtv and its Affiliates from and against all losses which GOtv 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 SCP of its obligations under this agreement.
- 14.12. The SCP 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 GOtv's policies and procedures which may be in force from time to time.
- 14.13. Without derogating from or limiting its further obligations in this agreement, the SCP 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 GOtv 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.
- 14.14. The SCP will furnish GOtv with quarterly audits of its systems certifying its compliance with the terms set out in this agreement.

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

15. Confidentiality

- 15.1. Each of the Parties shall at all times keep confidential and shall not, without the prior written consent of the other Party, disclose or divulge to any third party any information relating to the business or affairs of the other Party, the contents of this Agreement or any agreement entered into pursuant to this Agreement except as may be required to comply with any applicable law, governmental or regulatory authority, rule, regulation or order or to enforce any of the terms of this Agreement.

16. Insurance, indemnity and limitation of liability

- 16.1. The SCP shall for the duration of this Agreement obtain and maintain insurance cover for the provision of the Services.
- 16.2. The SCP indemnifies and holds harmless GOtv, its Affiliates and their Personnel against all claims, actions or demands, and/or losses of whatsoever nature suffered or incurred on any basis and howsoever arising as a result of the provision of the Services and/or a breach by the SCP and/or its Personnel of the terms of this Agreement.
- 16.3. Notwithstanding anything to the contrary in this Agreement, the SCP acknowledges that, GOtv or its Affiliated companies' liability for any indirect, consequential or special damages, including loss of profits or anticipated savings, shall be limited to the fees if any paid to the SCP in the last 12 months.
- 16.4. Subject to the aforesaid terms of this clause 15, GOtv's and its Affiliates' joint aggregate liability under or in connection with this Agreement, howsoever arising, shall be limited to the aggregate fees paid to the SCP hereunder at the time of such liability arising.

17. Breach, Suspension and Termination

17.1. Breach

- 17.1.1. Save where the contrary is expressly provided in this Agreement, should either Party ("**Defaulting party**") breach any provision of this Agreement and fail to remedy such breach within 14 (fourteen) calendar days after receiving written notice requiring such remedy from the other Party ("**Aggrieved party**") (or such shorter period as may be necessary for the circumstances), then the Aggrieved party, by giving written notice, shall be entitled, without prejudice to its other rights in law, including any right to claim damages, to terminate this Agreement or to approach a court of competent jurisdiction to claim specific performance of all of the Defaulting party's obligations.

17.2. Suspension

17.2.1. In the event of a breach by either Party of any of the obligations under 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 a written agreement on how to resolve the matter, and failing such agreement within 14 (fourteen) calendar days, GOtv may elect to terminate this Agreement as set out herein.

17.3. Termination

17.3.1. This Agreement may immediately be terminated in writing by GOtv, if the SCP becomes insolvent, is placed under provisional or final liquidation or under provisional or final judicial management.

17.3.2. In addition to the foregoing, GOtv reserves the right to terminate this Agreement for its convenience at any time for any reason on 30 (thirty) calendar days written notice to the SCP. In such event, the SCP will be paid for all Services authorised and satisfactorily performed, delivered or received prior to said termination.

18. Exit management

18.1. In the event of this Agreement is terminated or expires for any reason,

18.1.1. in order to ensure that the disruption to GOtv and the GOtv customers are minimised, the SCP will continue to provide the Services as set out in this Agreement for the remainder of the notice period in question or such shorter period as determined by GOtv;

18.1.2. each Party will immediately cease any and all use of and where possible return any confidential information, Personal Data and/or Intellectual Property of the other Party which is in that Party's possession or under its control, and where such return is not possible, to immediately delete, erase or destroy (and certify such deletion, erasure or destruction) of such information;

18.1.3. GOtv will pay the SCP the fees due and owing to the SCP for providing the Services until the date of termination; and

18.1.4. the SCP shall remit any fees received from GOtv customers and not yet remitted to GOtv as well as refund GOtv any fees received for Services not delivered within 14 (fourteen) calendar days of termination.

18.2. Except to the extent that GOtv, in its sole discretion, determines otherwise the SCP shall continue to perform the services and its other obligations in terms of this Agreement for the duration of any notice period.

19. Governing law and dispute resolution

19.1. This Agreement shall be interpreted, construed and enforced in accordance with the applicable laws of the Territory.

- 19.2. Any dispute arising out of or in connection with this Agreement, including any question regarding its existence, validity or termination, shall first be referred to the senior management of the Parties for resolution, and failing such resolution within a period of 10 (ten) Business Days from the date on which the matter was referred to them, the matter shall be referred to arbitration in accordance with this clause.
- 19.3. Any unresolved dispute as contemplated in clause 19.2 shall be referred to and finally resolved by arbitration under the rules of the leading commercial arbitration authority applicable in the Territory (“**Rules**”) in force from time to time, which Rules are deemed to be incorporated by reference into this clause.
- 19.4. The arbitrator’s award shall be final and binding on the Parties and may be made an order of a court.
- 19.5. Notwithstanding the foregoing, nothing in this clause shall be construed as precluding either Party from applying to a 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 the Territory.

20. Notices

- 20.1. Subject to applicable law, the parties choose the following addresses as their respective addresses for all purposes of the giving of any notice; the payment of any sum; the serving of any process and for any other purpose arising from this Agreement as follows:
- 20.2. in the case of GOtv to:
- physical address: the address as set out in the Confirmatory Response
- email: legal.notices@multichoice.com
- and marked for the attention of the Managing Director;
- 20.3. in the case of the SCP to:
- physical address: the address as set out in the Application Form
- email: the email address as set out in the Application Form
- and marked for the attention of the sales channel partner
- 20.4. Any notice given by a Party to the other will be presumed to have been received by the addressee at the time of delivery/receipt or transmission by email.
- 20.5. Notwithstanding anything to the contrary in this clause, a written notice or other communication actually received by a Party shall be adequate notice to it despite that the notice was not delivered to its given contact address.
- 20.6. Notwithstanding what is contained herein, the Parties agree that service of any legal processes emanating out of the courts shall be done in accordance with the laws of the Territory and not only by email.

21. Anti-bribery and anti-corruption compliance

- 21.1. 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:
- 21.1.1. comply with (and shall procure that each person associated with it who is performing under agreement shall comply with) all applicable (local and international) anti-bribery laws, including, but not limited to, the U.S. Foreign Corrupt Practices Act 1977, the U.K. Bribery Act 2010 and any similar applicable local anti-corruption and anti-bribery laws (“**the Anti-Bribery Laws**”), in respect of the performance of this Agreement;
 - 21.1.2. 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);
 - 21.1.3. 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; and
 - 21.1.4. immediately report to the other Party:
 - 21.1.4.1. any knowledge or suspicion of any violations by the Party, its officers, employees, Personnel or any person associated with it of any of the Anti-Bribery Laws; or
 - 21.1.4.2. any requests or demands for any undue financial or another advantage of any kind received by the Party in connection with the other Party’s continued business.
- 21.2. Each Party warrants and represents that neither it nor any of its officers, employees, Personnel or, having made reasonable enquiries, so far as it is aware, other persons associated with it in connection with this Agreement:
- 21.2.1. have been convicted of any offence involving bribery, corruption, fraud or dishonesty;
 - 21.2.2. 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
 - 21.2.3. 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.
- 21.3. 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 cancel

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.

22. Non-assignment

- 22.1. GOtv shall be entitled to cede, assign, delegate, transfer or novate all or any of its rights and/or its obligations under this Agreement, so long as authorized to do so by the SCP.
- 22.2. The SCP may not cede, assign, delegate, transfer, novate, sub-contract or in any manner whatsoever deal with its rights or obligations in terms of this Agreement without GOtv's prior written consent.

23. Force majeure

- 23.1. Either Party shall be relieved of liability for the non-performance or defective performance of any of its obligations under this Agreement caused by any act outside of its reasonable control including, but not limited to, storms, floods, fire, earthquakes, other natural disasters, pandemics, epidemics, diseases, power failures, unavailability of equipment from third party suppliers, strikes, riots, acts of terrorism and actions of civil, governmental, quasi-governmental and military authorities, which relate to the Parties' obligations set out in this Agreement.
- 23.2. A Party subject to force majeure shall, as soon as reasonably possible, notify the other Party in writing of the circumstances resulting in force majeure and shall provide an estimate (which shall be updated in writing from time to time) of when those circumstances are expected to cease to apply. The other unaffected Party shall be entitled to suspend the performance of its obligations to the same extent to which the affected Party is unable to perform its obligations hereunder. Either Party shall be entitled to terminate this Agreement on 10 (ten) Business Days' written notice to the other Party if the force majeure persists after 30 (thirty) calendar days.

24. General

- 24.1. This Agreement constitutes the whole agreement between the Parties and the Parties waive the right to rely on any alleged express provision not contained in this Agreement. This Agreement may be amended, varied or terminated only by written instrument signed by both Parties.
- 24.2. No contract varying, adding to, deleting from or cancelling this Agreement, and no waiver of any right under this Agreement, shall be effective unless reduced to writing and signed by or on behalf of the Parties.
- 24.3. The expiration or termination of this Agreement shall not affect any provisions that expressly provide that they will, or which of necessity must continue to, have effect after any such expiration or termination.
- 24.4. If any provision of this Agreement is held or found to be invalid or unenforceable or contrary to the provisions of any law, such provision shall be deemed to have been severed from this Agreement and to be *pro-non-scripto*; provided that all of the

remaining terms and conditions shall continue to be of full force and effect and to bind the Parties.

- 24.5. GOtv shall not be liable in any way for any costs incurred by the SCP leading up to and/or related to the SCP concluding and/or agreeing to be bound by this Agreement. Each Party hereto shall pay its own costs in respect of the execution of this Agreement and all negotiations relating to the same.
- 24.6. By applying to be an Agent of GOtv you are accepting the terms and conditions set out in this Agreement you confirm that you are duly authorised to do so on behalf of the SCP and warrant such authority.