

General Terms and Conditions for Purchasing by the Deutsche Telekom Group (GTC Purchasing)

Part B: Specific terms for South Africa

1. Definitions

- (1) The words and phrases defined In Part A of the Agreement will, when used in this Part B, have the meanings assigned to them in Part A. Furthermore, in the Agreement the following words and phrases have the meanings assigned to them hereunder and derivative expressions have corresponding meanings:
 - a. "Affected Services" means Services affected by a Force Majeure Event;
 - b. "Agreement" means the agreement constituted by the documents referred to in clause 2 of Part A;
 - c. "Effective Date" means the date on which the Vendor Application Form is signed by the Party doing so last in time;
 - d. "Good Industry Practice" means the application of processes, techniques and a degree of skill and care, and the innovative use of resources that have a proven record of success in providing improvement in cost, quality, performance, safety, or other measurable factors, that impact the health of an organization, which would reasonably be expected from a leading service provider in the ICT industry while engaged in the provision of services that are the same or similar to the Services;
 - e. "Force Majeure Event" means an act of God, an act of public enemy, fire, explosion, earthquake, perils of the sea, flood, storm or other adverse weather conditions, war declared or undeclared, civil war, revolution, civil commotion or other civil disorder, sabotage, riot, strikes, lock-outs or other labour disputes, blockade, embargo, sanctions, epidemics, act of any Government or other Authority, compliance with law, regulations or demands of any Government or Governmental agency, limitations imposed by exchange control or foreign investment or other similar regulations or any other circumstances of like or different nature beyond the reasonable control of a Party;
 - f. "Products" means any equipment, machinery, tools, materials, software or other item (tangible or intangible) that Contractor supplies to Customer, whether on its own or as part of the supply of Services to Customer.

2. Structure of the Agreement

- (1) The Agreement is a framework agreement that allows Customer from time to time to procure

Products and/or Services from Contractor. Whenever the Customer wishes to procure Products and/or Services from Contractor, the Customer must furnish Contractor with an Order.

- (2) The Agreement will commence on the Effective Date and, unless it is terminated in accordance with clause 7 of Part A, or clauses 15 or 16 of this Part B, will continue in force until it is terminated by either Party on one month's written notice to the other Party.
- (3) Save as agreed otherwise by the Parties in writing, (a) the cancellation or termination of an Order will not result in the cancellation or termination of this Agreement or of any other Orders; and (b) cancellation or termination of this Agreement will not result in the cancellation or termination of any Orders that may at that time still be in force. Such Orders will continue in force in accordance with their individual terms (and for such purpose the terms of the Agreement will continue to apply to such Orders, notwithstanding the termination the Agreement). The result of terminating the Agreement will only be to terminate the ability of either Party to conclude any further Orders.
- (4) Contractor may not supply Products or Services to Customer without an Order. If Contractor supplies Products or Services to Customer without an Order, Customer will be under no obligation to pay for such Products or Services and Contractor waives any claim that it may have against Customer for payment, whether in contract, or on the basis of an enrichment claim.

3. Sale of Products

- (1) If Contractor sells Products to Customer, it does so at the price(s) as specified in the Order relating to the Products.
- (2) Subject to clause 3(3) Contractor bears all risk of loss of and damage to the Products from whatever cause, until the Products have been accepted by Customer and notwithstanding that the Products were in Customer's possession when the loss occurred.
- (3) Clause 3(2) will not apply if Customer or its employees negligently or wilfully cause the loss of or damage to the Products.
- (4) Customer will hold rejected Products for collection by Contractor at Contractors' sole risk and cost.
- (5) Every container or package that Contractor delivers to Customer must be clearly marked

with Customer's Order number and Contractors' name.

4. Delivery and Acceptance

- (1) Customer will accept delivery of Products at its nominated premises only between 08h00 and 15h00 on business days. If Contractor wishes to deliver Products outside these times or at premises other than Customer's nominated premises, it must obtain Customer's prior, written consent to do so.
- (2) Acceptance of delivery of Products will not constitute acceptance of the Products.
- (3) Customer (or its agent) will inspect all Products after delivery, and may reject any Products that are not in compliance with the applicable Order.
- (4) Products delivered to Customer must be in compliance with the Order, failing which Customer may:
 - a. call upon Contractor to make good any defects in workmanship and material within a specified period at Contractor's cost; or
 - b. refuse to take delivery, or, having taken delivery, to reject the Products and to recover from Contractor all damages sustained by Customer arising from Contractors' breach of the Order;
 - c. refuse to take delivery, or, having taken delivery, to reject the Products and to purchase the same or similar goods of the specified quality on the open market in which case, Contractor must pay the excess between the price Customer then pays and the price in terms of the Order as liquidated damages.

5. Warranty in Respect of Products

- (1) Contractor warrants that the Products:
 - a. comply with the original equipment manufacturer's specifications for such Products;
 - b. comply with the specifications stipulated in the Order;
 - c. are free from all defects in workmanship and material for a period of 12 (twelve) months from the date of delivery to Customer. This warranty will be over and above any rights which Customer enjoys at law. Contractor must promptly replace, free of charge, all the Products that fail to meet this warranty.
- (2) Customer may require Contractor to assign any warranty that Contractor receives from the original equipment manufacturer of the Products, to Customer.

6. Cancellation of Order for Products

- (1) Time is of the essence in respect of all Orders. Accordingly, Customer may cancel an Order for Products entirely or partially if Contractor delivers the Products after the date specified in the Order, irrespective of the period which may

have elapsed thereafter, and without prejudice to Customer's right to claim damages arising from the late delivery/commencement.

- (2) Customer may cancel an Order by notice in writing without furnishing any reason. In such event, if Contractor is not in breach of the Order, Customer must pay to Contractor:
 - a. purchase price of Products completed and delivered to Customer at the date of such notice at the purchase price specified in the Order (in respect of goods that Contractor specifically manufactured for Customer in terms of the Order);
 - b. work in progress, at a price to be agreed upon in writing, subject to such prices not exceeding the pro rata portion of the cost of the Products as specified in the Order and provided that Contractor must deliver such incomplete Products to Customer which, upon delivery, will become Customer's property. Until delivery, Contractor bears the risk of loss of or damage to the incomplete Products;
 - c. materials, which have been ordered by Contractor for the Order, at the price Contractor paid for the materials, provided that Contractor is able to furnish written proof to Customer's reasonable satisfaction, that it had ordered the materials prior to receipt of Customer's notice of cancellation and was not able to cancel such order. Upon payment for the materials, Contractor must deliver the materials to Customer which, upon delivery, will become Customer's property. Until delivery Contractor bears the risk of loss of or damage to the materials;
 - d. the cancellation fee in respect of an order as contemplated in clause 6(c), which Contractor is able to cancel, subject to payment of a cancellation fee;
 - e. the reasonable cost of any special equipment such as jigs, tools and templates which cannot be utilised in the normal day-to-day activities of Contractor. Upon payment for such equipment, Contractor must deliver the equipment to Customer which, upon delivery, will become Customer's property. Until delivery Contractor bears the risk of loss of or damage to the equipment.

7. Warranties in respect of Services

Contractor warrants that:

- (1) it will render the Services in compliance with all laws that apply to the provision of the Services;
- (2) it has the skills, resources and expertise to provide the Services in accordance with the Agreement and the applicable Order. Without limiting the generality of the foregoing, Contractor represents to Customer that it will provide the Services in a timely, professional and

workmanlike manner consistent with Good Industry Practice.

8. Termination of Order for Services

- (1) Time is of the essence in respect of all Orders. Accordingly, Customer may, without first giving notice to remedy, cancel an Order for Services entirely or partially if Contractor does not commence with the Services on the date specified in the Order, irrespective of the period which may have elapsed thereafter (but provided Contractor has not, at the time of cancellation already commenced with the Services). Such cancellation will be without prejudice to Customer's right to claim damages arising from the late commencement.
- (1) Customer may cancel an Order for Services by notice in writing without furnishing any reason. In such event, if Contractor is not in breach of the Order, Customer must pay to Contractor:
 - a. Services already rendered, at a price to be agreed upon in writing, subject to such prices not exceeding the pro rata portion of the cost of the Services as specified in the Order;
 - b. for materials, that Contractor has acquired or ordered to enable it to render the Services, at the price Contractor paid for the materials, provided that Contractor is able to furnish written proof to Customer's reasonable satisfaction, that it had ordered the materials prior to receipt of Customer's notice of cancellation and was not able to cancel such order. Upon payment for the materials, Contractor must deliver the materials to Customer. On delivery thereof, the materials will become Customer's property. Until delivery Contractor bears the risk of loss of or damage to the materials.

9. Terms of Payment

- (1) Subject to Contractor performing all the terms and conditions of the applicable Order and to the terms of clauses 9(2), 9(5) and 9(6), Customer must pay Contractor for the Services and/or Products properly provided and accepted by Customer, within 45 (forty-five) days of the receipt by Customer from Contractor of a statement supported by correct VAT invoices.
- (2) If the Parties have agreed that Customer will make interim or periodic payments, Customer must pay the Service Charges to Contractor within 45 (forty-five) days of the receipt by Customer from Contractor of a statement supported by correct VAT invoices in respect of every part of the Services that would qualify for an interim or periodic payment.
- (3) If Contractor provides the Services at a time and material rate, it must record the time spent in doing so on time sheets, which the Customer must sign. Customer will not be obliged to pay for Services rendered on a time and material

basis unless Contractor's timesheets are signed by Customer.

- (4) If applicable, Customer must reimburse Contractor for disbursements that Contractor incurs, with Customer's prior written consent, in providing the Services.
- (5) Contractor must submit VAT invoices to Customer in duplicate, reflecting Customer's Order number.
- (6) Payment must be made in South African Rand, without conditions, deduction, bank or exchange commission, or set-off, into the bank account specified on Contractor's invoice.
- (7) If Customer disputes any portion of an invoice, it may withhold only the disputed part of the invoice and must pay the balance on due date.

10. Prices

- (1) If prices are subject to adjustment, the changes therein must be calculated on the basis set out in the Order or the accepted Proposal/Quote.
- (2) If Customer issues an Order on a 'price to be advised', 'estimated price', 'price subject to adjustment' or any other similar basis, it will be a condition of the Order that Contractor must advise Customer in detail in writing of the proposed prices prior to Contractor delivering the Products or commencing with the Services. Customer may demand that the price calculation be substantiated by documentary evidence. If the prices are unacceptable to Customer, it may cancel the Order without penalty.

11. General Warranties

- (1) Contractor warrants that:
 - a. it will not knowingly introduce any into any resources utilized by Customer;
 - b. it does not have any direct or indirect contractual, financial, business or other interest or advantage that would conflict in any manner or degree with the performance of its duties and responsibilities under the Agreement or under any Order;
 - c. neither Contractor nor any employee of Contractor has used or will use the authority provided or to be provided under this Agreement or under an Order to improperly obtain financial gain, advantage or benefit for Contractor;
 - d. it will not attempt to influence any of Customer's Employees by the direct or indirect offer of anything of value or an inducement;
 - e. it has legal capacity, and is qualified and registered to transact business in the Republic of South Africa;
 - f. it has all necessary rights, powers, and authority to enter into and perform under the Agreement and all Orders and to bind its organisation with respect to the same, and the execution, delivery, and performance of

this Agreement and all Contracts by Customer have been and will have been duly authorised by all necessary corporate action;

- g. the execution and performance of its obligations in terms of this Agreement and all Contracts does not and will not contravene any applicable laws and will not: (i) any agreement, court order, judgment or ruling to which Contractor is a party or by which it is bound; or (ii) contravene any provision of Contractor's constitutional documents; or (iii) be in breach of any of the provisions of any other agreement, obligation, restriction or undertaking which is binding on it;
- h. it has all necessary licenses, certificates, permits, authorisations and consents required under the laws of the Republic of South Africa necessary for it to provide the Services.

- (2) Neither Party enters into the Agreement in reliance upon any representation, warranty or other provision, except as provided in the Agreement or an Order. All conditions, warranties or other terms implied by law are excluded to the extent permitted by law.
- (3) Each Party warrants that it is acting as principal and not as agent for any other person, whether disclosed or otherwise.

12. Confidentiality

- (1) In the Agreement (including Part A thereof) the words "confidential information", whether capitalised, or not, means any information, discoveries, ideas, concepts, techniques, specifications, drawings, blueprints, diagrams, flow charts and data relating to products, designs, computer programs, business opportunities, customer lists, costing, marketing plans sales figures, technical and financial information, research, development and know-how, which is provided in written, encoded, graphic or other tangible form, and information relating to a Party's business or affairs including that of its associated and affiliated companies, whether disclosed in writing, orally or by any other means to a Receiving Party, whether before or after the commencement date of the Agreement.
- (2) The Parties must, for the term of the Agreement and for 3 (three) years thereafter, keep all Confidential Information they receive from each other in strict confidence and may not publish, employ, exploit or use such Confidential Information in any manner or make the Confidential Information available to third parties save to achieve the purposes of the Agreement or any Order or to the extent permitted by the disclosing Party.
- (3) A receiving Party must restrict the dissemination of the Confidential Information to other persons

who are actively involved in the business purpose for which the Confidential Information was disclosed, and then only on a "need to know" basis to persons that are also subject to these obligations of confidentiality no less stringent than contained in the Agreement.

- (4) A receiving Party must take all reasonable steps to impress upon other persons coming into contact with the other Party's Confidential Information the confidential nature thereof and to protect such Confidential Information in a manner no less stringent than the manner in which it protects its own Confidential Information.
- (5) Affiliates of Customer will not be deemed third parties insofar as Confidential Information is provided to them in connection with the Agreement or an Order.
- (6) The confidentiality obligations in the Agreement do not apply to Confidential Information, which the receiving Party can demonstrate:
 - a. lawfully obtained from a third party who is not under obligation of confidentiality with regard thereto; or
 - b. was already in the public domain upon conclusion of the Agreement or which becomes part of the public domain by publication or otherwise without any violation of the receiving Party's obligations under the Agreement; or
 - c. was developed independently by the receiving Party without any violation of its obligations under the Agreement; or
 - d. is approved in advance for release by written authorization by the disclosing Party; or
 - e. that constitutes technology, ideas, know-how and concepts of third parties (third party know-how). which the third party lawfully disclosed to the receiving Party, even insofar as such third party know-how incidentally coincides with the Confidential Information;
 - f. that must be disclosed to an assignee in case of assignment of claims to enable the assignee to enforce a claim, if necessary; or
 - g. that the receiving Party provides to third parties for the purpose of protecting the receiving Party's interests or exercising its rights under the Agreement or an Order, provided that such third parties are obliged to maintain secrecy under their professional rules or in terms of a confidentiality agreement no less stringent than those contained in this Agreement.
- (7) Each Party may disclose Confidential Information to satisfy an order of a court of competent jurisdiction or to comply with the provisions of any law or regulation in force from time to time (including a request in terms of the Promotion to Access to Information Act, No 2 of

2000, as amended), provided that such Party must inform the other Party of its obligation to disclose before disclosure; may disclose the Confidential Information only to the extent legally required and must continue to apply the provisions of the Agreement to such Confidential Information for all other purposes.

- (8) A disclosing Party may at any time request a Receiving Party to return any Confidential Information or other material containing, pertaining to, or relating to the Confidential Information and may, in addition, request the receiving Party to furnish a written statement to the effect that upon such return, it has not retained in its possession, or under its control, either directly or indirectly, any such material.
- (9) Alternatively to clause 14(8), a receiving Party must, if asked to do so by a disclosing Party, destroy or irrevocably delete such material and furnish the disclosing Party with a written statement to the effect that such material has been destroyed or irrevocably deleted.
- (10) The receiving Party must comply with a request in terms of clauses 12(8) and 12(9) within 5 (five) days of receipt of such request from the disclosing Party.
- (11) Customer will take reasonable steps to ensure the confidentiality of information transmitted by way of e-mail. Contractor acknowledges, however, that due to the nature of the internet and e-mail communications, Customer cannot guarantee the security or confidentiality of information transmitted in this manner. Contractor must contact Customer should it wish specific information not to be communicated by way of e-mail or require any specific security arrangements to be implemented.
- (12) The Parties agree that a breach of the terms of this clause 12 would result in irreparable injury to the disclosing Party for which a remedy in damages would be inadequate. The Parties agree that in the event of such breach or threatened breach, the disclosing Party may seek an injunction to prevent the breach or threatened breach, in addition to remedies otherwise available for such specific performance or injunctive relief, for which the disclosing Party has an adequate remedy at law.

13. Security Provisions

To the extent that Customer is required to grant Contractor access to Customer's equipment, systems, applications or information (collectively, "Information Systems"), Customer will do so subject to the following conditions:

- (1) Customer will grant access only to Contractor's Personnel whom Contractor has authorised to have such access; for legitimate business purposes only; on a case-by-case basis, and on the principle of 'least access'; and to its

Information Systems directly required to fulfil Contractor's obligations under the Order, and only for the duration of the Order and only to persons then in the employ of Contractor;

- (2) Contractor must communicate to its Personnel Customer's security and/or acceptable usage policies that Customer provides to Contractor; ensure that its Personnel accessing Customer's Information Systems are made aware of their security responsibilities, and are adequately trained in the execution of their security responsibilities; ensure that its Personnel accessing Customer's Information Systems sign confidentiality and non-disclosure agreements to maintain Customer's information in confidence, alternatively that equivalent provisions are included in Contractor's employment contracts with its Personnel; ensure that any of its equipment (for example workstations) used to access Customer's information systems are physically secured against theft and tampering, which could result in exposure of Customer's information; ensure that any of its equipment and software (e.g. workstations, Windows operating systems, web browser, etc.) used to access Customer's Information Systems are appropriately configured with respect to security, that security patches and updates are regularly installed to counter publicly known vulnerabilities and security holes, and that adequate Anti-malware software is installed to protect against viruses, worms, Trojans and similar malware; designate in writing a primary and secondary point of contact for Customer for all information security issues. The contact details of such persons must be communicated to Customer's Corporate Security at infosecurity@Customer.co.za within 5 (five) days from the date of conclusion of this Agreement.
- (3) Contractor may use the customer or other data that Contractor and its Personnel access only to fulfil its obligations under this Agreement or an Order. It may not use such data for any other purposes without the prior, written permission of Customer.
- (4) Customer's data as contemplated in this clause 13 may only be stored, transmitted and processed within South Africa in order to comply with local and regional data privacy laws;
- (5) If Contractor provides information processing services to Customer, it is required to provide high availability services with operational redundancy to ensure uninterrupted services, or other measures as agreed with Customer.
- (6) Contractor or its Personnel may not attempt to interfere with Customer's Information Systems.

- (7) Contractor must, when on Customer's premises, comply with all Customer's security and access policies and processes.
 - (8) Contractor must inform Customer immediately in writing of any security breach, vulnerability or incident, or potential security breach, vulnerability or incident associated with the provision of services to Customer and/or access to Customer's Information Systems of which Contractor becomes aware. Contractor's security point of contact must inform Customer through the infosecurity@Customer.co.za mailbox.
 - (9) Contractor must return any equipment that Customer may provide to Contractor in terms of this Agreement or an Order to Customer upon termination of the Agreement or applicable Order.
 - (10) Contractor must irreversibly delete any of Customer's data stored on Contractor's equipment (e.g. servers, workstations, storage media) sent to external parties for repair or maintenance, and is required to irreversibly delete any of Customer's data stored on Contractor's equipment that is retired, repurposed or sold.
 - (11) Upon termination of employment or engagement of a member of Contractor's Personnel, Contractor must inform Customer at infosecurity@Customer.co.za that such person's access to Customer's Information Systems must be removed. Contractor must notify Customer as soon as reasonably possible, but no later than 3 (three) working days from the date of termination of the person's employment or engagement.
 - (12) Contractor must insert terms similar to those contained in this clause 13 in its contracts with its subcontractors who will provide Services to Customer.
- 14. Intellectual Property Ownership**
- (1) The intellectual property owned by the Parties, their Contractors and/or suppliers remains the sole property of such Parties.
 - (2) If the Customer commissions Contractor to create intellectual property for the Customer ("Commissioned IP") then, provided the Customer has paid Contractor for the creation thereof, such Commissioned IP will vest solely in the Customer and Contractor will fully co-operate with the Customer, at Contractor's cost, to have the Commissioned IP registered in the name of the Customer, if required.
- 15. Events of Default**
- In addition to the events of default listed in clause 7 of Part A, an Event of Default will occur if any of the following events, each of which will be several and distinct from the others, occurs in respect of a Party ("Defaulting Party"):
- (1) if the Defaulting Party is not a natural person, it commits an act in terms of the Insolvency Act, No 24 of 1936, which would have constituted such an act of insolvency if it had been a natural person; or
 - (2) an order placing the Defaulting Party under supervision and/or commencing business rescue proceedings in respect of such Defaulting Party, is made; or
 - (3) the Defaulting Party is removed from the register of companies or is placed under provisional or final liquidation or sequestration;
 - (4) notice is given of a meeting of the shareholders or directors of the Defaulting Party, at which meeting the voluntary liquidation of or the commencement of business rescue proceedings in respect of the Defaulting Party will be tabled; or
 - (5) the Defaulting Party's board of directors resolves that the Defaulting Party voluntarily begin business rescue proceedings and be placed under supervision;
 - (6) the Defaulting Party is (or is deemed by any authority or legislation to be) financially distressed, as contemplated in section 128 (1) of the Companies Act or the value of its assets is less than its liabilities; or
 - (7) the Defaulting Party (i) is unable to pay its debts as and when they become payable in the ordinary course of business, (ii) threatens to suspend payment of all or a part of its indebtedness to the other Party or any other creditors, (iii) commences negotiations and/or takes any other step with a view to the deferral, rescheduling or other readjustment of all (or all of a particular type of) its indebtedness to its other creditors, or (iv) proposes or makes a general assignment or an arrangement or composition with or for the benefit of its creditors or a moratorium is agreed or declared in respect of or affecting all or a part of its indebtedness to the other Party or its other creditors; or
 - (8) the Defaulting Party fails to satisfy any final judgment taken against it or fails to apply to have such judgment set aside within 7 (seven) calendar days of becoming aware of it.
 - (9) If an Event of Default occurs, whether in terms of this clause 15 or clause 7 of Part A, the Party other than the Defaulting Party ("Innocent Party") may, in addition to and without prejudice to any other right it may have in law or in terms of the Agreement, in its sole discretion cancel (i) the Agreement; or (ii) the applicable Order; or (iii) all Orders then still in force; or (iv) any combination of the aforesaid, as the Innocent Party may elect in its sole discretion, and claim such damages as it may have suffered.

- (10) Contractor may not institute a claim against Customer arising from the Agreement more than 1 (one) year after the cause of action arose.

16. Force Majeure

- (1) If either Party delays or fails to comply with any of its obligations under the Agreement, due to a Force Majeure Event, such Party will not be in breach of the Agreement nor will it incur any liability to the other Party.
- (2) If the Party that is subject to Force Majeure is unable to fully resume the Affected Services within 30 (thirty) days from the date on which the Force Majeure Event occurred, then either Party may terminate Affected Services by delivering to the other Party a termination notice in writing, specifying the termination date.

17. Limitation of Liability

- (1) Neither neither Party will be liable to the other Party for (a) indirect, incidental, consequential or special damages or losses and/or (b) loss of income, profits, or goodwill, loss of use, downtime or costs of substitute products, lost or damaged data or software, lost opportunities or anticipated savings, howsoever arising, whether or not caused by its employees, agents and/or contractors, and regardless of form or cause of action and whether foreseeable or unforeseeable.
- (2) The maximum, cumulative liability for all claims arising during the term of the Agreement, of either Party to the other Party for all damages or losses in respect of or relating to the Agreement (but excluding any Oder), howsoever arising, whether or not caused by its employees, agents and/or contractors, and regardless of form or cause of action, will be limited to an amount of R1,000,000 (one million rand).
- (3) The maximum, cumulative liability for all claims arising during the term of an Order of either Party to the other Party for all damages or losses in respect of or relating to that Order, howsoever arising, whether or not caused by its employees, agents and/or contractors, and regardless of form or cause of action, will be limited to R1,000,000(one million rand).

18. General

- (1) The Parties may correspond via email for operational reasons, but neither Party may give any notice relating to a dispute, demand, breach, legal proceedings, renewal, cancellation or termination by way of email. Such formal notice must be signed by hand on paper.
- (2) The Agreement constitutes the whole of the agreement between the Parties relating to the subject matter hereof. Every Order constitutes the whole of the agreement between the Parties relating to the subject matter thereof. No amendment, alteration, variation, novation or consensual cancellation of the Agreement or an

Order, or any addition to the Agreement or an Order will be of any force or effect unless reduced to writing and signed by the Parties.

- (3) No waiver, indulgence, delay or relaxation of any of the terms and conditions of the Agreement or any Order or any rights arising from them will be binding or effectual for any purpose unless expressed in writing and signed by the Party giving the same, and will be effective only in the specific instance and for the purpose given.
- (4) Any provision of the Agreement or any Order that contemplates performance or observance subsequent to termination or expiration of the Agreement or that Order or which must necessarily continue to have effect after such expiration or termination, will survive the termination or expiration of the Agreement or that Order, notwithstanding that the provision itself does not expressly provide for this.
- (5) Nothing in the Agreement or any Order constitutes either Party as the agent, principal, representative, joint venturer or partner of the other, and neither Party may represent the contrary to any third party.
- (6) Neither Party may cede its rights or delegate its obligations under the Agreement or any Order without the prior written consent of the other Party. However, Customer may cede its rights or delegate its obligations to any company that it controls, that controls it, or that is under common control with it.
- (7) The provisions of the Agreement were settled by negotiation and each Party was free to secure independent legal advice. The rule of construction that clauses must be interpreted against the Party principally responsible for drafting will, therefore, not apply in the interpretation of the Agreement. The same principle will apply to all Contracts.
- (8) The Agreement and all Contracts will be governed, interpreted and implemented in accordance with the laws of the Republic of South Africa.
- (9) The use of any expression in the Agreement or any Order covering a process available under the laws of South Africa such as, without limiting the interpretation of this particular sub-clause, "winding-up" will, if any of the Parties is subject to the law of any other jurisdiction, be construed as including any equivalent or analogous proceedings under the law of such defined jurisdiction.
- (10) The address of a Party's principal place of business as at the signing of the Agreement will be that Party's domicilium citandi et executandi for all purposes, whether in respect of court process, notices or other documents or communications, of whatever nature.

19. BBBEE

- (1) The Contractor warrants that, as at the Effective Date, it has been certified to have a level four (4) or better Broad-Based Black Economic Empowerment (“BBBEE”) status as envisaged in the Broad-Based Black Economic Empowerment Act, 2003 and that it will maintain such status throughout the duration of this Agreement.
- (2) The Contractor must provide evidence of such status level by way of a BBBEE verification certificate, issued by an accredited verification agency (“Verification Certificate”). The Contractor must achieve level three (3) status or better within 2 (two) years from the Effective Date and must provide Customer with the Verification Certificate that confirms such improved status as soon as it achieves such status.
- (3) The Contractor must provide Customer with the first Verification Certificate on the Effective Date and updated Verification Certificates annually during the duration of this Agreement on or before 1 July. The Contractor must notify T-Systems promptly in writing of any material changes in its BBBEE status.
- (4) Failure to comply with any of the provisions of this clause 19 will constitute a material breach of the Agreement that will entitle Customer to terminate the Agreement and all extant Orders by written notice without first having to provide the Contractor notice to remedy the breach, and without having to pay the Contractor any termination fee or other penalty.
- (5) This clause 19 is intended to ensure that Contractor maintains or improves its BBBEE contributor level. If the provisions of the BBBEE Act and/or the codes created in terms thereof are amended in such a manner that the commercial rationale of this clause 19 is materially negated, its terms can no longer be substantively applied, and/or Contractor’s BBBEE contributor level is reduced, Contractor undertakes to meet with Customer and in good faith attempt to negotiate and sign an appropriate amendment of this clause 19, so as to achieve its intended effect. If the Parties are unable to reach agreement within 30 (thirty) calendar days of the said amendments, either of them may refer the matter to an independent attorney to prepare and finalise an amendment to this clause 19, acting as an expert and not as an arbitrator, and the Parties will be bound by the amendment as aforesaid whether they agree to sign a corresponding amendment to the Agreement or not. Supplier will have 12 months to implement necessary changes to satisfy the provision of the amended clause.

20. Dispute Resolution Procedure

- (1) Informal Resolution;
 - a. If any dispute or Problem arises between the Parties, the Customer relationship manager and the Vendor relationship manager shall meet and attempt to resolve the problem. Written minutes of such meetings shall be kept by Vendor and delivered to Customer within 5 (five) days after the meeting.
 - b. If the Parties are unable to resolve the problem within 10 (ten) days after the initial request for the meeting, then the Parties shall seek to resolve the problem through the Dispute Resolution Committee review as provided in clause 20(2) below.
- (2) Dispute Resolution Committee;
 - a. Upon receipt of a written referral from the Parties’ representatives as provided in clause 20(1), the Dispute Resolution Committee shall meet within 5 (five) days of such referral,
 - b. If the Dispute Resolution Committee is unable to resolve the Problem within 10 (ten) days after the Problem was referred to it or 15 (fifteen) days have passed since the Problem resolution process began, then the Dispute Resolution Committee shall forward the written Problem referral to the Parties’ executives as provided for in clause 20(3) below, along with a statement of any actions taken or recommendation made by the respective members of the Dispute Resolution Committee.
- (3) Executive Resolution;
 - a. For Problems that are not resolved as described in clause 20(2), negotiations shall be conducted by the Chief Information Officer or higher-level officer of the Customer and the Chief Information Officer or higher-level officer of the Vendor.
 - b. If such representatives are unable to resolve the Problem within 5 (five) Business Days after the Parties have commenced negotiations, or 15 (fifteen) days have passed since the initial request for negotiations at this level, then the Parties shall be entitled to discontinue negotiations and to seek to resolve the Problem through arbitration as hereinafter provided.
- (4) Arbitration;
 - a. If the Parties are unable to resolve any dispute, in the manner contemplated by clause 20(3), then subject to clause 20(4)(b), such dispute shall on written demand by either Party to the dispute be submitted to arbitration at AFSA in Sandton and in accordance with the rules thereof by an arbitrator or arbitrators agreed on by the Parties or should the Parties fail to agree on an arbitrator within 10 (ten) days after arbitration has been demanded, the arbitrator shall be nominated by AFSA. The arbitration shall be held in the English language.
 - b. The Parties shall request that the arbitrator(s) commence the arbitration within 21 (twenty-one)

- days and proceed as if time is of the essence in the arbitration proceeding.
- c. The Parties shall request that the arbitrator render his or her decision within 14 (fourteen) days following the conclusion of the hearing.
 - d. Recognising the express desire of the Parties for an expeditious means of dispute resolution, the arbitrator shall limit or allow the Parties to expand the scope of discovery as may be reasonable under the circumstances.
 - e. The Parties undertake not to withhold their consent to join another party to the Arbitration.
 - f. The Parties irrevocably agree that the submission to arbitration is subject to the Parties' rights of appeal. Any Party may appeal the decision of the arbitrator within a period of 20 (twenty) days after the arbitrator's ruling has been handed down by giving written notice to that effect to the other Party to the arbitration. The appeal shall be dealt with in accordance with the rules of AFSA by a panel of 3 (three) arbitrators appointed by AFSA.
 - g. The decision of the arbitrator shall be binding on the Parties to the arbitration after the expiry of the period of 20 (twenty) days from the date of the arbitrator's ruling if no appeal has been lodged by any Party or upon the issue of determination by the appeal panel, as the case may be. A decision, which becomes final and binding in terms of this clause 20(4)(g) may be made an order of court at the instance of any Party to the arbitration.
 - h. Each Party agrees to continue performing its obligations under the Agreement while any dispute is being resolved except to the extent the issue in dispute precludes performance (dispute over payment shall not be deemed to preclude performance).
 - i. The Parties shall use commercially reasonable efforts to resolve disputes arising under the Agreement as rapidly as possible.
 - j. This clause shall not preclude either Party from seeking urgent relief from either the High Court of South Africa or any other competent organs of state created for the specific purpose of regulating the business or industry activities in which the Parties are engaged.
 - k. Any dispute resolution or arbitration process under this clause shall be conducted in camera and the Parties shall treat as confidential and not disclose to any third party the existence of the dispute, details of the dispute, the conduct of the informal or formal dispute resolution proceedings or the outcome of the dispute resolution proceedings, without the written consent of the other Party provided that the Parties shall be entitled to disclose such information to such persons as are necessary to enable them to conduct their case.

21. Disputed Amount

- (1) Subject to and in accordance with the provisions of this clause 21, Customer may withhold payment in respect of any disputed amounts of any Vendor invoice that Customer in good faith disputes as due or owing. Such dispute shall automatically be referred to dispute resolution in terms of clause 20(dispute resolution).
- (2) On resolution of the dispute in favour of Customer, Vendor shall cancel the disputed invoice, issue Customer with a credit note for same and reissue the invoice in the correct amount.
- (3) In the case where a dispute is resolved in Vendor's favour, Customer shall be entitled to charge Customer interest at the prime rate of a bank designated by Customer (calculated from the due date for payment to the date of actual payment, both dates inclusive) in respect of the disputed amount (or the portion thereof) awarded to Vendor in terms of the dispute procedure.
- (4) The failure of the Customer to pay a disputed invoice, or to pay the disputed part of an invoice, shall not constitute a breach or default by Customer, so long as Customer complies with the provisions of this clause 21.