

**KIMBERLY-CLARK OF SOUTH AFRICA'S TERMS AND CONDITIONS OF PURCHASE**

(For the supply of Goods and/or Services)

These [Supplier Terms and Conditions of Purchase](#) shall regulate the supply to Kimberly-Clark of South Africa (Pty) Ltd (KCSA) by the Vendor of goods and/or services ordered under a Purchase Order ('PO') of KCSA.

Kimberly-Clark of South Africa's Terms and Conditions of Purchase are available on our website: <https://www.kimberly-clark.com/en-za/southafrica>.

**WHEREBY IT IS AGREED AS FOLLOWS:****1. INTERPRETATION AND PRELIMINARY**

The headings of the clauses in this Agreement are for the purpose of convenience and reference only and shall not be used in the interpretation of nor modify nor amplify the terms of this Agreement nor any clause hereof. Unless a contrary intention clearly appears -

- 1.1. words importing -
  - 1.1.1. any one gender include the other two genders;
  - 1.1.2. the singular include the plural and *vice versa*; and
  - 1.1.3. natural persons include created entities (incorporated or unincorporated) and the state and *vice versa*;
- 1.2. the following terms shall have the meanings assigned to them hereunder and cognate expressions shall have corresponding meanings, namely –
  - 1.2.1. **"Agreement"** means this service level agreement including any annexures, schedules and appendices to it, including the Commercial Conditions to Kimberly-Clark of South Africa Terms and Conditions of Purchase;
  - 1.2.2. **"Business Day"** means a day other than a Saturday, Sunday or official South African public holiday;
  - 1.2.3. **"Commencement Day"** means the date stipulated in clause 4 hereof, being the date on which this Agreement becomes of full force and effect;
  - 1.2.4. **"Goods"** means the goods to be supplied by the Vendor to KCSA in terms of this Agreement, the details, Specifications and prices of which goods are set out in Schedule 1 to this Agreement;
  - 1.2.5. **"KCSA"** means Kimberly-Clark of South Africa (Pty) Ltd, a company duly incorporated in accordance with the laws of South Africa with registration number: 1966/006844/07; with registered address at 8 Leicester road, Bedfordview, 2008, South Africa (which address shall be the domicilium *citandi et executandi* of KCSA for purposes of this Agreement);
  - 1.2.6. **"KCSA's Rules and Regulations"** means the internal rules, regulations and policies of KCSA, as amended from time to time;
  - 1.2.7. **"KC Supervising Officer"** means KCSA trained and appointed officer tasked with managing the job or task activities of the Vendor whilst the Vendor is on the premises o KCSA;
  - 1.2.8. **"Key Personnel"** means the Vendor's key personnel who will be involved in supervising or rendering the Services, as set out in Schedule 2 or in the PO;
  - 1.2.9. **"Parties"** means the parties to this Agreement, namely KCSA and the Vendor, and the **"Party"** shall mean a reference to any of them as the context may require;
  - 1.2.10. **"Purchase Order (PO)"** means the purchase order to be used and issued by KCSA for placing an order with the Vendor for the specific quantities of the Goods and/ Services and which may contain details on pricing, specifications of goods and/or services and other information determined by KCSA at its sole discretion for purposes of this Agreement;
  - 1.2.11. **"RFI"** means the relevant request for information together with any supporting documents as despatched by KCSA to the Vendor prior to the conclusion of this Agreement;
  - 1.2.12. **"RFQ"** means the relevant request for quote together with any supporting documents as despatched by KCSA to the Vendor prior to the conclusion of this Agreement;
  - 1.2.13. **"Services"** means the services to be provided by the Vendor to KCSA in terms of this Agreement, the details, specifications and prices of which are set out in the PO or Schedule 1 to this Agreement;
  - 1.2.14. **"Signature Date"** means the date of signature of this Agreement by the Party signing last;
  - 1.2.15. **"Specifications"** means the information regarding the Goods or the Services, which fully describes certain minimum standards and requirements regarding the Goods or the Services;
  - 1.2.16. **"SSCS"** shall mean KCSA's Code of Conduct and Supplier Social Compliance Standards located at;
    - 1.2.16.1. <http://www.kimberly-clark.com/sustainability/people/CSC.aspx> and;

- 1.2.16.2. [www.kimberly-clark.com/en/responsibility/social-compliance](http://www.kimberly-clark.com/en/responsibility/social-compliance) and;  
1.2.16.3. as may be amended from time to time in KCSA's sole discretion.

- 1.2.17. "Vendor" means the other party from whom KCSA procures goods or services in terms of this agreement
- 1.2.18. "VAT" means value-added tax payable in terms of the VAT Act;
- 1.2.19. "VAT Act" means the Value-Added Tax Act, 89 of 1991 (as amended) and where applicable includes the regulations promulgated in terms thereof;

- 1.3. any reference to an enactment is to that enactment as at the Signature Date and as amended or re-enacted from time to time;
- 1.4. if any provision in this definition clause is a substantive provision conferring rights or imposing obligations on any Party, notwithstanding that it is only in the definition clause, effect shall be given to it as if it were a substantive provision in the body of the Agreement;
- 1.5. when any number of days is prescribed in this Agreement, same shall be reckoned exclusively of the first and inclusively of the last day unless the last day falls on a day which is not a Business Day, in which case the last day shall be the next succeeding Business Day;
- 1.6. expressions defined in this Agreement shall bear the same meanings in schedules or annexures to this Agreement which do not themselves contain their own conflicting definitions;
- 1.7. the use of any expression in this Agreement covering a process available under South African law such as a winding-up (without limitation *eiusdem generis*) shall, if any of the Parties to this Agreement is subject to the law of any other jurisdiction, be construed as including any equivalent or analogous proceedings under the law of that jurisdiction;
- 1.8. where any term is defined within the context of any particular clause in this Agreement, the term so defined, unless it is clear from the clause in question that the term so defined has limited application to that clause, shall bear the meaning ascribed to it for all purposes in terms of this Agreement, notwithstanding that that term has not been defined in this interpretation clause;
- 1.9. the expiration or termination of this Agreement shall not affect such of the provisions of this Agreement as expressly provide that they will operate after any such expiration or termination or which of necessity must continue to have effect after such expiration or termination, notwithstanding that the clauses themselves do not expressly provide for this;
- 1.10. the rule of construction that a contract shall be interpreted against the party responsible for the drafting or preparation of the contract, shall not apply;
- 1.11. any reference in this Agreement to a Party shall, if such Party is liquidated or sequestered, be applicable also to and binding upon that Party's liquidator or trustee, as the case may be; and
- 1.12. this Agreement shall be governed by and interpreted in accordance with the laws of South Africa.

## 2. **RECORDAL**

- 2.1. KCSA is involved in the manufacture, import, marketing, distribution, retail and sale of innovative health, feminine care, diapers and hygiene products (without limiting the generality of the aforesaid) and requires the supply of the Goods and Services as set out in this Agreement.
- 2.2. The Vendor represents itself as having the necessary resources, expertise, staff, products, services and skill, technical knowledge and experience to fully meet the requirements of KCSA in relation to the Goods and/or Services.
- 2.3. In reliance on the above, KCSA wishes to appoint the Vendor to provide the Goods and/or the Services to KCSA and the Vendor accepts this appointment on the terms and conditions set out in this Agreement.
- 2.4. From the Commencement Date hereof the RFI and the RFQ (if applicable) shall be of no further force and effect and will not be binding between or on the Parties.

## 3. **DURATION**

- 3.1. This Agreement shall commence on date set out in the PO or date of delivery of goods or commencement of services by the Vendor, whichever date occurs first, unless otherwise agreed in writing between the parties (the "Commencement Date") and shall continue for the following "Term", subject to the provisions of this Agreement:
- 3.1.1. if the term is specified in the PO, for the term specified in the PO, subject to KCSA having the right to cancel the agreement for any reason whatsoever, without costs or liabilities by giving the Vendor thirty (30) days' written notice to cancel the Agreement;
- 3.1.2. if there is no fixed term stipulated in the PO, indefinitely on a month-to-month basis, subject to KCSA giving the Vendor thirty (30) days' written notice to cancel the Agreement.
- 3.2. If KCSA enters into the Agreement for the supply of goods and/or services by the Vendor for a fixed term as provided for in clause 3.1.1, and does not cancel or renew the agreement for a further term before the term has ended, then the agreement in respect of the service/s will continue indefinitely, subject to KCSA giving the Vendor thirty (30) days' written notice to cancel the agreement.
- 3.3. The Term of this Agreement may be extended by mutual agreement between the Parties. Any Party wishing to extend the Term of this Agreement ("Notifying Party") shall give written notice to the other Party ("Receiving Party") to this effect. If the Receiving Party, upon receipt of the written notice from the Notifying Party, notifies the Notifying Party in writing that it consents to the extension of the Term of this Agreement, the Term of this Agreement will be extended for a further period as agreed on the terms and conditions recorded herein.

## 4. **SUPPLY OF GOODS**

- 4.1. The Vendor shall sell and supply to KCSA, and KCSA shall purchase from the Vendor, such Goods as KCSA orders [by way of Purchase Order] from time to time from the Vendor at the applicable prices as set out in the PO or Schedule 1 and upon the terms and conditions set out in this Agreement.
- 4.2. In the event that KCSA submits to the Vendor any estimates of KCSA's projected requirements of the Goods for the (the "**Projection**"). Such estimates are given for Vendor's planning purposes only and do not constitute any obligation on KCSA to order or purchase any of the Goods as set out in the Projection.
- 4.3. The Vendor shall ensure that it has enough Goods for sale and delivery to KCSA as stipulated in the Projection.
- 4.4. Nothing contained in this Agreement will constitute an obligation on the part of KCSA to order or purchase any minimum quantity of the Goods other than the agreed minimum (if any) as set out in the PO or Schedule 1.
- 4.5. If KCSA wishes to purchase the Goods, it shall provide the Vendor with a Purchase Order for Goods concerned. On the Vendor's receipt of the Purchase Order, an agreement of Sale of Goods concerned by the Vendor to KCSA shall automatically have come about on the terms and conditions of this Agreement as read with that Purchase Order.
- 4.6. The Vendor shall be obliged to confirm in writing within 48 (forty eight) hours of its receipt of the PO each and every PO so received by it from KCSA and such confirmation shall include:
  - 4.6.1. the applicable PO Price;
  - 4.6.2. the applicable quantity and details of the Goods ordered;
  - 4.6.3. Confirmation that the delivery of the Goods will be made in accordance with clause 5 (*Delivery of Goods*).

## 5. **DELIVERY OF GOODS**

- 5.1. The Vendor shall deliver the Goods on a date as may be stipulated by KCSA in the PO or such later date as otherwise agreed in writing between the parties.
- 5.2. The Goods shall be delivered by the Vendor to such address included in the Purchase Order or as otherwise agreed in writing between the Parties.
- 5.3. The quantities of the Goods which the Vendor must so deliver to KCSA must be as is set out in the PO. KCSA will accept a maximum of 5% (five percent) deviation from the quantities stipulated in the PO.
- 5.4. Notwithstanding the time lines set out in this clause 5, KCSA may reasonably request from time to time, and the Vendor shall use its best endeavours to comply with any such request, to have the Goods manufactured, packaged and shipped on an expedited basis.

## 6. **OWNERSHIP AND RISK**

- 6.1. Ownership of the Goods shall remain with the Vendor until payment in full has been made by KCSA to the Vendor, at which instance ownership shall pass to KCSA.
- 6.2. The risk of the Goods shall only pass to KCSA when we have accepted it as being to our complete satisfaction and the Goods will, therefore, be held at the Vendor's risk or returned to the Vendor for credit or replacement as may be required by KCSA and in the case of replacement, within the delivery period as originally specified on our order or as soon as reasonably possible thereafter.

## 7. **QUALITY OF GOODS**

- 7.1. The Vendor shall implement all necessary quality controls to ensure that the Goods meet the agreed Specifications.
- 7.2. Each item of the Goods shall bear appropriate trademarks and shall be in appropriate packaging, which shall meet the Specifications.
  - 7.2.1. All goods packaged shall comply with all laws and regulatory requirements, shall be securely packaged, carried and shall be delivered free of defects.
  - 7.2.2. Certificates of conformance in relation to the packaging of the goods may be required from time to time and shall be submitted by the Vendor to KCSA at the request of KCSA before delivery of the goods will be accepted by KCSA.
- 7.3. KCSA shall be entitled from time to time to amend the Specifications by mutual agreement in writing with the Vendor.
- 7.4. All Goods must be manufactured and packaged under appropriate sanitary conditions (the "**Conditions**"), and shall comply in all respects with the Specifications and with the quality standards of KCSA, medical clearances, raw material standards (the "**Standards**") and packaging standards applicable to the Goods.
- 7.5. KCSA or its designee shall have the right upon reasonable notice at any reasonable time or times to inspect those portions of the facilities and equipment used by the Vendor in the converting, packaging and/or processing otherwise (including, without limitation, the manufacturing and storing) of the Goods to ensure compliance with Conditions, Standards and Specifications. Any such inspection of the Goods and review of the Vendor's quality assurance program will not constitute acceptance of any Goods and shall not be construed as relieving the Vendor from any of its obligations under this clause 7 (Quality of Goods).
- 7.6. KCSA is entitled not to accept (and/or to refuse delivery of) any Goods which do not conform to any of the Conditions, Standards and/or Specifications and any other standards set out in the PO or Schedule 1 or in KCSA's Rules and Regulations or any previously approved samples.

- 7.7. The Vendor shall ensure that the Goods, (including, without limitation, its packages, labels, direction sheets, cartons and containers used in connection with the Goods) conform to any previously approved samples, and the Vendor shall not make (nor allow anyone else to make) any change to any of them or to any Goods without the prior written consent of KCSA.
- 7.8. Payment for the Goods shall not constitute acceptance by KCSA of the Goods.
- 7.9. As soon as practicably possible KCSA shall notify the Vendor of any defective or non-conforming Goods and shall give the Vendor a reasonable opportunity to inspect same. Subject to KCSA's availability, the Vendor shall inspect the Goods concerned and shall within 7 (seven) days afterwards either repair or replace all non-conforming or defective Goods with conforming Goods at no additional charge to KCSA.
- 7.10. Any defective Goods delivered to KCSA by the Vendor and not accepted by KCSA shall, if KCSA so requests the Vendor be properly disposed of by the Vendor. KCSA may request certificate of safe disposal, which the Vendor shall provide at the request of KCSA. The Vendor may not use any of those defective Goods or resell any defective Goods to anyone else without KCSA's prior written consent. Any such defective Goods may be disposed of by KCSA at the written request of the Vendor. All costs relating to such disposal shall be borne by the Vendor, which cost shall be payable upon demand. If KCSA chooses not to dispose of defective Goods itself, it will be entitled to demand that the Vendor removes the defective Goods from KCSA's premises within 7 (seven) days of the inspection contemplated in clause 7.9 and disposes of the defective Goods in accordance with this clause 7.10.
- 7.11. The Vendor shall notify KCSA immediately in writing once it becomes aware of or has a reason to believe that any Goods delivered to KCSA are defective or do not conform with the applicable Conditions, Standards and/or Specifications in any manner whatsoever. The Vendor will cooperate with KCSA to determine whether the Goods are so defective or non-conforming. In addition, if a defect or non-conformity is or may be present, the Vendor shall cooperate with KCSA in good faith (i) to correct the cause of the defect or non-conformity, and (ii), if requested by KCSA, to provide KCSA with all and any information about the Goods to assist KCSA to identify and recover any such defective or non-conforming Goods that may have been distributed or made available by KCSA to any third parties and comply with KCSA's Non-Conformance Procedure, set out in Schedule 3 of this Agreement.
- 7.12. Complaint Handling
- 7.12.1. Each Party shall provide the other with an opportunity to review and inspect any records that are maintained by that Party regarding complaints received by that Party regarding the Goods.
- 7.12.2. The Vendor shall promptly notify KCSA upon the receipt by the Vendor of any consumer complaint regarding any of the Goods supplied by the Vendor to KCSA.

7.13 KCSA Issued Materials

Where KCSA for the purposes of the PO issues materials to Vendor, such materials shall be and remain the property of KCSA. Vendor shall maintain all such materials in good order and condition subject, in the case of tooling, patterns and the like to fair wear and tear. Vendor shall use such materials solely in connection with the PO. Any surplus materials, which shall for the avoidance of doubt, include packaging, shall be disposed of at KCSA's discretion. In the event of waste of or damage to such materials arising from bad workmanship or negligence of Vendor, Vendor shall at the request of KCSA either replace the wasted or damaged material or reimburse KCSA an amount equal to the agreed value of the wasted or damaged material.

8. DELIVERY DOCUMENTS

- 8.1. Only the Goods set out in the applicable Purchase Order will be accepted by KCSA, unless any change to that Purchase Order was consented to in writing by KCSA prior to the delivery of the Goods concerned in which case the Goods must be as is set out in that amended Purchase Order.
- 8.2. Every delivery of the Goods to KCSA shall be accompanied by at least the following documents, to be furnished to the specific facility of KCSA to which the goods are delivered, as per the delivery address on the PO :
- 8.2.1. delivery document or a goods received note
- 8.2.2. a valid tax invoice for the supply of the Goods, which must reflect at least:
- 8.2.2.1. the applicable KCSA Purchase Order number;
- 8.2.2.2. line item number;
- 8.2.2.3. the Vendor's delivery note number;
- 8.2.2.4. the delivery date;
- 8.2.2.5. the description of the Goods;
- 8.2.2.6. the applicable price/s for the Goods;
- 8.2.2.7. the Vendor's VAT Number;
- 8.2.2.8. KCSA's VAT Number;
- 8.2.2.9. any other information as prescribed by applicable legislation or reasonably requested by KCSA;
- together with an acceptance document signed on behalf of KCSA by a person duly authorised by KCSA to accept such delivery on behalf of KCSA being "**Delivery Documents**".
- 8.3. It will be the responsibility of the Vendor to ensure the correctness of the Delivery Documents. Any inaccuracies in the Delivery Documents may delay receipt of the Goods and possible return of the Goods as well as non-payment.

9. PROVISION OF SERVICES

The Vendor must –

- 9.1. render the Services agreed upon to KCSA in accordance with at least the practices and the highest professional standards in well managed entities providing similar services to these Services herein agreed ("**Good Industry Practice**");
- 9.2. at all times exercise all reasonable skill, care and diligence in rendering the Services and in the performance of all its obligations in terms of this Agreement;

- 9.3. observe and comply with all reasonable directives from time to time issued by KCSA in relation to the Services;
- 9.4. as soon as possible, but in any event, by not later than the Commencement Date have and maintain sufficient professional indemnity insurance for the duration of this Agreement, against any of its potential liabilities that may arise as a result of the provision of the Services and provide KCSA with proof of such insurance cover in the form of a certificate issued by the Vendor's insurer;
- 9.5. refrain from engaging in any activity that may prejudice or the business of KCSA or place it in risk;

#### 10. **VARIATION OF THE SCOPE OF SERVICES**

- 10.1. KCSA may in writing inform the Vendor that the performance of a particular Service is no longer required, in which case that particular Service will cease to be part of the Services from the date that the Vendor is so informed in writing to that effect.
- 10.2. KCSA may in writing request the Vendor that:
  - 10.2.1. the performance of an additional service should become part of the Services;
  - 10.2.2. a variation be made to a particular element of the Services or the performance of the Services; and/or
  - 10.2.3. a change be made to the date for commencement of the Services or any part of the Services,

in which case the Parties shall use their respective reasonable endeavours to consent to the variations, which consent shall not be unreasonably withheld upon the treatment of that request and to amend this Agreement, accordingly, together with Schedule 1 or the PO or. In the event of either party's refusal to consent to a contract variation request, the other party may refer the matter for dispute resolution, set out in terms of this Agreement

#### 11. **KEY PERSONNEL**

- 11.1. The Services shall be rendered by or under the ultimate supervision of the Key Personnel listed in Schedule 2 of this Agreement or in the PO and such Key Personnel shall direct and control the rendering of the Services.
- 11.2. The Key Personnel of the Vendor or any replacement person approved by KCSA from time to time shall have full authority to act on behalf of the Vendor for all purposes in connection with this Agreement and if present, shall represent the Vendor at each and every meeting (where applicable).
- 11.3. The Vendor shall use only the Key Personnel and the Vendor's other personnel or consultants, provided that such consultants shall have been approved by KCSA, in the rendering of the Services and such persons shall be available substantially for so long as may be necessary to ensure the proper rendering by the Vendor of the Services.
- 11.4. The Vendor shall not remove any of the Key Personnel without the prior written approval of KCSA, which approval shall not be unreasonably withheld or delayed. KCSA shall have the right after consultation with the Vendor to request the removal of any person engaged in the rendering of the Services if, in KCSA's opinion, that person's performance or conduct is or has been unsatisfactory and the Vendor shall then promptly remove the person so specified. The Vendor shall be responsible for replacing such person with a person who has been approved by KCSA.

#### 12. **INTELLECTUAL PROPERTY**

The Parties acknowledge and agree to the following –

- 12.1. save for information which is proprietary to the Vendor at the Commencement Date, the rendering of the Services may include the reviewing, amending, development, drafting, creation and design, for or under instruction of KCSA, of documents, diagrams and other written works in which KCSA is interested ("**Intellectual Property**");
- 12.2. all such Intellectual Property which the Vendor develops, and all rights, including intellectual property rights in and to such Intellectual Property, will vest in KCSA absolutely and as sole beneficial owner thereof;
- 12.3. the Vendor shall not own any rights in or to the Intellectual Property;
- 12.4. the Vendor shall, if and when so required by KCSA, and at the expense of KCSA, apply or join in applying for the registration of appropriate protection in respect of the Intellectual Property on behalf of KCSA and will, at the expense of KCSA, execute all documents and do all things necessary for vesting the protection and all right, title and interest in respect of the Intellectual Property in KCSA or in any person which KCSA may specify;
- 12.5. the rights in or to the Intellectual Property, as well as all the rights to any Intellectual Property in all works created during the course of the Vendor's appointment in terms of this Agreement will vest in KCSA;
- 12.6. the Vendor shall not divulge, nor authorise or allow anyone else to divulge, either during its appointment or afterwards, any knowledge of the subject matter of the Intellectual Property. Without limiting the generality of the foregoing, the provisions of clause 32 (*Confidentiality*) shall apply to the Vendor in this regard;
- 12.7. in the event that, and as soon as, any Intellectual Property rights, particularly, but without limitation, copyright, come into existence in respect of documents on which the Vendor works, this clause serves as an automatic assignment of all rights to any Intellectual Property in all works created during the course of the Vendor's appointment in terms of this Agreement to KCSA; and
- 12.8. the above assignment shall be of all Intellectual Property rights, including, but without limitation, copyright, which came into existence along with all accrued rights therein, including the right to sue for infringement, which may have taken place prior to the date of recording any such assignments.

#### 13. **PRICES**

- 13.1. The applicable prices of the Goods and Services as stipulated in the PO or Schedule 1 respectively (“Prices”) shall be all inclusive [VAT inclusive], (where applicable) and include amongst other, but without limitation, purchasing, receiving and storing raw materials; provision of labour, utilities, finishing materials, packaging and supplies packing for shipment and preparation of related documents insurance cost, freight and delivery cost, customs and excise duties, storage of the Goods pending delivery, quality control systems, depreciation, overhead and all other costs and expenses of whatever kind.
- 13.2. The Prices shall remain valid and unchanged for a period of 12 (twelve) months from the Commencement Date and thereafter no price variations shall take place unless mutually agreed in writing by the Parties. If the Vendor wants to request a Price variation after that 12 (twelve) month period, the Vendor shall provide KCSA with a written request for the Price variation at least 3 (three) months prior to the anticipated effective date of the price variation.
- 13.3. The Parties shall negotiate in good faith to establish an increased variation of Price for the Goods and or Services requested under clause 13.2 and if a new price is so agreed between the Parties in writing then such new Price shall be valid for the period of 1 (one) year from the date on which it came into force, unless otherwise agreed in writing between the parties. If the Vendor wishes to increase vary a Price again after the expiry of a period of 1 (one) year from the date on which that increased Price variation came into force, then the procedure contemplated in clauses 13.2 and 13.3 shall again be followed
- 13.4. If Parties fail to agree on the proposed price variation under clause 13.2, then in such instance this agreement may be terminated without cause and without any liability herein by either party giving the other party 3 (three) months’ days’ written notice.

**14. PAYMENT FOR GOODS AND SERVICES**

- 14.1. No payment to the Vendor in respect of Goods and/or Services in terms of this Agreement will be made unless KCSA has received the Delivery Documents as set out in clause 8.2.
- 14.2. The Vendor shall invoice KCSA for the Goods and/or Services monthly in arrears or as otherwise agreed in writing between the parties. The invoice rendered shall comply with clause 8.2.2.
- 14.3. The Delivery Documents specified in clause 8.2 and the invoice in respect of the Goods and/Services are contemplated in clause 14.2 must be submitted by the Vendor to KCSA on or before the date of delivery.
- 14.4. The Delivery Documents must be submitted to KCSA at the following address: *8 Leicester road, Bedfordview, 2008, South Africa.*
- 14.5. Payments of invoices shall be made strictly 60 (sixty) days from date of invoice
- 14.6. KCSA shall make payment to the Vendor of the whole undisputed amount against the Vendor's invoices, in accordance with payment terms agreed to herein or as otherwise agreed between the parties. Any disputed amount will be referred for resolution in accordance with clause 34 (*Dispute Resolution*).
- 14.7. The Vendor acknowledges that KCSA shall not be under any obligation to pay based on the Delivery Documents or invoices which are provided to KCSA after 3 (three) calendar months after the month within which the delivery of the relevant Goods or the provision of the relevant Services took place except if, as an outcome of dispute declared and determined in terms of this Agreement, the Vendor is entitled to payment of any amount that it had previously not invoiced KCSA for, in which case then the Vendor shall be entitled to provide KCSA with the invoice in respect of any such amount within 3 (three) months of the outcome of that dispute being declared or determined.
- 14.8. The onus resides on the Vendor to verify any change of banking details, consequently KCSA shall not be responsible for fraudulent changes to bank details that have not been verified and KCSA is hereby indemnified against any resultant loses or damages

**15. PAYMENTS BY ELECTRONIC FUNDS TRANSFER (“EFT”)**

- 15.1. All payments by KCSA to the Vendor under this Agreement shall be made via EFT and the Vendor will provide KCSA:
  - 15.1.1. with written details of the Vendor's South African bank account setting out the Vendor's bank, branch, branch number and account number; and
  - 15.1.2. with a photocopy of a cancelled cheque from the Vendor's bank account referred to above.
- 15.2. The Vendor further agrees and acknowledges that KCSA, on giving or causing to be given an instruction to its bankers to effect the transfer of any amount due by it to the Vendor under this Agreement, will have fully and effectively discharged its obligation to make such payment to the Vendor, provided that KCSA shall provide the Vendor with reasonable assistance to rectify the bank's errors if such is the case.
- 15.3. The Vendor indemnifies KCSA, its employees and agents against any claims of whatsoever nature which may be brought against any of them by any person or entity alleging non-payment of any amounts due to the Vendor for any EFT payment transfer which has been effected in terms of the above.

**16. SET-OFF MONIES DUE FROM THE VENDOR**

Whenever any sum of money is due and payable by the Vendor to KCSA, that sum may be deducted by KCSA from any sum then due, or which at any time thereafter may become due, to the Vendor by KCSA, whether under this Agreement or any other agreements or contracts between KCSA and the Vendor or otherwise howsoever.

**17. VERIFICATION OF VENDOR INFORMATION**

The Vendor hereby consents and grants authority to KCSA for KCSA to verify Vendor information through *inter alia* credit checks, searches and verifications in respect of the Vendor, its shareholders, directors and any other related parties, with any credit bureau, agency or party which KCSA may at its sole discretion consider expedient or necessary.

**18. SUBCONTRACTORS**

- 18.1. Unless KCSA' provides express prior written consent, the Vendor may not;
  - 18.1.1 sub-contract all or any of its obligations under this Agreement; nor



18.1.2 cede, delegate, assign or encumber all or any of its rights and/or obligations under this Agreement.

18.2. Notwithstanding such consent granted under clause 18.1, the Vendor shall remain responsible for the actions of the sub-contractor, as if it was the Vendor itself that performed the service or delivered the goods agreed to. All subcontractors shall be subject to KCSA's policies and procedures, similarly to the Vendor herein and shall ensure compliance with KCSA's occupational health and safety requirements as set out in clause 24 hereof.

## 19. VENDOR WARRANTIES AND INDEMNITIES

19.1. The Vendor represents and warrants to KCSA that:

- 19.1.1. the Vendor and the signatory to this Agreement on behalf of the Vendor have the necessary power and authority to sign this Agreement and to accept its terms and conditions on behalf of the Vendor;
- 19.1.2. the Vendor has the necessary skill and knowledge to perform the Services and supply the Goods in accordance with this Agreement;
- 19.1.3. the Goods and the Services conform to the required Specifications, Conditions and Standards and that the Goods comply with, and are fit for, the purpose for which they are intended;
- 19.1.4. it is fully experienced in the rendering of the Services and other obligations substantially similar to rendering the Services and its employees possess and will apply the highest level of skill and expertise in the rendering of the Services and the performance of the Vendor's obligations in terms of this Agreement;
- 19.1.5. all the necessary actions to authorise the Vendor's entering into of this Agreement and the performance of its obligations under this Agreement have been taken;
- 19.1.6. the rendering of the Services and the supply of the Goods by the Vendor will not contravene –
- 19.1.7. any provision of the Vendor's constitutional documents;
- 19.1.8. any order or decree of any court or arbitration award which is binding on the Vendor; nor
- 19.1.9. any documentation or legal obligation which is binding upon the Vendor;
- 19.1.10. the Vendor is not subject to and will not subject itself to any obligation, compliance with which has, or is likely to have, a material adverse effect on the ability of the Vendor to perform its obligations under this Agreement, nor is it aware, having made due and careful enquiry, of any reason why it would be subject to any such obligation; and
- 19.1.11. no proceedings or other steps have been taken and not discharged for its winding-up or dissolution, or for it to be placed in business rescue or for the appointment of a business rescue practitioner, receiver, administrator, liquidator, trustee or similar office in relation to any of its assets or revenue.

19.2. The Vendor represents and warrants to KCSA in respect of the Goods delivered to KCSA that:

- 19.2.1. they do not constitute unsafe goods;
- 19.2.2. there is no product failure, defect or hazard in any of those Goods; and
- 19.2.3. there is not any need to display instructions or warnings to consumers in respect of any hazard from or associated with the use of those Goods.

19.3. The Vendor indemnifies and holds harmless KCSA against any and all loss, damages, liability, cost and or expense incurred or suffered by KCSA as a result of:

- 19.3.1. any Goods constituting unsafe goods; or
- 19.3.2. a product failure, defect or hazard in any of the Goods; or
- 19.3.3. any need to display instructions or warnings to consumers in respect of any hazard from or associated with the use of the Goods, including, without limitation, as a result of any third party;
- 19.3.4. anyone suffering death, injury or illness as a result of; or
- 19.3.5. anyone suffering any loss of, or physical damage to, any property as a result of the Goods, regardless of whether or not the property concerned is movable or immovable; or
- 19.3.6. any environmental impairment, fines or penalties; or
- 19.3.7. anyone suffering any economic loss as a result of any harm contemplated in clauses 19.3.4 or 19.3.5.

19.4. If, notwithstanding clause 19.1, any such unsafe product characteristic, failure, defect, hazard or need to display (collectively "Defect") is found to exist in or in respect of any of the Goods:

- 19.4.1. that Defect is, as between the Parties, *prima facie* but rebuttably presumed to have existed in or in respect of the Goods prior to its delivery to KCSA in terms of this Agreement; or
- 19.4.2. to the extent that the rebuttable presumption in clause 19.4.1 is rebutted, that Defect is, as between the Parties, *prima facie* but rebuttably presumed to be wholly attributable to compliance by KCSA with instructions provided to

KCSA by the Vendor.

19.5. In addition to the provisions of clause 19.3 and any other indemnities under in this Agreement, the Vendor hereby indemnifies and holds KCSA harmless against any and all damages, losses, liabilities, claims, demands, actions and causes of action for loss or damage arising from any act or omission of Vendor, its directors, officers, agents or employees or anyone else for which it is vicariously liable in connection with the supply, processing, treatment, manufacture, packaging, shipment and/or delivery of the Goods under this Agreement for any reasons other than those contemplated in clause 19.3.

20. **LIMITATION OF LIABILITY**

Subject to the provisions of this agreement, neither party shall be liable to the other for any consequential, incidental or indirect damages, whether arising under contract or tort law, including, but not limited to, lost profits, lost production and/or the increased cost of energy, materials and labour associated with its acts or omissions hereunder, provided that nothing contained in this clause 20 is intended or shall be construed or interpreted to limit, alter or modify the rights and/or remedies of either party in the recovery of costs, expenses or other amounts contractually agreed.

21. **INSURANCE**

21.1 The Vendor shall acquire adequate insurance cover, in an amount acceptable to KCSA in respect of:

21.1.1 The goods, prior to delivery thereof to the Vendor or the services, prior to acceptance and satisfactory completion thereof at the discretion of KCSA until the expiration of any warranty periods that are applicable to the goods or services or in accordance with a specific written agreement between the parties.

21.1.2 The Vendor's public liability and all other legal liabilities hereunder and in respect of its employees, workmen, agents and third parties.

21.2 The insurance policies listed in clause 21.1 shall cover all legal liabilities of the Vendor in terms of this Agreement..

21.3 The Policies shall contain an endorsement that the Vendor's policies shall be primary in all instances regardless of the policies claimed by KCSA.

21.4 At the request of KCSA the Vendor shall provide certificates of insurance in respect of the goods or services to the value as directed and determined by KCSA, in its sole discretion.

22. **USE OF KCSA NAME**

22.1. The Vendor shall not without the express prior written consent of KCSA represent, advertise or publish in any manner whatsoever, the fact that the Vendor is contractually associated with KCSA or supplies Goods and/or Services to KCSA.

22.2. The Vendor shall not without the express prior written consent of KCSA use KCSA's name or logo.

23. **COMPLIANCE WITH LAWS**

23.1. The Vendor shall, in performing this Agreement, comply with all and any applicable laws and all and any applicable KCSA's Rules and Regulations.

23.2. The applicable KCSA's Rules and Regulations are available on request. It is the responsibility of the Vendor to request the copy of and acquaint itself with the content of all applicable KCSA's Rules and Regulations.

23.3. KCSA reserves the right to amend its Rules and Regulations from time to time without the Vendor's consent. Any such amendment shall be binding on the Vendor once KCSA notifies the Vendor of such amendment in writing.

23.4. The Vendor must obtain and maintain all permits and/or similar permissions required for the purposes of providing the Goods and/or Services under this Agreement. The Vendor indemnifies and holds KCSA harmless against and from all the consequences of any failure to do so.

23.5. The Vendor shall give all and any notices, pay all taxes, duties and fees, and obtain and maintain all permits, licenses and approvals required by all applicable laws in relation to the supply, rendering and provision of the Goods and Services and the remedying of any defects. The Vendor indemnifies and holds KCSA harmless against and from all consequences of any failure to do so.

24. **OCCUPATIONAL HEALTH AND SAFETY**

24.1. The Vendor shall:

24.1.1. ensure that all employees, workmen and sub-contractors of the Vendor are inducted in their area of work

24.1.2. ensure that all requirements in terms of the Occupational Health and Safety Act 85 of 1993 (the OHS Act) are complied with

24.1.3. ensure that KCSA's Critical Safety rules are complied with by the employees, workmen or sub-contractors of the Vendor ('workers of the Vendor)

24.1.4. prior to commencement of the contract, provide KCSA with a certificate of fitness for every safety critical worker for review by the Occupational Health nurse before such workers of the Vendor enter the premises of KCSA for any duration of work.

24.2. The Vendor shall ensure that the workers of the Vendor that occupy safety critical positions and that will be on the premises of KCSA, for a period in excess of one week undergo regular fitness evaluations to determine their fitness for the performance of their jobs.

24.3. The KC Supervising Officer shall determine on the basis of the specific safety critical jobs undertaken by the workers of the Vendor, how often the workers of the Vendor are required to undergo the fitness evaluations.



- 24.4. The Vendor shall provide KCSA with copies of the certificates of fitness, to be included in the Contract Safety file, in accordance with point no 6.9 of KCSA'S Procedure for Contract Management (CO-CO-SO-002, Revision 1).
- 24.5. For purposes of this clause 24 'Safety file' shall include all relevant information that are significant to health and safety risks that KCSA must be made aware of and consequently consider to address at its discretion prior to conclusion or during execution of this Agreement. The relevant documentation shall be completed and submitted to the Safety Officer of KCSA before entry to premises
- 24.6. The fitness evaluations shall be performed by Occupational Health Service Providers that are approved by KCSA.
- 24.7. The costs for performing the medical and physical fitness evaluations shall be borne by the Vendor.

## 25. **ANTICORRUPTION COMPLIANCE**

- 25.1. In performing its obligations under the Agreement, the Vendor shall, at all times, comply with the U.S. Foreign Corrupt Practices Act ("FCPA"), the U.K. Bribery Act, and any national and local anti-corruption laws applicable to the Vendor, including laws enacted to comply with the UN Convention Against Corruption and the OECD Convention (collectively "**Anti-Corruption Laws**").
- 25.2. The Vendor shall not offer or give, directly or indirectly, whether through any agent or intermediary or otherwise, anything of value to any person to encourage that person to perform his or her job duties or functions improperly or to reward that person for having done so in violation of any anti-corruption law applicable to KCC ("**Improper Payment**").
- 25.3. The Vendor shall conduct its business in compliance with the requirements of the FCPA and the Bribery Act (even if these laws are not otherwise applicable to the Vendor).
- 25.4. The Vendor shall maintain books and records that are accurate and complete. In the event that Vendor is found to have made any Improper Payment, then KCSA shall have the right to terminate this Agreement and/or any Purchase Order for cause, and, in addition to any other right that KCSA may have, to recover from the Vendor:
- 25.4.1. the amount or value of the Improper Payment, and
- 25.4.2. any fines or expenses incurred by KCSA in connection with the Improper Payment.
- 25.5. Notwithstanding the termination referred to in clause 25.4., KCSA shall have the right to investigate and/or audit the Vendor and/or its affiliates connected to the actual or alleged Improper Payment and/or violation, and the Vendor shall cooperate with such an investigation or audit.
- 25.6. The Vendor indemnifies and holds harmless KCSA from all costs, fees, interest payments, fines and/or other liabilities incurred by KCSA in connection with or arising from the investigation of or defence against any litigation or other judicial, administrative or other legal proceedings brought against KCSA arising from any act or omission of the Vendor or any of its subcontractors, agents, workmen or any other person for when it is vicariously liable in violation of, or alleged to be in violation of, the anti-corruption law of any jurisdiction.

## 26. **COMPLIANCE WITH SUPPLIER SOCIAL COMPLIANCE STANDARDS**

- 26.1 Vendor warrants and represents that it understands and is in full compliance with the SSCS and it shall comply with KCSA's requests for demonstration of such compliance. This includes, at a minimum, adhering to all local laws including those related to workplace health and safety standards, labour practices, compensation, working hours, non-discriminatory hiring practices and environmental regulatory compliance. In the event that Vendor is found to not be in compliance with the SSCS, then KCSA shall have the right, in addition to the termination rights in clause 28, to terminate for cause this Agreement and any PO issued hereunder, and to recover, in addition to other rights set out in this Agreement, any fines or expenses incurred in connection with Vendor's non-compliance.
- 26.2 Upon written request by KCSA, the Vendor shall provide KCSA with a Suitable Social Compliance Report (as described hereinafter) for any facility associated with the provision of Goods or Services in relation to this Agreement. Should the Vendor not provide a Suitable Social Compliance Report within sixty (60) days from the receipt of such notice from KCSA, then KCSA shall have the right to conduct third-party inspections and audits at the identified Vendor facility in order to assess the Vendor's compliance with the SSCS. As stated herein "Suitable Social Compliance Report" must meet the following requirements: (i) a report from a full and complete audit (e.g., not a follow-up audit report); (ii) issued within the last twelve (12) months; (iii) issued by a reputable independent auditor; (iv) meet or exceed the following standards: SMETA 4 pillar, SA8000 (SAI) or other audits that have at least 85% commonality with a SEMTA 4 pillar audit consistent with the mutual recognition process established by AIM Progress. In the event the Vendor does not timely provide a Suitable Social Compliance Report for an applicable facility and KCSA elects to have a social compliance audit conducted at that facility, the Vendor agrees that (i) KCSA may utilize independent third-parties to conduct such inspections and audits, (ii) it shall provide all reasonable assistance for the safety and convenience of such auditors and inspectors in the performance of such audits, including providing adequate working area at the production facility and (iii) all reasonable charges related to the third party inspection and audit of the Vendor facility shall be paid fully by the Vendor.
- 26.3 Vendor shall indemnify and hold harmless KCSA from any costs, fees, interest payments, fines or other liabilities incurred in connection with or arising from the investigation of or defense against any litigation or other judicial, administrative or other legal proceedings brought against KCSA arising from acts or omissions of Vendor or any of its subcontractors or agents.
- 26.4 KCSA routinely utilises independent third-parties to inspect and audit Vendors' compliance with the SSCS. KCSA reserves the right to conduct third-party factory inspections and audits at Vendor's facilities at KCSA's sole discretion. Vendor shall provide all reasonable assistance for the safety and convenience of such auditors and inspectors in the performance of such audits, including providing adequate working area at the production facilities.
- 26.5 All charges related to the third party inspection and audit of Vendor facilities shall be paid fully by the Vendor directly to third party auditor. Failure to pay third party auditor within thirty (30) days of receipt of bill will result in non-compliance with the SSCS. In addition, KCSA reserves the right to conduct any audits at its own expense in its sole discretion.

## 27. **BENEFITS**

To the extent that benefits are expressed as being conferred on any person or entity that is not party to this Agreement in terms of a particular clause, the provisions of that clause shall be a stipulation for the benefit of such person or entity and shall be capable of acceptance by such person or entity without any need to give any notice to the Parties, at any time.

## 28. **BREACH AND TERMINATION**

- 28.1. KCSA may terminate this agreement for any reason whatsoever, without costs or liabilities by furnishing the Vendor with 30 (thirty) days' written notice of termination. All costs and liabilities due and payable before termination shall remain and payable under the provisions of this agreement.
- 28.2. Should any Party breach any provision of this Agreement and fail to remedy such breach within 14 (fourteen) days after receiving a written notice requiring such remedy from the other Party, then the Party giving such notice shall, by further written notice, be entitled to, without prejudice to any of its other rights in law including any right to claim damages, to cancel this Agreement or to claim immediate specific performance of all of the defaulting Party's obligations then due for performance.
- 28.3. KCSA shall also be entitled to cancel this Agreement with immediate effect, without prejudice to any of its other rights in law including any right to claim damages, if:
- 28.3.1. the Vendor commits any act of insolvency, or being a natural person, assigns, surrenders, or attempts to assign or surrender his estate,
  - 28.3.2. the Vendor is liquidated, sequestrated or placed under judicial management or wound up, whether provisionally or finally or abandons the Goods;
  - 28.3.3. any ground justifying the liquidation or business rescue of the Vendor comes about;
  - 28.3.4. any board resolution of the Vendor to place or placing the Vendor in business rescue is proposed or passed;
  - 28.3.5. any application or other proceeding to place the Vendor in business rescue is brought or initiated;
  - 28.3.6. the Vendor compromises with any its creditor/s or endeavours to attempt to do so,
  - 28.3.7. the Vendor breaches any warranty given by it to KCSA;
  - 28.3.8. the Vendor acts in any way that is referred to as an act of insolvency in terms of the Insolvency Act, 1936 or any replacement thereof; or being a partnership is dissolved or being a private company undergoes a substantial change in shareholding;
  - 28.3.9. the Vendor generally does or omits to do anything which may prejudice the rights of KCSA in terms of this Agreement or causes KCSA to suffer any loss or damage; or
  - 28.3.10. the Goods do not conform with the Specifications, Conditions or Standards and the Vendor has not remedied the defect or replaced the Goods in accordance with clause 7.9.

## 29. **DELAY PENALTIES**

In the event of delays in performance or delivery arising from the negligence or non-compliance of the Vendor with the terms of this Agreement or the PO by the Vendor, KCSA shall be entitled to claim penalties from the Vendor at a rate of 0.5% of the contract value to a maximum of 5% of the total contract value.

## 30. **FORCE MAJEURE**

- 30.1. Neither Party shall be liable for a delay or failure to perform under this Agreement which results from any occurrence or event entirely outside of its control and which could not have been reasonably avoided including, but not limited to, accident, action of the elements, act of God, civil commotion, war (whether or not declared), enemy action, epidemic, explosion, fire, flood, insurrection, strike, lockout or other labour trouble or shortage, natural catastrophe, riot, unavailability or shortage of material, equipment or transportation, act, demand or requirement of law or of the Government of South Africa or any other competent governmental authority ("**Force Majeure**"); provided however, that the Party in default or failure shall make all reasonable efforts to remove or overcome the effects of such occurrence or event and, in any event, shall promptly resume performance after cessation of such occurrence or event.
- 30.2. If a Party is or will be prevented from performing any of its obligations under this Agreement by Force Majeure, then it shall give written notice to the other Party of the event or circumstances constituting the Force Majeure and shall specify the obligations, the performance of which is or will be prevented. The notice shall be given within 7 (seven) days after the Party became aware, or should reasonably have become aware, of the relevant event or circumstance constituting Force Majeure.
- 30.3. The notifying Party shall, having given the written notice, be excused from performance of such directly affected obligations for so long as such Force Majeure strictly prevents it from performing them.
- 30.4. The notifying each Party shall at all times use all reasonable endeavours to minimise any delay in its performance of this Agreement as a result of Force Majeure.
- 30.5. A Party shall give written notice to the other Party when it ceases to be affected by Force Majeure.
- 30.6. Either Party may terminate this Agreement if Force Majeure continues for a period of 30(thirty) days or more.

## 31. **DOMICILIUM AND NOTICES**

- 31.1. The Parties choose *domicilium citandi et executandi* ("*domicilium*") for all purposes of the giving of any notice, the serving of any process and for any other purpose arising from this Agreement, as follows:
- 31.1.1. KCSA: registered address under clause 1.2.5
  - 31.1.2. The Vendor: on the address stipulated in the PO or as otherwise provided by the Vendor in writing

- 31.2. Each of the Parties shall be entitled from time to time, by written notice to the other of them, to vary its *domicilium* to any other physical address, provided that the change shall become effective on the 5<sup>th</sup> (fifth) Business Day from the receipt of the notice by the other Party.
- 31.3. Any notice given by either Party to the other shall be in writing and if delivered by hand during the normal business hours of the addressee at the addressee's *domicilium* for the time being shall be presumed to have been received by the addressee at the time of delivery.
- 31.4. Notwithstanding anything to the contrary contained in this clause 31, a written notice or other communication actually received by a Party shall be adequate written notice or communication to it notwithstanding that the notice was not sent or delivered to that Party's *domicilium*.

## 32. CONFIDENTIALITY

- 32.1. Subject to the provisions of clause 33, no Party will, without the prior written consent of the other Party (which consent shall not be unreasonably withheld or delayed), disclose to any person:
- 32.1.1. any details of this Agreement, any details of the negotiations leading to this Agreement (including the details contained in the RFI and the RFQ), any confidential information handed over to such Party during the course of those negotiations nor any confidential details of any transaction, agreement or matter contemplated by or set out in this Agreement; nor
- 32.1.2. any confidential information relating to the operations and affairs of another Party, (together the "**Confidential Information**").
- 32.2. The Parties shall keep all Confidential Information confidential and disclose it only to their directors, officers, employees, consultants and professional advisers who:
- 32.2.1. have a need to know (and then only to the extent that each such person has a strict need to know);
- 32.2.2. are aware that the Confidential Information must be kept confidential;
- 32.2.3. are aware of the disclosing Party's undertaking in relation to such information in terms of this Agreement; and
- 32.2.4. have been directed by the disclosing Party to keep the Confidential Information confidential and have undertaken to keep the Confidential Information confidential and not to directly or indirectly use it for its own or any third party's benefit.
- 32.3. The obligations of the Parties in relation to the maintenance and non-disclosure of Confidential Information in terms of this Agreement do not extend to information that:
- 32.3.1. is disclosed to the receiving Party in terms of this Agreement but at the time of such disclosure such information is known to be in the lawful possession or control of the receiving Party (other than the Confidential Information obtained from the other Party during the negotiations leading to the signature of this Agreement) and not subject to an obligation of confidentiality;
- 32.3.2. is developed independently by one of the Parties without knowledge and having access to the other Party's Confidential Information;
- 32.3.3. is or becomes public knowledge, otherwise than pursuant to a breach of this Agreement by the Party (or any of its directors, employees, representatives, officers, consultants, advisers, agents or representatives) who discloses such confidential information;
- 32.3.4. is required by law (including the provisions of any law, statute or regulation and including further disclosures required to be made by any director/s of any Party under his or her duty of skill, care and diligence or under his or her fiduciary duties or under his or her duties under the Companies Act, No 71 of 2008) or during or for any threatened, pending, anticipated or instituted legal or administrative proceedings, or by the rules or regulations of any recognised stock exchange of competent jurisdiction, to be disclosed and subject to the Party concerned having taken all reasonable steps to limit, as far as reasonably possible, the extent of such disclosure and to notify the other Party as soon as practicably possible of the necessity of having have to make such disclosure; or
- 32.3.5. is required to be disclosed for purposes of the implementation of this Agreement.
- 32.4. The provisions of this clause 32 shall survive the termination of this Agreement.

## 33. DATA PRIVACY

- 33.1. For the purposes of this Agreement:
- 33.1.1. "**Data Protection Legislation**" means any data protection or data privacy laws applicable to KCSA from time to time, including but not limited to the General Data Protection Regulation 2016/679, the Protection of Personal Information Act 4 of 2014, the Promotion of Access to Information Act, 2 of 2000, the Electronic Communications and Transactions Act 26 of 2005 and the Consumer Protection Act 68 of 2008;
- 33.1.2. "**KCSA Data**" means any data, including any information which may be treated or defined as "*personal information*" in terms of any Data Protection Legislation, supplied to or acquired by the Vendor or its personnel by or on behalf of KCSA, or Processed by or on behalf of KCSA or its personnel; and
- 33.1.3. "**Process**" means collect, receive, record, organise, collate, store, Develop, update, modify, retrieve, alter, consult,

Use, disseminate or perform any other act or action, including any other act or action which may be treated or defined as "**process**" or "**processing**" in terms of any Data Protection Legislation. The word "**Processed**" shall have a corresponding meaning.

- 33.2. In addition to and without prejudice to, or limiting the generality of, its further obligations contained in any other agreements concluded with KCSA, when Processing any KCSA Data, the Vendor will at all times:
- 33.2.1. comply with any applicable laws, including Data Protection Legislation; and all applicable industry codes of conduct to the extent that they regulate or relate to the Processing of the KCSA Data;
  - 33.2.2. strictly comply with KCSA policies and procedures pertaining to the protection, privacy, Processing and destruction of the KCSA Data that apply to KCSA and to which KCSA is subject;
  - 33.2.3. comply with all applicable industry codes of conduct to the extent that they regulate or relate to the Processing of KCSA Data;
  - 33.2.4. use and apply appropriate measures, procedures, and controls in relation to KCSA Data, in accordance with Good Industry Practice;
  - 33.2.5. not do anything, or omit to do anything, which will cause KCSA to contravene any applicable law, including any Data Protection Legislation; and
  - 33.2.6. keep the KCSA Data confidential.
- 33.3. The Vendor may only Process KCSA Data:
- 33.3.1. for the specific purpose for which it was disclosed to the Vendor, delineated in any agreement concluded between the Parties;
  - 33.3.2. as required or permitted by applicable law; and/or
  - 33.3.3. with the express prior written consent of KCSA.
- 33.4. The Vendor shall take all reasonable and appropriate technical and organisational precautions and measures necessary to secure the integrity and confidentiality of the KCSA Data, and to prevent any (i) loss of, damage to, or unauthorised destruction of the KCSA Data; or (ii) unauthorised or unlawful access to or Processing of the KCSA Data. These measures will include:
- 33.4.1. identifying and conducting its own regular assessments to identify, all reasonably foreseeable internal and external risks to the KCSA Data in its possession or control ("**Data Risk Assessments**");
  - 33.4.2. establishing and maintaining appropriate safeguards against the risks identified and regularly verifying that such safeguards are effectively implemented;
  - 33.4.3. updating and aligning its safeguards to address the risks and deficiencies identified during and/or pursuant to Data Risk Assessments;
  - 33.4.4. regularly verifying that the safeguards are effectively implemented and that the updated and aligned safeguards are effectively implemented;
  - 33.4.5. ensuring that the safeguards are continually updated in response to new risks or deficiencies in previously implemented safeguards;
  - 33.4.6. providing KCSA with copies and details of the results of all Data Risk Assessments within five (5) Business Days after they are required by KCSA; and
  - 33.4.7. having due regard to all applicable laws (including Data Protection Legislation), Good Industry Practice, and generally accepted information security practices and procedures which may apply to the Vendor or which are required in terms of specific industry or professional laws, rules and regulations.
- 33.5. The Vendor must:
- 33.5.1. provide KCSA with all assistance and co-operation requested by KCSA in relation to any requests or complaints received from any person or entity, including requests for the deletion, updating or correction of KCSA Data; and
  - 33.5.2. immediately notify KCSA where there are reasonable grounds to believe that the KCSA Data has been accessed or acquired by an unauthorised person. In such event, the Vendor must immediately:
    - 33.5.2.1. comply with all instructions and directions given by KCSA;
    - 33.5.2.2. take all measures necessary to determine the scope of the compromise and to restore the integrity of KCSA's infrastructure;
    - 33.5.2.3. provide all information which may be requested by KCSA, co-operate fully with KCSA in relation to any notifications which may be made by KCSA to any regulator, data subjects (as defined in any applicable Data Protection Legislation) or any other person; and
    - 33.5.2.4. co-operate fully with KCSA in relation to any investigations that KCSA may initiate or which may be initiated by an investigator or other authority.
  - 33.5.3. Without limiting or derogating from the Vendor's further obligations under this Agreement, in the event that are reasonable grounds to believe that the KCSA Data has been accessed or acquired by an unauthorised person, the Vendor must immediately provide the following information to KCSA, as well as such additional information that KCSA may request:
    - 33.5.3.1. the date and time of security breach;

- 33.5.3.2. brief description of the security breach (what was lost and how) including details of the equipment, software and/or physical premises and whether the breach is or was by hacking, lost device, public disclosure (email), theft or other means;
  - 33.5.3.3. the name(s), if known, of the person(s) responsible for the breach;
  - 33.5.3.4. whether the breach is ongoing;
  - 33.5.3.5. description of the steps taken to contain the security breach; what steps have been taken to investigate the cause of the breach;
  - 33.5.3.6. list and category of data subjects whose Personal Information has been affected by the breach and specify if any special personal information or sensitive personal data (as these terms are defined under Data Protection Legislation) has been affected;
  - 33.5.3.7. any recommendations about how the affected data subjects can protect themselves against the effects of the security breach;
  - 33.5.3.8. possible consequences of the security breach; and
  - 33.5.3.9. what steps can be, have been taken to prevent a similar breach in future.
- 33.6. The Vendor shall not transfer the KCSA Data to a third party or allow a third party to Process the KCSA Data party without the prior written consent of KCSA, with may be withheld or withdrawn by KCSA in its sole discretion.
- 33.7. The Vendor shall not transfer or Process the KCSA Data outside of the Republic of South Africa without the prior written consent of KCSA, with may be withheld or withdrawn by KCSA in its sole discretion.
- 33.8. The Vendor shall, on request from KCSA, supply all information, data and materials required by KCSA to assess and confirm the Vendor's compliance with its obligations in this Agreement. This information shall be provided at no additional cost where provided in an electronic format only, but otherwise at cost where KCSA requests the information other than in electronic format. The information shall be provided to KCSA promptly and in any event within 5 Business Days of request, provided that if KCSA is unable to receive the information within this period, then such information will be provided as soon as KCSA is able to receive the information.
- 33.9. The Vendor shall comply with all reasonable directions and instructions which may be given by KCSA regarding the Processing of the KCSA Data. It is further agreed that any directions or instructions which are required for purposes of ensuring compliance with any applicable laws, including Data Protection Legislation, shall also be deemed to be reasonable.
- 33.10. The Vendor hereby indemnifies KCSA and holds KCSA harmless from and against any and all claims or loss arising from a breach by the Vendor or its personnel of this Agreement and/or arising from the unauthorised Processing of, access to, use and/or disclosure of any KCSA Data by the Vendor, its sub-contractors, sub-processors and/or any of their respective personnel.
- 34. DISPUTE RESOLUTION**
- 34.1. Subject to any other provisions of this Agreement which provide for their own remedies, should any dispute arise between the Parties in connection with –
- 34.1.1. the conclusion or existence of;
  - 34.1.2. the implementation of;
  - 34.1.3. the interpretation or application of any of the provisions of;
  - 34.1.4. the Parties' respective rights and obligations in terms of or arising out of the conclusion, breach or termination of; or
  - 34.1.5. the validity, enforceability, rectification, termination or cancellation, whether in whole or in part of;
  - 34.1.6. any documents furnished by the Parties pursuant to the provisions of,
- this Agreement or which relates in any way to any matter affecting the interests of the Parties in terms of this Agreement, such dispute shall, save as otherwise provided herein, be determined in terms of this clause.
- 34.2. Any Party may demand that a dispute be determined in terms of this clause by written notice given to the other Party.
- 34.3. Subject to the provisions of this clause, the arbitration shall be conducted in accordance with the commercial arbitration rules of the Arbitration Foundation of Southern Africa (or failing it, any successor or equivalent body thereto) in force from time to time ("AFSA") and failing any such rules, shall otherwise be governed by the arbitration laws for the time being in force in the Republic of South Africa from time to time.
- 34.4. This clause shall not preclude any Party from obtaining interim or urgent relief from a court of competent jurisdiction.
- 34.5. The Parties hereby consent to the arbitration being dealt with on an urgent basis in terms of the Rules of AFSA should any Party by written notice given to the other Party require the arbitration to be held on an urgent basis. In such event the Parties agree to apply jointly to the AFSA Secretariat as required in terms of the said Rules to facilitate such urgent arbitration.
- 34.6. The arbitrator shall be if the matter in dispute is principally –
- 34.6.1. a legal matter, a practising advocate or attorney of Gauteng of at least 15 (fifteen) years' standing;

- 34.6.2. an accounting matter, a practising chartered accountant of Gauteng of at least 15 (fifteen) years' standing;
- 34.6.3. any other matter, any independent person agreed upon between the Parties.
- 34.7. Should the Parties fail to agree whether the dispute is principally a legal, accounting or other matter within seven days after the arbitration is demanded, the matter shall be deemed to be a legal matter.
- 34.8. Should the Parties fail to agree on an arbitrator within 14 (fourteen) days after the giving of notice in terms of clause 34.2, any of the Parties shall be entitled to request the Registrar for the time being of AFSA to nominate the arbitrator during the ensuing seven day period, and who, in making the nomination, shall have regard to the nature of the dispute and the Parties' requirement for a speedy arbitration. That nomination shall be final and binding on the Parties and the Parties shall jointly appoint that nominated person as the arbitrator. If the appointment is to be made in terms of clause 34.6.1, preference shall be given to attorneys or advocates having the requisite expertise, on the panel of arbitrators of AFSA.
- 34.9. The arbitration shall take place in Johannesburg or in such other place as is agreed by the Parties, with only the Parties and their legal representatives being present.
- 34.10. The arbitration shall be determined in accordance with the provisions of South African law and the Parties submit to South African jurisdiction for the purpose of this arbitration.
- 34.11. The arbitrator shall determine the applicable procedure to be followed in the arbitration and shall not be bound by strict rules of evidence.
- 34.12. The arbitrator may by notice to the Parties within 7 (seven) days after his or her appointment, dispense wholly or in part with formal submissions and/or proceedings provided that the Parties are given an adequate opportunity to make submissions to the arbitrator.
- 34.13. The decision of the arbitrator shall be final and binding on the Parties and may be made an order of the court at the instance of any of the Parties to the dispute.
- 34.14. The Parties hereby consent to the jurisdiction of the South Gauteng High Court of South Africa in respect of the proceedings referred to in clauses 34.13.
- 34.15. The Parties agree to keep the arbitration including the subject matter of the arbitration and the evidence heard during the arbitration confidential and not to disclose it to anyone except for purposes of an order to be made in terms of clause 34.13.
- 34.16. The provisions of this clause –
- 34.16.1. constitute an irrevocable consent by the Parties to any proceedings in terms hereof and no Party shall be entitled to withdraw therefrom or claim at any such proceedings that it is not bound by such provisions; and
- 34.16.2. are severable from the rest of this Agreement and shall remain in effect despite the termination of or invalidity for any reason of this Agreement.
- 34.17. The Parties agree that a written demand by either Party in terms of clause 34.2 that the dispute be submitted to arbitration, is deemed to be a legal process for the purpose of interruption of extinctive prescription in terms of the Prescription Act, 68 of 1969.
35. **INDEPENDENT CONTRACTOR RELATIONSHIP**
- 35.1. The Vendor is acting under this Agreement as an independent contractor engaged in the supply of the Goods and/or the rendering of the Services and upon the order of KCSA. Nothing contained herein shall constitute or be deemed to constitute the Vendor as the agent, employee, partner, representative or joint venture partner of KCSA and KCSA shall not be responsible for any violation by the Vendor of any applicable law or regulation.
- 35.2. The Parties specifically record that KCSA is entitled under this Agreement to issue certain instructions and directions to the Vendor, to make certain requests to the Vendor, to provide the Vendor with certain matters, to inform the Vendor of certain matters, to approve certain matters in respect of the Vendor and otherwise to take certain actions in respect of the Vendor to ensure that the Services rendered and the Goods supplied are in accordance with the Specifications, Conditions, Standards and other requirements set out in this Agreement.
36. **JURISDICTION**
- Save as otherwise provided herein, the Parties hereby consent to the non-exclusive jurisdiction of the magistrate court having jurisdiction, notwithstanding that the claim or cause of action exceeds to jurisdiction of the Magistrates courts in Gauteng, however this provision does not prevent the parties from approaching the South Gauteng High Court of South Africa in respect of any action or legal proceedings which may arise out of or in connection with this Agreement.
37. **INDEPENDENT ADVICE AND FAIRNESS OF THE AGREEMENT**
- Each of the Parties hereby acknowledges and records that:
- 37.1. it has been free to secure independent legal and other professional advice (including financial and taxation advice) as to the nature and effect of all of the provisions of this Agreement and that it has either taken such independent advice or has dispensed with the necessity of doing so; and
- 37.2. all of the provisions of this Agreement and the restrictions herein contained are fair and reasonable in all the circumstances and are in accordance with the Party's intentions.
38. **CESSION**
- The Vendor shall not be entitled to cede, assign or delegate, transfer or otherwise dispose of or encumber any of its rights, obligations, interest or benefits in terms of this Agreement without the prior express written consent of KCSA.



39. **SEVERABILITY**

Each and every provision of this Agreement (excluding only those provisions which are essential at law for a valid and binding agreement to be constituted) shall be separate and severable from the remaining provisions of this Agreement. If any of the provisions of this Agreement (excluding only those provisions which are essential at law for a valid and binding agreement to be constituted) is found by any court or arbitrator of competent jurisdiction to be invalid and/or unenforceable then, notwithstanding such invalidity and/or unenforceability, the remaining provisions of this Agreement shall be and remain of full force and effect.

40. **GENERAL**

40.1. This Agreement as read with the relevant Purchase Orders constitutes the sole record of the agreement between the Parties in relation to the subject matter hereof. The terms and conditions which may be contained or referred to by the Vendor when tendering or when acknowledging the Purchase Order shall be deemed to have no force or effect and are expressly superseded by these terms and conditions.

40.2. No addition to, novation, variation, or agreed cancellation of this Agreement shall be of any force or effect unless in writing and signed by or on behalf of the Parties.

40.3. No indulgence which any Party may grant to the other shall constitute a waiver of or, whether by estoppel or otherwise, limit any of the existing or future rights of the grantor in terms hereof and the grantor shall not thereby be precluded from exercising any rights against the grantee which may have arisen in the past or which might arise in the future save in the event and to the extent that the grantor has signed a written document expressly waiving or limiting such right.

40.4. Without prejudice to any other provision of this Agreement, any successor in title, including any executor, heir, liquidator, judicial manager, curator or trustee, of any Party, shall be bound by this Agreement.

41. **ENTIRE AGREEMENT**

41.1. **Subject to local laws and this clause 41 KCSA's Purchase Order ('PO') and this Terms and Conditions of Purchase contain the entire understanding and agreement of parties with respect to the subject matter and supersede any other prior or contemporaneous agreements, express or implied, written or oral (including any Vendor's standard terms and conditions), with respect of the same subject matter.**

41.2. **However, if there has been any separately negotiated agreement between the parties (signed by each party authorised representative(s) for the Goods and/or Services those terms also apply and the terms of that agreement will prevail to the extent of any inconsistency with KCSA's Terms and Conditions of Purchase.**

41.3. **If anything in the Purchase Order ('PO') is unenforceable, illegal, or void than the it is covered, and the rest of the PO remain in force. A waiver of any form of the PO is only affective in respect of the specific instance and purpose for which it is given.**

**SCHEDULE 1 - DETAILS, SPECIFICATIONS AND PRICES OF THE GOODS and/or SERVICES**

(The abovementioned details shall either be herein included or as set out in the Purchase Order)

**SCHEDULE 2 – KEY PERSONNEL**

(The details of the Key Personnel shall either be herein included or as set out in the Purchase Order)

### **SCHEDULE 3- NON-CONFORMANCE PROCEDURE**

#### Vendor obligations

- Acknowledgement of the NCR (non-conformance report) / claim within 1 working day of submission, feedback and confirmation of settlement within 7 (seven) days or site visit arranged within 14 (fourteen) days to validate/discuss.
- Acknowledgment that evidence provided will be sufficient to settle the claim within 7(seven) days.
- Quarterly reviews between KCSSA East Africa and Vendor to ensure all items were closed satisfactorily and review process to simplify further if possible.