



## PURCHASE ORDER TERMS

Document reference:

<https://www.bdo.co.za/en-za/purchase-order-terms>

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| <p><b>1. INTRODUCTION &amp; EXPLANATION</b></p> <p>These Purchase Order terms apply to the procurement of goods and / or services.</p> <p>The relevant BDO entity identified on the Purchase Order (BDO) will procure goods and / or services from the Supplier identified on the Purchase Order (Supplier) in terms of these Purchase Order terms.</p> | <p>not written and severed without invalidating the remaining provisions.</p> <p>2.5 References to statute, regulation or other legislation shall be a reference to the same as at the Effective Date, and as amended or substituted from time to time thereafter.</p> <p>2.6 Words such as “include”, “in particular” etc. denote examples or emphasis and shall not be construed as limiting the generality of any preceding words.</p> |
| <p><b>2. INTERPRETATION</b></p> <p>The Purchase Order terms shall be governed and interpreted in accordance with South African law as follows.</p>  | <p>2.7 The rule of construction that a contract shall be interpreted against the Party principally responsible for the drafting or preparation of the contract, shall not apply.</p>  |
| <p>2.1 Words and phrases used in these Purchase Order terms that are defined in any statute or regulations shall be construed in accordance with the applicable statute or regulation.</p>  | <p>2.8 Any annexures and/or document referred to in these Purchase Order terms shall be deemed to be incorporated herein and in the event of a conflict, the provisions of these Purchase Order terms shall prevail.</p>  |
| <p>2.2 Headings shall be read for 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</p>  | <p>2.9 Any provisions of these Purchase Order terms which either expressly or by its nature extends beyond the expiration or termination of these Purchase Order shall survive such expiration or termination.</p>  |
| <p>2.3 Words shall be gender neutral, the singular shall include the plural, natural persons shall include other legal persons (corporate or un-incorporate) and the State and vice versa</p>   | <p>2.10 Any substantive provision imposing rights or obligations, notwithstanding that it is in a definition clause, shall have effect as if it were a substantive provision in the body of these Purchase Order terms.</p>   |
| <p>2.4 The provisions of these Purchase Order terms are severable. Any provision which is or may become unenforceable shall be ineffective to the extent of its unenforceability and shall be treated as if</p>   | <p>2.11 Where figures are referred to in numerals and in words, if there is any conflict between the two, the words shall prevail</p>   |

- 2.12 When any number of days is prescribed in these Purchase Order terms, same shall be reckoned inclusively of the first and exclusively 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 immediately following Business Day.
- 3. DEFINITIONS**
- For purposes of the Purchase Order and these Purchase Order terms, the following words and/or phrases will, unless the context clearly indicates otherwise, have the meanings set out below:
- 3.1 **'Agreement'** means the Purchase Order and these Purchase Order terms;
- 3.2 **'Affiliate'** means a person or entity which Controls, is Controlled by, or is under common Control with, a Party;
- 3.3 **'Anti-bribery Laws'** means all applicable foreign and domestic anti-bribery, anti-corruption and anti-money laundering laws including the Foreign Corrupt Practices Act, 1977, as amended, 15 U.S.C. §§ 78dd-1, et seq. (United States of America); Bribery Act, 2010, as amended, c.23, § 1 (United Kingdom); and the Prevention and Combating of Corrupt Activities Act, 2004, as amended (Republic of South Africa), as well as any laws intended to implement the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions;
- 3.4 **'BDO'** or **'we'** or **'us'** or derivatives thereof means the BDO entity identified in the Purchase Order;
- 3.5 **'BDO Background Intellectual Property'** means Intellectual Property owned or licensed to BDO;
- 3.6 **'BDO Data'** means any information of BDO accessed by, or disclosed to, the Supplier by or on behalf of BDO or their Personnel in connection with these terms and conditions and includes all Confidential Information and Personal Information;
- 3.7 **'BDO Member'** means those firms considered a BDO member firm, both locally and internationally, by virtue of a license or other Agreement with BDO International Limited, with 'BDO Member Firm' meaning any one of them.
- 3.8 **'BDO Personnel'** means BDO and, where applicable, each and all of BDO's directors, employees, sub-contractors as the case may be, together with any other natural or juristic person, association, partnership, trust or other entity controlled or owned, directly or indirectly, by BDO or Associated with BDO, and each and all of its directors, employees and agents, with 'BDO personnel' meaning any one of them;
- 3.9 **'Business Day'** means any day other than a Saturday, Sunday or official public holiday in the Republic of South Africa;
- 3.10 **'Change of Control'** means:
- 3.10.1 no longer having Control or retaining the ability to direct the course of an entity;
- 3.10.2 that a majority of the shares of the entity changed ownership;
- 3.10.3 a competitor of BDO either alone or together with any other person, becomes entitled to more than 5% of the issued voting shares of the Supplier or any of its Affiliates;
- 3.10.4 the Supplier or any of its Affiliates, either alone or together with any other person, becomes entitled to more than 5% of the issued voting shares of a competitor of BDO;
- 3.10.5 any other person, either alone or together with another person, becomes entitled to more than 15% of the issued voting shares of the Supplier or any of its Affiliates;
- 3.10.6 a competitor of BDO appoints a member of the board of directors of the Supplier or any of its Affiliates; or
- 3.10.7 the Supplier or any of its Affiliates appoints a member of the board of directors of a competitor of BDO;

- 3.11 **‘Confidential Information’** means the Information of the Parties which is deemed or designated by either of them to be confidential and/or proprietary and includes:
- 3.11.1 information which affords the Discloser a competitive advantage and includes its trade secrets, ideas, processes, formulas, computer software and information systems (whether developed in-house or operated under licence), data and know-how, copyrightable material, improvements, inventions (whether patentable or not), techniques, marketing plans, strategies, business and product development plans, timetables, forecasts and details and particulars in regard to its suppliers, (potential) customers and business associates, products and services (past, current and prospective), business or technical information, product plans, product designs, product costs, pricing structures and strategies, product names, finances and/or financial results, business opportunities, research, staff and development.
- 3.11.2 Information that is not readily available in the normal course of business to a competitor or the public and/or under the circumstances would reasonably be deemed to be confidential and has not lawfully been made public or entered the public domain through lawful and authorised means;
- 3.12 **‘Control’** will bear the meaning assigned to it in Section 2 of the Companies Act 71 of 2008;
- 3.13 **‘CPA’** means the Consumer Protection Act, No 68 of 2008;
- 3.14 **‘Data Protection Law’** means the POPIA and the GDPR and all other applicable laws in relation to Personal Information/Personal Data (or the equivalent);
- 3.15 **‘Disclosing Party’** means the Party who is disclosing Confidential Information to the Receiving Party;
- 3.16 **‘Enterprise and Security Architecture’** means the information technology enterprise and security architecture and standards established by BDO from time to time;
- 3.17 **‘Force Majeure’** means any event beyond the reasonable control of the Party (‘the Affected Party’) claiming the occurrence of force majeure:
- 3.17.1 the occurrence of which could not have been reasonably foreseen at the date of the execution of this Agreement; and
- 3.17.2 includes, but is not limited to, war whether declared or not, revolution, riot, strikes or other protestor action, insurrection, civil commotion, invasion, armed conflict, the failure of suppliers or contractors, hostile act of foreign enemy, act of terrorism, sabotage, radiation nor chemical combination, ionizing radiation, act of God, plague or other serious endemic, epidemic or pandemic or any governmental action related to any of the foregoing;
- 3.18 **‘GDPR’** means the EU General Data Protection Regulation (EU) 2016/679;
- 3.19 **‘Goods’** means all tangible items that the Supplier is required to supply or license to BDO under these terms and conditions;
- 3.20 **‘Intellectual Property’** means all Information of a proprietary nature in relation to the technology, business, products, processes, services or operations of a Party, including any patent, trademark, logo or design, which has been registered or is capable of being registered in any national or international intellectual property office or association, as well as any copyrightable works, trade secrets and know-how;
- 3.21 **‘Permitted Recipients’** means employees, directors, officers, professional advisors, agents, financiers and consultants of the Receiving Party;

- 3.22 **'Party/Parties'** means BDO or the Supplier individually or collectively as the context may require;
- 3.23 **'Personal Data'** means any information relation to an identified or identifiable natural or juristic person by way of direct or indirect reference to an identifier such as a name, contact details, photographs, identification number, location data, online identifiers; or, to one or factors specific to the physical, psychological, genetic, economic, cultural or social identifiers of that natural or juristic person;
- 3.24 **'POPIA'** means the Protection of Personal Information Act No 4 of 2013;
- 3.25 **'Purchase Order'** means the purchase order document stating the Goods and/or Services being procured from the Supplier;
- 3.26 **'Purchase Order terms'** means the terms and conditions set out in this agreement;
- 3.27 **'Receiving Party'** means a Party which receives Confidential Information from a Disclosing Party;
- 3.28 **'Rejection'** means written notification from BDO to the Supplier rejecting Goods or a Work Product that does not meet its specifications;
- 3.29 **'Services'** means the services to be provided by the Supplier to BDO and any other services not specifically described but upon which the successful delivery of the Services is dependent;
- 3.30 **'Supplier Background Intellectual Property'** means Intellectual Property owned by, or licensed to, the Supplier and not developed under the Purchase Order terms;
- 3.31 **'Third Party Intellectual Property'** means any form of Intellectual Property recognised and protected under law, which is owned by a third party, including another contractor of the Supplier, and is used in the Goods and/or Services;
- 3.32 **'Work Products'** means the product of any Services, equipment and tangible or intangible items delivered to BDO by the Supplier.
- 4. DURATION**
- 4.1 The Purchase Order terms shall commence on the date set out in the Purchase Order and endure until all Goods and/or Services has been provided and accepted in good order.
- 5. WARRANTIES**
- 5.1 Supplier represents, warrants and undertakes to BDO that:
- a) the Goods and/or Services shall at all times comply with BDO's specifications, if any, and will be free from defects;
  - b) the Goods and/or Services and the use by BDO of the Work Product and/or any other materials provided by Supplier shall not infringe the intellectual property rights or other rights of any third party;
  - c) Supplier shall perform its obligations under the Purchase Order terms professionally and in a skilled manner, consistent with the highest applicable industry practices;
  - d) Supplier shall obtain all consents, clearances, permissions and licenses necessary to carry out all of its obligations under the Purchase Order terms;
  - e) Supplier shall provide any Services in accordance with the requirements set out in this Purchase Order terms and in compliance with any BDO policies, as notified to Supplier by or on behalf of BDO from time to time, and using Personnel with knowledge and experience which is sufficient for the tasks assigned to them;
  - f) the Services will be rendered in compliance with all applicable laws;
  - g) it is registered under the Compensation for Occupational Injuries and Diseases Act, 1993, and all assessments due will be paid in full throughout the term of the Purchase Order terms;

- h) any software and any other Goods, Services and/or Work Products provided to BDO will be free of all computer viruses, worms, logic bombs, trap doors, trojan horses and any other harmful, destructive or deactivating code;
  - i) any software provided is and will be compatible with the operating platform (whether software, hardware, or a combination thereof). The Supplier shall state in writing to BDO the operating platforms with which the software is compatible;
  - j) any software provided to BDO does not include or contain any disabling code, timer, clock, counter or other limiting design or routine that causes the software to be erased, inoperable, or otherwise incapable of being used in the full manner for which it was designed and licensed in terms of the Purchase Order terms:
    - i) after being used or copied a certain number of times, or after the lapse of a certain period of time, or after the occurrence or lapse of any similar triggering factor; or
    - ii) solely because the software has been installed on or moved to equipment that has a serial number, model number or other identification different from that on which the software originally was installed;
  - k) it will comply with industry standards to secure and defend the software, Services and BDO Data against anyone trying to breach the security of the software or Services including through unauthorised access to the software, Services or BDO Data, or making unauthorised modifications to the software, Services or BDO Data. The Supplier will notify BDO immediately of any such breach or modification and will rectify it in accordance with industry standards;
  - l) it has not included or used any open-source software in any software provided to BDO nor does the software operate in such a way that it is compiled or linked with any open-source software. The Supplier shall identify in writing to BDO any open-source software supplied to BDO or any software supplied to BDO which operates in such a way that it is compiled or linked with any open-source software;
  - m) the media on which any software is provided to BDO will be free from defects in workmanship and materials during normal use;
  - n) any documentation and manual provided to BDO is free from defects and will describe in detail and in a self-contained manner how BDO may access and use any software provided to BDO such that any reader of the documentation and manual can access, use and maintain all of the functionality of the software without the need for further instruction;
  - o) all Services will be performed in accordance with the description set out in the Purchase Order terms and will not degrade the performance and/or operation of any software provided to BDO; and
  - p) its response to any BDO request for proposal was accurate when submitted, and the Supplier acknowledges that BDO relied upon the Supplier's response when selecting the Supplier to provide the Goods and/or Services.
- 5.2 The Supplier agrees that time is of the essence for the performance of the Supplier's obligations under the Purchase Order terms.
- 6 INVOICES**
- 6.1 BDO's purchase order number, the requisitioner's name, date and description of Goods and/or Service, Services and Work Product(s) (if any) shall appear on all invoices, packages and (where relevant) shipping papers. Any shipments shall be prepaid and accompanied by a packing slip. All amounts set out in the Purchase Order are exclusive of VAT or other local applicable equivalent taxes, which will be paid by BDO at the rate and in the manner prescribed by applicable law, subject to receipt of a valid VAT invoice (or equivalent).
- 6.2 Unless otherwise stipulated within the Purchase Order, BDO's standard payment terms are within 30(thirty) business days of receipt of an undisputed invoice.

6.3 Invoices will be payable by BDO by electronic bank transfer as agreed on the onboarding form, receipt of a correct, undisputed and properly due invoice. BDO shall not be liable for any amounts not explicitly set out in the purchase order. BDO may, without limiting its other rights or remedies, set off any amount owing to it by Supplier against any amount payable by BDO to Supplier under this Purchase Order terms.

6.4 If BDO notifies the Supplier prior to the due date for payment that it disputes a part or the whole of any invoice, BDO will be entitled to withhold payment of the disputed amount only. The Parties will negotiate in good faith to resolve the dispute. Failing resolution within five days after receipt by the Supplier of BDO's notification, the dispute will be resolved accordance with clause 22.2. Any adjustment to invoiced amounts arising as a result of such resolution will be reflected, so far as practicable, in the Supplier's next invoice to BDO. Nothing in the Purchase Order terms will preclude BDO from claiming repayment of any amount incorrectly paid to the Supplier notwithstanding that no dispute was previously noted.

## 7 INDEMNIFICATION

7.1 The Supplier indemnifies and holds BDO harmless against loss or damage suffered by, or claims made against BDO arising out of or in connection with:

- a) an allegation by a third party that any intellectual property supplied by the Supplier infringes the third party's intellectual property rights;
- b) any misconduct, negligence or breach of the Purchase Order terms by the Supplier;
- c) a material inaccuracy or untruthfulness in any representations or warranties made by the Supplier under or in connection with a Purchase Order terms and its conclusion; and
- d) claims for taxes, interest or penalties against BDO that are obligations of the Supplier.

7.2 If a claim against the Supplier for infringement of intellectual property rights is made or appears likely or possible

it will, at the request of BDO, immediately cease providing Services in respect of, or using, the allegedly infringing intellectual property. The Parties will immediately investigate and implement any measures reasonably available to mitigate any adverse consequences which result. The Supplier is not relieved from complying with its obligations under the Purchase Order terms to the extent that its ability to do so is impaired by its ceasing to provide Services in respect of, or using, the allegedly infringing intellectual property.

7.3 If a claim against BDO for infringement of intellectual property rights is made or appears likely or possible the Supplier must use its best endeavours at its own cost to:

- a) procure for BDO the right to continue using the allegedly infringing intellectual property; or
- b) modify the allegedly infringing intellectual property so as to render it non-infringing; or
- c) replace it with intellectual property that is at least functionally equivalent.

7.4 If the Supplier determines that none of these alternatives is reasonably available, BDO will cease using the intellectual property and the Supplier will give BDO a credit equal to the amount paid by BDO for the allegedly infringing intellectual property or Services received through the use of the allegedly infringing intellectual property.

7.5 If the Supplier does not take steps to defend or settle the claim within the time period permitted for the taking of such steps, BDO may do so and proceed with the defense or settlement of the claim in its sole and absolute discretion. The Supplier must on demand reimburse all of BDO's costs of doing so together with any amounts which BDO agrees to pay to the claimant, or any amounts awarded against it.

7.6 If the Supplier takes over the investigation, defense and settlement of the claim, BDO may appoint its own legal representatives as observers at its own cost. The Supplier must give all necessary cooperation to BDO in this regard.



## 8 LIMITATION OF LIABILITY

- 8.1 BDO is not liable to the Supplier for any Losses comprising consequential damages, loss of profit, data or goodwill.
- 8.2 To the extent permitted by law, regulations applicable to BDO, in no event will BDO's total aggregate liability for all direct Losses arising from, or in connection with the Purchase Order terms be greater than the charges (excluding VAT) actually paid by BDO to the Supplier under the Purchase Order terms as at the date of the event giving rise to the claim.
- 8.3 The limitation of liability in clause 8.2 does not apply to Losses which comprise or are caused by fraud.
- 8.4 Where BDO is only partially at fault in causing the Loss, it will be liable for that partial fault only, as if the Apportionment of Damages Act, 1956 applies to the Loss and the apportionment of that fault.
- 8.5 Losses may only be claimed where formal legal proceedings or arbitration proceedings have commenced within 2 years after the claimant becomes aware or ought reasonably to have become aware of the facts that give rise to the claim and within 3 years of the event giving rise to the claim occurring.

## 9 SUPPLIER'S OBLIGATIONS: SERVICES

- 9.1 The Supplier must:
- 9.1.1 perform the Services in accordance with the Purchase Order terms;
- 9.1.2 must perform the Services in accordance with Best Practices;
- 9.1.3 use adequate numbers of appropriately skilled, qualified and experienced Personnel, and all equipment, assets and other resources necessary to provide the Services;
- 9.1.4 over time improve its understanding of the environment of BDO in which the Services are being performed, consider the requirements of BDO and apply its expertise to ensure that it renders the Services in a manner which, in its expert judgement, meets the needs of BDO;
- 9.1.5 cooperate with BDO Personnel and transfer skills where possible. It must

ensure that the best interests of BDO are served when performing the Services and communicate all information, findings and knowledge gained during the Services that are, or may be, beneficial to BDO;

- 9.1.6 provide its Personnel with all equipment and resources necessary for their performance of the Services;
- 9.1.7 ensure that the Services comply with the Enterprise and Security Architecture;
- 9.1.8 comply with all BDO security, usage and access policies and procedures applicable to Suppliers;
- 9.1.8 comply with all applicable laws;
- 9.1.9 render the Services with a high degree of professional skill and care but in any event with not less than that which would be expected of a Supplier of similar services to a substantial customer; and
- 9.1.10 be an expert in any Services unless BDO agrees otherwise in writing.
- 9.2 The Supplier is not responsible for any failure to provide Services to the extent attributable to acts or omissions of BDO or BDO's breach of the Purchase Order terms, if it:
- 9.2.1 nevertheless, used commercially reasonable endeavours to provide the Services;
- 9.2.2 promptly informed BDO of the reason it could not provide the Services, including where practicable by providing advance notice;
- 9.2.3 took any steps in addition to commercially reasonable endeavours that BDO may reasonably have requested and for which BDO agreed to bear the reasonable costs.

## 10 SUPPLIER'S OBLIGATIONS: GOODS

- 10.1 All Goods must:
- 10.1.1 be new;
- 10.1.1 be robust and of high-quality workmanship;
- 10.1.3 be sourced from reputable manufacturers and suppliers;
- 10.1.4 be fit for their intended purpose;
- 10.1.5 be in full working order on delivery; and
- 10.1.6 carry a manufacturers or supplier's warranty, the benefit of which must be capable of being given to BDO, against all

- manufacturing defects for at least 12 months from the date of supply to BDO.
- 10.2 Goods must be supplied on the dates and to the locations specified on the Purchase Order.
- 10.3 All manuals pertaining to the Goods developed or obtained by the Supplier must simultaneously be given to BDO.
- 10.4 Goods must be securely packaged to guard against damage during transit, loading and offloading.
- 10.5 For each Business Day by which the Goods are delivered late, the Supplier is liable for a penalty of 1% of the invoiced cost of the Goods to BDO, excluding taxes and delivery costs.
- 10.6 The Supplier must:
- 10.6.1 where applicable comply with all BDO, security, usage and access policies and procedures applicable to Suppliers; and
- 10.6.2 use adequate numbers of appropriately skilled, qualified and experienced personnel, and all equipment, assets and other resources necessary to deliver the Goods and/or Services.
- 10.7 BDO is not obliged to take delivery of any Goods in excess of those ordered, or which on delivery appear to be damaged, or whose packaging is damaged. Goods that are apparently undamaged and meet the requirements of clause 10.1 will be accepted by BDO, failing which they will be Rejected. The Supplier must remove Rejected Goods and replace them without delay at no cost to BDO. Rejected Goods will be considered undelivered.
- 10.8 Acceptance of the Goods does not extinguish BDO's right to subsequently Reject the Goods if BDO discovers that the Goods were damaged or did not meet the requirements of clause 10.1 on delivery.
- 10.9 The risk of damage to the Goods remains with the Supplier until the Goods are accepted and are in the possession, and under the control, of BDO.
- 10.10 BDO may commence use of the Goods on physical delivery, but ownership passes to BDO at the date agreed between the Parties or on payment in full, whichever is earlier.
- 11 DELIVERY AND OWNERSHIP OF GOODS AND WORKING PRODUCTS**
- 11.1 Work Products and Goods must be supplied to BDO on the dates specified in the Purchase Order and must comply with all agreed functional specifications and technical specifications. Any functional specifications and technical specifications agreed between the Parties with respect to any Goods or Work Products form part of the Purchase Order terms.
- 11.2 BDO may Reject Goods or a Work Product that does not comply with agreed functional specifications or technical specifications or that they do not otherwise meet the requirements of the Purchase Order terms. If BDO Rejects a Work Product or Goods, without prejudice to any other rights which it may have in terms of the Purchase Order terms or at law, BDO may
- 11.2.1 return the Work Product or Goods to the Supplier for remediation (in the case of Work Products) or replacement (in the case of Goods) together with the reasons for the Rejection of the Work Product or Good's. The faults in the Work Products must be remedied or the Goods replaced within five Business Days and the Deliverable or Goods will be resubmitted to BDO. This clause 11.2.1. applies to the re-submitted Work Products or Goods until there is no further cause for Rejection;
- 11.2.2 accept the Work Product or Goods at a charge equitably reduced to take into account the deficiencies in the Work Product or Goods;
- 11.2.3 return the Work Product or Goods to the Supplier in exchange for a full refund of all monies paid for that Work Product or Goods;
- 11.2.4 employ another Supplier to provide the Work Product or Goods at the cost of the Supplier provided that the price or rate charged by the alternative supplier is substantially in accordance with the price or rate charged by the Supplier; or
- 11.2.5 terminate the Purchase Order terms in accordance the terms of this Purchase Order terms if the deficiencies in the Work Product or Goods are not remedied despite at least one further attempt by the Supplier, except that the notice



- periods in that clause do not apply. BDO may only exercise this right if in its reasonable opinion the defective Work Product or Goods renders it impossible or worthless for the Supplier to continue to deliver Goods and / or Services in terms of the Purchase Order terms. In this event the Purchase Order terms will terminate with effect from the date stated in a written notice of termination given by BDO. BDO will return the Work Product or Goods in exchange for a full refund of all monies paid for that Work Product or Goods, without prejudice to any claim for damages it may have.
- 11.3 The Supplier's obligation to supply a Work Product or Goods on any date will only be met if the Work Product or Goods comply with the Purchase Order terms in all respects including meeting any agreed functional specifications and technical specifications on that date.
- 11.4 BDO may change the date of the submission of any Work Product or Goods with the written agreement of the Supplier, provided that agreement is not unreasonably withheld or delayed. BDO and the Supplier will agree in writing on the costs of the delay or acceleration, however the Supplier must use commercially reasonable endeavours to minimise these costs.
- 11.5 Acceptance of any Work Product or Goods does not constitute a waiver by BDO of any rights with respect to defects which subsequently manifest or are discovered in a Work Product or Goods which could not reasonably have been discovered on their delivery to BDO.
- 11.6 Work Products are owned by BDO, and to the extent that Work Products contain Supplier Intellectual Property or Third-Party Intellectual Property, clause 12 applies.
- 12 INTELLECTUAL PROPERTY**
- 12.1 BDO retains all rights and interests in BDO Background Intellectual Property except as stated in the Purchase Order terms.
- 12.2 The Supplier may access and use BDO Background Intellectual Property solely as necessary for performing the Services.
- 12.3 The Supplier retains all rights and interests in the Supplier Background Intellectual Property except as stated in the Purchase Order terms.
- 12.4 Supplier Background Intellectual Property must be original or novel and must not infringe any third parties' rights.
- 12.5 The Supplier grants to BDO a license on the terms stated in clause 12.18 in respect of any Supplier Background Intellectual Property embedded or incorporated in a Work Product or which is otherwise made available to BDO.
- 12.6 Bespoke Intellectual Property, whether incorporated within Work Products or not, is owned by BDO.
- 12.7 If Work Products or Bespoke Intellectual Property contain:
- 12.7.1 Supplier Background Intellectual Property or Third-Party Intellectual Property, clauses 12.5 and 12.16 respectively apply; and
- 12.7.2 know how, formats, processes, templates, methodologies and techniques which cannot be assigned to BDO, the Supplier waives all rights to use them unless used to provide services to BDO.
- 12.8 The Supplier irrevocably transfers all of its rights and interest in Bespoke Intellectual Property and Work Products arising in the course of the Purchase Order terms to BDO upon its development, and BDO accepts that transfer. The Supplier must, at BDO's request and expense, do all things and sign all documents required to transfer the Bespoke Intellectual Property and Work Products to BDO or any successor in title. No compensation in addition to its payment under the Purchase Order terms will be paid to the Supplier for the Supplier's compliance with this clause 12.8.
- 12.9 If any patentable Bespoke Intellectual Property is developed during the course of the Services, the Supplier must immediately notify BDO so that BDO may register a patent, alternatively if the

- Supplier registers a patent, it will immediately transfer the patent to BDO.
- 12.10 The Supplier must be competent to transfer the Bespoke Intellectual Property to BDO.
- 12.11 The Supplier must do all things necessary and sign all documents necessary to:
- 12.11.1 assist BDO or any successor in title in registering or otherwise protecting or asserting BDO's rights in, or ownership of, the Bespoke Intellectual Property transferred to BDO in terms of the Purchase Order terms; and
- 12.11.2 prove the subsistence of any Bespoke Intellectual Property for the purpose of enforcement and protection of the Bespoke Intellectual Property.
- 12.12 All Bespoke Intellectual Property arising in the course of the Services must be compatible with the current Enterprise and Security Architecture. If the Supplier is aware of future developments in the Enterprise and Security Architecture, the Supplier will enquire, and if so instructed by BDO, will develop the Bespoke Intellectual Property so that it is compatible with the future Enterprise and Security Architecture. If the Enterprise and Security Architecture changes and Bespoke Intellectual Property is no longer compatible, the Supplier must modify it to render it compatible with the Enterprise and Security Architecture. If the modifications will incur cost or change the manner in which the Supplier delivers the Services or Goods or BDO receives or uses the Services or Goods, the Supplier may agree the charges with BDO in writing.
- 12.13 The Supplier waives all personality and moral rights in Bespoke Intellectual Property.
- 12.14 The Supplier must not disclose any information regarding BDO's Background Intellectual Property and the Bespoke Intellectual Property to any person other than is necessary in the performance of the Services.
- 12.15 If the Supplier needs access to or uses any Intellectual Property licensed to or owned by a third party to provide Goods or Services it must have the right to do so and, where appropriate, BDO will use reasonable endeavours to assist the Supplier. The Supplier must comply with any conditions imposed by the other contractor.
- 12.16 If Third Party Intellectual Property is provided by the Supplier, the Supplier must procure a license for BDO on the terms stated in clause 12.18.
- 12.17 The Supplier must indemnify BDO against any claims caused by its breach of clauses 12.15 and 12.16 and at its own cost take all steps necessary to rectify the breach upon the demand of BDO.
- 12.18 Any Supplier Background Intellectual Property or Third-Party Intellectual Property (Licensed Intellectual Property) provided by the Supplier is subject to the following license terms:
- 12.18.1 BDO has a perpetual, non-exclusive, world-wide, irrevocable, royalty-free license to, as applicable, install, execute, access, configure and use the Licensed Intellectual Property including all updates and later versions or releases for its internal business purposes or otherwise in accordance with the purpose for which the Licensed Intellectual Property is made available to BDO.
- 12.18.2 Where necessary to fully use the Licensed Intellectual Property BDO may permit its customers to use or install it, provided that such customers acquire no rights in the Licensed Intellectual Property other than its use.
- 12.18.3 BDO may make copies of the Licensed Intellectual Property for any purpose necessary or practical to give full effect to this license and to secure its use of the Licensed Intellectual Property but may not otherwise reproduce the Licensed Intellectual Property.
- 12.18.4 BDO may not sell or sub-license the Licensed Intellectual Property but may sell products in which the Licensed Intellectual Property is embedded.
- 12.18.5 Any manuals developed or obtained by the Supplier pertaining to the Licensed Intellectual Property must be given to BDO.
- 12.18.6 The Supplier will, at no additional cost and on receipt of a written request from BDO, make readily available to BDO any information necessary to enable BDO to render the Licensed Intellectual Property

- interoperable with other items to the extent that this is permitted by law.
- 12.19 The Supplier must ensure that its contracts with its subcontractors include written:
- 12.19.1 warranties that all Work Products and Bespoke Intellectual Property created by the subcontractor is original and does not infringe the intellectual property rights of any third party;
- 12.19.2 transfers to the Supplier all individual rights and interest in Work Products and Bespoke Intellectual Property created by the subcontractor or acquired by it in terms of clause 12.19 (3); and
- 12.19.3 obligations to ensure that the subcontractors acquire all rights and interests in any Work Products and Bespoke Intellectual Property arising or created by any further subcontractors engaged in the Services.
- 12.20 If the Supplier breaches clause 12.19.3 it will indemnify BDO against any Losses and at its own cost take all steps necessary to rectify the breach upon the demand of BDO.
- 12.21 Without derogating from the Supplier's obligation under clause 12.20, if a subcontractor to the Supplier fails to transfer Work Products or Bespoke Intellectual Property created by it to the Supplier, the Supplier must take all reasonable steps including instituting legal proceedings to enforce its rights against the subcontractor.
- 12.22 Except for any Supplier Background Intellectual Property, intellectual Property contained in Goods supplied to BDO will be transferred and licensed to BDO subject to the terms of the Purchase Order terms. The Supplier agrees to indemnify BDO against any Losses incurred.
- 12.23 The Supplier will not be precluded or restricted from carrying on its business for other customers, provided that no Confidential Information and Intellectual Property of BDO and Bespoke Intellectual Property is used.
- 12.24 BDO has a perpetual irrevocable, worldwide right to use all skills and experience, ideas, concepts, know-how, formats, formulae, compositions, processes, templates, routines, sub-routines, software and other tools of general application, methodologies, techniques, patterns, designs, drawings, diagrams, devices, charts, plans, specifications, coming to its knowledge in connection with the Purchase Order terms.
- 12.25 This clause 12 survives termination of the other terms of the Purchase Order terms, in perpetuity.
- 13 BDO'S REPUTATION**
- 13.1 The Supplier acknowledges that as BDO is highly sensitive to reputational risks.
- 13.2 The Supplier must take particular care to avoid any actions which will or might adversely affect the good name and reputation of BDO. If the Supplier becomes aware of any such occurrence it will inform BDO without delay.
- 13.3 If BDO reasonably considers that its reputation has, or may have, been adversely affected by any act or omission of the Supplier or its subcontractors or Personnel, BDO may terminate the Purchase Order terms immediately on written notice, without liability.
- 14 SOLE RECOURSE**
- 14.1 The Supplier's sole recourse for any Losses arising from, or in connection with, the Purchase Order terms and Purchase Order is against the BDO entity identified in the Purchase Order.
- 15 PUBLICITY**
- 15.1 Neither Party may make any disclosure including any press release nor public announcement regarding any matter connected with the Purchase Order terms, including the Purchase Order, without obtaining the prior written consent of the other Party.
- 15.2 Both Parties will take all reasonable steps to ensure that the provisions of this clause 15 are observed by their personnel. The Supplier will also take all reasonable steps to ensure the observance of the provisions of this clause 15 by its subcontractors.

**16 SOURCE CODE ESCROW**

- 16.1 If the Purchase Order terms requires the Supplier to deposit the source code of any software, and all technical information and documentation required to enable BDO to modify and operate the software, into escrow, this will be subject to the terms of this clause 16. The Supplier shall identify in writing to BDO the software that will be placed in escrow and identify the escrow agent.
- 16.2 Not later than 30 (thirty) days after delivery of the software to BDO, if it does not already have one, the Supplier must enter into an escrow agreement at its own cost with an escrow agent acceptable to BDO in respect of the source code of the software.
- 16.3 The Supplier must enroll BDO as a beneficiary under the escrow agreement.
- 16.4 The escrow agreement must require the escrow agent to make the source code of the software, and all technical information and documentation required to enable BDO to modify and operate the software available to BDO:
- 16.4.1 upon the provisional or final insolvency of the Supplier;
- 16.4.2 if the Supplier ceases to maintain or support the software;
- 16.4.3 where the Supplier is in breach of the Purchase Order terms relating to the use or support of the software and such breach has not been remedied in accordance with the terms of this Purchase Order terms; or
- 16.4.5 the Supplier ceases to carry on business.
- 16.5 Upon delivery to BDO, the Supplier must deposit the software source code for each version or release of the software, and all technical information and documentation required to enable BDO to modify and operate the software, with the escrow agent.
- 16.6 If BDO is entitled to the source code under the escrow agreement, BDO may directly or through a third party modify, improve and maintain the source code and the software compiled from the source code. BDO will own the copyright in the changes made by it to the source code.

**17 COMPLIANCE**

- 17.1 Supplier warrants that its performance of this Purchase Order terms and all actions in connection therewith shall comply with all applicable laws and regulations, including those relating to anti-bribery and corruption and data privacy, and the Supplier shall not do, or omit to do, any act that will cause BDO to be in breach of any such laws or regulations.

**18 TERMINATION**

- 18.1 BDO may terminate this Purchase Order terms in whole or in part, with or without cause, at any time and without liability, upon written notice to Supplier. In the event of any termination, Supplier shall promptly refund to BDO any fees paid for the Goods, Services and/or Work Product(s) that have not been provided as at the effective date of termination, and no further fees shall be due from BDO in respect of the Goods, Services and/or Work Product(s). Termination or expiry of this Purchase Order terms for any reason shall not affect the accrued rights and obligations of the Parties at the date of termination or expiry (as applicable).

**19 NO USE OF NAME**

- 19.1 Supplier shall not use, or permit the use of, the name, trade name, service marks, trademarks, or logo of BDO in any form of publicity, press release, advertisement, or otherwise without BDO's prior written consent.

**20 INSURANCE**

- 20.1 Supplier shall maintain in effect throughout the Term such insurance, issued by a nationally recognised insurance company of sound financial status, as is sufficient to cover all liabilities to which it may be subject in relation to this Purchase Order terms. Supplier shall deliver certificates of insurance evidencing required coverage upon BDO's request.

## 21 CONFIDENTIAL INFORMATION

- 21.1 The Parties may, from time to time during the term of the Purchase Order terms, provide to one another Confidential Information. "Confidential Information" means to the extent that it is not freely and publicly available: commercial, financial, technical, scientific and research information; trade secrets, passwords, or other secret codes, information disclosed with the permission of third parties in which the third parties have confidentiality rights; information legally protected from disclosure; any information the unauthorised disclosure of which could reasonably be expected to cause harm or risk to the Disclosing Party; any information designated by the Disclosing Party as confidential; and any information which is manifestly confidential;
- 21.2 Confidential Information shall not include information that:
- 21.2.1 is or becomes part of the public domain through no act or omission of the Receiving Party;
- 21.2.2 was in the Receiving Party's lawful possession prior to initial disclosure by the Disclosing Party;
- 21.2.3 is lawfully disclosed to the Receiving Party by a third party without restriction on disclosure;
- 21.2.4 is independently developed by the Receiving Party; or
- 21.2.5 is properly disclosed pursuant to a legal or regulatory obligation, including an order of a court of competent jurisdiction or that of a competent regulated body, provided that (to the extent not prohibited from doing so under applicable law) prior written notice of such required disclosure is furnished to the Disclosing Party as soon as practicable in order to afford it an opportunity to seek a protective order.
- 21.3 The Supplier's obligations under this clause 21 survives termination of this Purchase Order terms in perpetuity. Each party shall hold all Confidential Information relating to the other in confidence and shall treat such

Confidential Information with the same degree of care that it uses to protect its own confidential information, which shall be no less than a reasonable degree of care.

- 21.4 Supplier shall not, at any time during or after the Term, use any Confidential Information received from BDO for any purpose other than carrying out its obligations under this Purchase Order terms.
- 21.5 Upon the Disclosing Party's request, and upon the expiration or termination for any reason of this Purchase Order terms, the Receiving Party shall promptly return to the Disclosing Party or, if so directed by Disclosing Party, destroy all BDO Confidential Information (in every form and medium), and certify such return or destruction in writing.
- 21.6 Notwithstanding the foregoing, unless prohibited by law, Supplier understands and agrees that BDO may disclose Supplier Confidential Information received from Supplier to other BDO Member, and BDO Member persons and third parties providing services on its behalf who may collect, use, transfer, store or otherwise process it in the various jurisdictions in which they operate for purposes related to the provision of the services, to comply with regulatory requirements, to check conflicts, for quality, risk management, or financial accounting purposes and/or for the provision of other administrative support services. BDO shall be responsible to Supplier for maintaining the confidentiality of Supplier Confidential Information.
- 21.7 Clause 21.5 does not apply to any Confidential Information which BDO is required to retain to comply with any law or professional obligation to which it is subject or which BDO requires for purposes of any legal, judicial or similar proceedings.

## 22 DISPUTE RESOLUTION AND GOVERNING LAW

- 22.1 This Purchase Order terms shall be governed by, and construed in accordance



- with, the laws of the Republic of South Africa.
- 22.2 Notwithstanding clause 22.1, any dispute arising out of or in connection with this Purchase Order terms, must first be resolved in terms of this clause 22.2:
- 22.2.1 If a dispute cannot be resolved amicably between the Parties through negotiation of the Parties' senior executives, the dispute must be referred to arbitration.
- 22.2.2 The arbitration will be held subject to the provisions of the Purchase Order terms:
- 22.2.2.1 at Sandton;
- 22.2.2.2 with only the Parties, their legal representatives, arbitrator/s and any witnesses who may be called to give evidence present;
- 22.2.2.3 otherwise in accordance with the provisions of the Arbitration Foundation of Southern Africa (AFSA); and
- 22.2.2.4 conducted in the English language.
- 22.3 The arbitrator will be a senior counsel with no less than ten years standing agreed upon between the Parties. If the Parties cannot agree upon an arbitrator within ten Business Days after the arbitration has been demanded, the nomination will be made by the chairperson of AFSA at the request of either Party.
- 22.4 All information and evidence regarding the proceedings will be confidential.
- 22.5 The arbitrator will be obliged to give written reasons for the award.
- 22.6 Nothing contained in this Purchase Order terms will prevent either Party from applying to court for urgent or interdictory relief.
- 23 DATA PROTECTION**
- 23.1 In this clause 23 the terms "processing", "process", "processor", and "data subject" shall have the substantive meaning given in the Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 ("the Regulation") and the Protection of Personal Information Act 4 of 2013 ("the POPIA"). Where there is an inconsistency the POPIA shall prevail.
- 23.2 With respect to Personal Data provided in pursuance of the Services, BDO may, by virtue of the Supplier's position, appoint the Supplier as processor or sub-processor of Personal Data. The Supplier will not assume any responsibility for determining the purposes for which and the manner in which Personal Data is processed. Supplier will not engage any further subcontractors without the prior written consent of BDO. The Supplier and its subcontractors will not process Personal Data for their own purposes, nor include Personal Data in any product or service offered by the Supplier to third parties.
- 23.3 The subject-matter, duration, nature and purpose of the processing of the Personal Data as well as the type of personal data and categories of data subjects will be provided by the Supplier to BDO in writing, before the processing of the Personal Data.
- 23.4 The Supplier will and will procure that its subcontractors will:
- 23.4.1 Process Personal Data in accordance with the requirements as imposed under applicable law and the Regulation on processors.
- 23.4.2 Process Personal Data only in accordance with documented instructions from BDO (which may be specific instructions or instructions of a general nature as set out in this Purchase Order terms or as otherwise notified by BDO to the Supplier during the term of the Purchase Order terms), including with regard to transfers of Personal Data to a country outside of South Africa or the European Economic Area (EEA). Supplier shall immediately inform BDO if, in its opinion an instruction infringes the Regulation or any other applicable law;
- 23.4.3 unless otherwise requested by BDO, process Personal Data only to the extent, and in such manner, as is necessary for the provision of the Services;
- 23.4.4 implement appropriate technical and organisational measures to protect Personal Data against unauthorised or unlawful processing and against accidental loss, destruction, damage, alteration or disclosure. When implementing and updating such technical

- and organisational measures ensuring a level of security appropriate to the risk, the Supplier will have regard to the state of the art, the costs of implementation and the nature, scope, context and purposes of processing as well as the risk of varying likelihood and severity for the rights and freedoms of natural persons. The Supplier acknowledges that BDO is relying upon the Supplier's skill and knowledge in order to assess what is 'appropriate' to protect Personal Data in the context of this Purchase Order terms;
- 23.4.5 assist BDO by appropriate technical and organisational measures, insofar as this is possible, for the fulfilment of BDO's obligation to respond to requests for exercising the data subject's rights laid down in Chapter III of the Regulation;
- 23.4.6 at the request of BDO, assist in carrying out a data protection impact assessment relating to the processing of Personal Data;
- 23.4.7 notify BDO without undue delay after becoming aware of a personal data breach (meaning a breach of security leading to the accidental or unlawful destruction, loss, alteration, unauthorised disclosure of, or access to, Personal Data transmitted, stored or otherwise processed) and keep BDO informed of any related developments. The notification to BDO will include at least 1) the nature of the breach; 2) the impacted data categories; 3) the identified and potential consequences of the breach and 4) the measures the Supplier takes to mitigate the consequences of the breach. The Supplier shall take any measures necessary to mitigate (potential) damage resulting from the breach. At the request of BDO, the Supplier shall provide all additional information with regard to the breach and will assist BDO in notifying the breach to a supervisory authority and/or the data subjects concerned;
- 23.4.8 At the direction of BDO, securely delete or return all Personal Data to BDO after the end of the provision of the Services relating to processing unless applicable law requires storage of the Personal Data.
- 23.5 Make available to BDO all information necessary to demonstrate compliance with the obligations laid down in this Safeguarding of Data clause. The Supplier will ensure:
- 23.5.1 the reliability of any employees and subcontractor personnel who have access to Personal Data;
- 23.5.2 that all employees and subcontractor personnel involved in the processing of Personal Data have undergone adequate training in the care, protection and handling of personal data; and
- 23.5.3 that persons authorized to process Personal Data have committed themselves to confidentiality and that they will treat Personal Data as Confidential Information.
- 23.6 The Supplier will promptly inform BDO if it receives:
- 23.6.1 a request from a data subject concerning any information that may be contained in Personal Data; or
- 23.6.2 a complaint, communication or request relating to BDO's obligations under the Regulation or the Promotion of Access to Information Act 2 of 2000.
- 23.7 Upon reasonable request of BDO, the Supplier agrees to submit its data processing facilities, data files and documentation needed for processing Personal Data (and/or those of its agents, affiliates and subcontractors) to reviewing, auditing and/or certifying by BDO (or any independent or impartial inspection agents or auditors, selected by BDO and not reasonably objected to by the Supplier) to ascertain compliance with the warranties and undertakings in this Purchase Order terms, with reasonable notice and during regular business hours.
- 23.8 The Supplier will at its own reasonable expense assist BDO to comply with any obligations under the Regulation and any other applicable data protection legislation and will not perform its obligations under this Purchase Order terms in such a way as to cause BDO to breach any of its obligations under the Regulation, the POPIA or any other applicable data protection legislation.
- 24 ENTERPRISE AND SECURITY ARCHITECTURE**

- 24.1 BDO owns all BDO Data, and the Supplier acquires no rights in it.
- 24.2 Data generated by the Supplier for and on behalf of BDO is owned by BDO.
- 24.3 BDO will back up its data on a regular basis but if any data is lost or corrupted through the actions or omissions of the Supplier, the Supplier will at its own cost give all cooperation to BDO necessary to restore the data.
- 24.4 Neither Party will be responsible for the security of data during transmission through public telecommunications facilities or services, provided that where security protocols are specified, these have been adhered to.
- 24.5 Where any media storing data belonging to BDO is removed from BDO's control, the Supplier must inform BDO and ascertain whether BDO requires the data to be backed up or removed. The Supplier must comply with BDO's instructions regarding the data.
- 24.6 All information technology Work Products must be compatible with the current Enterprise and Security Architecture. If the Supplier is aware of future developments in the Enterprise and Security Architecture, the Supplier will enquire, and if so, instructed by BDO will develop the Work Products so that they are compatible with the future Enterprise and Security Architecture. If the Enterprise and Security Architecture changes and Work Products are no longer compatible, the Supplier must modify them to render them compatible with the Enterprise and Security Architecture. If the modifications will incur cost or change the manner in which the Supplier delivers the Services or BDO receives the Services, the Supplier and BDO may agree on the additional costs.

## 25 CHANGE OF CONTROL

- 25.1 The Supplier must notify BDO of any intended Change of Control as soon as legally and practically possible and provide any information reasonably

requested by BDO in relation to the Change of Control. The Parties will discuss the intended Change of Control and endeavour to address any concerns that BDO has. If the Parties are unable to address such concerns to the reasonable satisfaction of BDO, then BDO may terminate Purchase Order terms by written notice to the Supplier with effect from the dates of termination stated in its notice.

- 25.2 BDO's sole liability will be for the Supplier's charges and any liabilities accrued prior to termination of the Purchase Order terms and additional amounts due for termination assistance, if any.

## 26 INDEPENDENCE

- 26.1 BDO must comply with the law, including the rules of all relevant governmental, regulatory, professional, or other bodies. In particular, BDO must comply with professional independence rules to maintain its independence as an external auditor when rendering non-audit services to and forming business relationships with audit clients. BDO must also, as a professional services provider, ensure that it does not have a conflict of interest when rendering services to its clients.
- 26.2 BDO renders external audit as well as non-audit services to numerous clients and has business relationships with many persons. It is therefore a BDO requirement to check for possible conflicts of interest and ensure auditor independence both before entering into relationships with any third parties and on an ongoing basis during those relationships.
- 26.3 The Supplier must:
  - 26.3.1 immediately provide BDO with information requested by BDO for the purposes of checking for conflicts of interest and ensuring auditor independence and warrants that such information will in each instance be complete and accurate in all respects;
  - 26.3.2 immediately notify BDO, during the subsistence of the Purchase Order terms, upon becoming aware of any changes in circumstances which may give rise to a

- conflict of interest or an auditor concern;  
and
- 26.3.4 indemnify BDO against all Losses (including legal fees on the scale as between attorney and own client) suffered by BDO, arising from, or in connection with, a breach by the Supplier of its obligations in this clause 26.
- 26.4 BDO acknowledges that it has the responsibility of reviewing and considering the effect on its independence of the information received from the Supplier in terms of this clause 26 and will notify the Supplier of any conflict with the Supplier's interests or an auditor independence concern on becoming aware of the conflict or concern.
- 26.5 Should it be deemed by BDO that a conflict or independence concern exists or has come into existence in relation to the Purchase Order terms, BDO and the Supplier will take reasonable steps to attempt to resolve the conflict or independence concern.
- 26.6 Where it is not reasonably possible to resolve a conflict or independence concern, BDO will, in the sole exercise of its professional judgement, be entitled to terminate the Purchase Order terms immediately on written notice. In this event the Supplier will not have any claim against BDO for any Losses suffered by it. BDO will be under no obligation to make any further payments to the Supplier beyond the date of such termination and must be refunded any amounts paid in advance on a pro rata basis.
- 27 ANTI-BRIBERY AND CORRUPTION**
- 27.1 Each Party confirms that, in connection with the Purchase Order terms:
- 27.1.1 it will comply, and will procure that all its Personnel and subcontractors comply, with all applicable Anti-Bribery Laws, and will not offer, give or agree to give any person, or solicit, accept or agree to accept from any person, either directly or indirectly, anything of value to obtain, influence, induce or reward any improper advantage (Anti-Bribery Obligation);
- 27.1.2 it will not do, or omit to do, any act that will cause the other Party to be in breach of any Anti-Bribery Obligation;
- 27.1.3 it has in place and will maintain in place throughout the term of the Purchase Order terms, policies and procedures to ensure compliance with the Anti-Bribery Obligation and will enforce them where appropriate. The Supplier will disclose such policies and procedures to BDO on the date set out in the Purchase Order terms;
- 27.1.4 it will make clear to those involved in receiving or providing the Goods and/or Service, including its Personnel and subcontractors, that it does not accept or condone the payment of bribes (including facilitation payments) on that Party's behalf;
- 27.1.5 it will promptly report to the other Party any request or demand for any undue financial or other advantage of any kind received by the other Party in connection with the performance of the Purchase Order terms;
- 27.1.6 it will provide the other Party with any reasonable assistance requested, at the other Party's reasonable cost, to enable the other Party to co-operate with a government, regulator or law enforcement authority in any relevant jurisdiction for the purpose of compliance with the Anti-Bribery Obligation;
- 27.1.7 within one month of the date set out in the Purchase Order terms, and annually thereafter, it will certify to the other Party in writing, compliance with this clause 27 by that Party and its Personnel and subcontractors. That Party will also provide such supporting evidence of compliance as the other Party may reasonably request.
- 27.1.8 it will report in writing to the other Party details of any breach of the Anti-Bribery Obligation as soon as reasonably practicable upon becoming aware of the breach;
- 27.1.9 it will monitor compliance with the Anti-Bribery Obligation; and
- 27.1.10 in all its dealings with the other Party, it will remain cognisant that it is required to act, and is acting, in accordance with the Anti-Bribery Obligation.

- 27.2 Each Party must ensure that its subcontractors are subject to equivalent written obligations and that this clause 27 is brought to the attention of all its Personnel who must be informed of the importance of compliance with this clause.
- 27.3 The Supplier will indemnify BDO against all Losses arising from or in connection with a breach by it or its Personnel or subcontractors of this clause 27.
- 27.4 A breach of this clause 27 shall be considered a material breach.
- 27.5 If BDO terminates this Purchase Order terms for breach of this clause 27, the other Party will not be entitled to claim compensation or any further remuneration, regardless of any activities or agreements with third parties entered into before termination.

## **28 GENERAL**

- 28.1 Unless determined otherwise by BDO, the Purchase Order and these Purchase Order terms constitute the entire agreement between the Parties regarding its subject matter.
- 28.2 No addition to or variation or consensual termination of the Purchase Order terms, including this clause, has effect unless in writing and signed by the Parties.
- 28.3 No indulgence by a Party to another Party, or failure to enforce the terms of the Purchase Order terms, will be interpreted as a waiver or be capable of founding an estoppel.
- 28.4 The Parties undertake to do everything reasonable in their power necessary for or incidental to the effectiveness and performance of the Purchase Order terms.
- 28.5 Except as specifically provided in the Purchase Order terms, no Party is entitled to cede any of its rights or delegate any of its obligations under the Purchase Order terms without the prior written consent of the other Party affected by the transfer of rights or obligations.
- 28.6 Any illegal or unenforceable provision of the Purchase Order terms may be severed, and the remaining provisions of the Purchase Order terms continue in force.