

## **EY South Africa Purchase Order Terms and Conditions**

### **(“Purchase Order Terms”)**

#### **Introduction**

The relevant Ernst & Young entity identified on the Purchase Order (“EY”) will procure goods and/or services from the supplier identified on the Purchase Order (“Supplier”) in terms of these Purchase Order Terms.

It is agreed

#### **1 Definitions and interpretation**

- 1.1 **Affiliate** means a person or entity which Controls, is Controlled by, or is under common Control with, a Party;
- 1.2 **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;
- 1.3 **Change of Control** means:
  - 1.3.1 no longer having Control or retaining the ability to direct the course of an entity;
  - 1.3.2 that a majority of the shares of the entity changed ownership;
  - 1.3.3 a competitor of EY, 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;
  - 1.3.4 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 EY;
  - 1.3.5 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;
  - 1.3.6 a competitor of EY appoints a member of the board of directors of the Supplier or any of its Affiliates; or
  - 1.3.7 the Supplier or any of its Affiliates appoints a member of the board of directors of a competitor of EY;
- 1.4 **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;

- 1.5 **Control** has the meaning given to it in section 2(2) of the *Companies Act, 2008*;
- 1.6 **Disclosing Party** means the Party which discloses Confidential Information to the Receiving Party, either directly or indirectly through another person;
- 1.7 **Enterprise Architecture** means the information technology enterprise architecture and standards established by EY from time to time;
- 1.8 **EY Background Intellectual Property** means Intellectual Property owned or licensed to EY;
- 1.9 **EY Data** means any information of EY accessed by, or disclosed to, the Supplier by or on behalf of EY, EY Network Firms or their Personnel in connection with this Purchase Order Terms and includes all Confidential Information and Personal Information;
- 1.10 **EY Network Firm(s)** means the Ernst & Young member firms that are part of the global network, each of which is a separate legal entity;
- 1.11 **Goods** means all tangible items that the Supplier is required to supply or license to EY under this Purchase Order Terms;
- 1.12 **Intellectual Property** means all intellectual property in all jurisdictions worldwide, including the following:
  - 1.12.1 inventions (whether patentable or non-patentable) and all improvements to inventions;
  - 1.12.2 trademarks, service marks, trade dress, logos, trade names and corporate names; domain names, internet and intranet names, addresses, icons and other designations useful to identify or locate EY online; translations, adaptations, derivations and combinations of these; goodwill associated with these; and related applications, registrations and renewals;
  - 1.12.3 copyrightable works capable of protection under the laws of any jurisdiction;
  - 1.12.4 ideas, research and development, know-how, formulae, compositions, manufacturing and production processes and techniques, technical data, designs, drawings, specifications,
  - 1.12.5 computer programs (including data and related documentation);
  - 1.12.6 patterns, designs and design applications and registrations; and
  - 1.12.7 copies and tangible embodiments of any of the above,
  - 1.12.8 in each instance and in whatever form or medium and including adaptations, translations and derivative works;
- 1.13 **Permitted Recipients** means employees, directors, officers, professional advisors, agents, financiers and consultants of the Receiving Party;
- 1.14 **Parties** means EY and the Supplier, and “Party” shall refer to either EY or the Supplier;
- 1.15 **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;
- 1.16 **Personal Information** shall have the meaning prescribed to it in POPI;
- 1.17 **Personnel** means a Party’s or the Supplier Affiliate’s or EY Network Firm’s employees, contractors, members, subcontractor staff members, shareholders, directors, officers, partners or principals including those engaged in the performance or receipt of the Services together with key personnel.
- 1.18 **POPI** means the Protection of Personal Information Act, 2013;

- 1.19 **Purchase Order** shall mean the purchase order document stating the Goods and/or Services being procured from the Supplier, a template copy of which is set out in Annexure D, titled “Purchase Order Template”;
- 1.20 **Purchase Order Terms** means the terms and conditions set out in this agreement including the annexures attached hereto;
- 1.21 **Receiving Party** means a Party which receives Confidential Information from a Disclosing Party;
- 1.22 **Rejection** means written notification from EY to the Supplier rejecting Goods or a Work Product that does not meet its specifications;
- 1.23 **Services** means the services to be provided by the Supplier to EY and any other services not specifically described but upon which the successful delivery of the Services is dependent;
- 1.24 **Supplier Background Intellectual Property** means Intellectual Property owned by, or licensed to, the Supplier and not developed under the Purchase Order Terms;
- 1.25 **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;
- 1.26 **Work Products** means the product of any Services, equipment and tangible or intangible items delivered to EY by the Supplier.
- 1.27 Any reference in the Purchase Order Terms to:
- 1.27.1 a **clause** is, subject to any contrary indication, a reference to a clause of the Purchase Order Terms;
- 1.27.2 **law** means any law including common law, statute, constitution, decree, judgment, treaty, regulation, directive, by-law, order, standards or any other measure of any government, local government, statutory or regulatory body or court having the force of law; and
- 1.27.3 **person** means any natural or juristic person, firm, company, corporation, government, state, agency or organ of a state, association, trust or partnership (whether or not having separate legal personality).
- 1.28 Where a word or expression is given a particular meaning, other parts of speech and grammatical forms of that word or expression have a corresponding meaning.
- 1.29 The headings do not govern or affect the interpretation of the Agreement. If any provision in a definition confers rights, or imposes obligations on any Party, effect is given to it as a substantive provision of the Agreement.
- 1.30 Unless the context indicates otherwise words denoting gender include all genders; reference to a natural person includes a juristic person; the singular includes the plural, and the plural includes the singular.
- 1.31 Any number of days prescribed in the Agreement excludes the first day and includes the last day; and any relevant action or notice may be validly done or given on the last day.
- 1.32 Unless the context indicates otherwise if the day for payment of any amount or performance of any obligation falls on a day which is not a Business Day, that day will be the next Business Day.
- 1.33 The words “including” and “in particular” are without limitation.
- 1.34 A reference to a Party includes that Party’s successors-in-title and permitted assigns.

- 1.35 A time of day is a reference to Johannesburg time.
- 1.36 The rule of interpretation that, in the event of ambiguity, the contract must be interpreted against the party responsible for the drafting of the contract does not apply.
- 1.37 Save for as set out in the paragraphs below, in the event of any conflict, ambiguity or inconsistency between the terms and conditions of this Purchase Order Terms and any other document relating to this transaction, including any terms and conditions in any invoice, or Supplier document, the terms and conditions of this Purchase Order Terms shall take precedence, unless any amendment is reduced to writing and signed by both parties.

## **2 Duration**

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.

## **3 Warranties**

- 3.1 Supplier represents, warrants and undertakes to EY that:
- (1) the Goods and/or Services shall at all times comply with EY's specifications, if any, and will be free from defects;
  - (2) the Goods and/or Services and the use by EY and the EY Network Members 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;
  - (3) Supplier shall perform its obligations under this Purchase Order Terms professionally and competently and in a good and workmanlike manner, consistent with the highest applicable industry practices;
  - (4) Supplier shall obtain all consents, clearances, permissions and licenses necessary to carry out all of its obligations under this Purchase Order Terms;
  - (5) Supplier shall provide any Services in accordance with the requirements set out in this Purchase Order Terms and in compliance with any EY codes or policies as notified to Supplier by or on behalf of EY from time to time, and using Personnel with knowledge and experience which is sufficient for the tasks assigned to them.
  - (6) the Services will be rendered in compliance with all applicable laws;
  - (7) it is registered under the Compensation for Occupational Injuries and Diseases Act, 1993 and all assessments due are, and will be throughout the term of the Purchase Order Terms, paid in full;
  - (8) any software and any other Goods, Service and/or Work Products provided to EY will be free of all computer viruses, worms, logic bombs, trap doors, trojan horses and any other harmful, destructive or deactivating code;
  - (9) 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 EY the operating platforms with which the software is compatible;
  - (10) any software provided to EY 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;
  - (11) it will comply with industry standards to secure and defend the software, Services and EY Data against anyone trying to breach the security of the software or Services including through unauthorised access to the software, Services or EY Data, or making unauthorised modifications to the software, Services or EY Data. The Supplier will notify EY immediately of any such breach or modification and will rectify it in accordance with industry standards;
  - (12) it has not included or used any open source software in any software provided to EY 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 EY any open source software supplied to EY or any software supplied to EY which operates in such a way that it is compiled or linked with any open source software;
  - (13) the media on which any software is provided to EY will be free from defects in workmanship and materials during normal use;
  - (14) any documentation and manual provided to EY is free from defects and will describe in detail and in a self-contained manner how EY may access and use any software provided to EY 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;
  - (15) 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 EY; and
  - (16) its response to any EY request for proposal was accurate when submitted, and the Supplier acknowledges that EY relied upon the Supplier's response when selecting the Supplier to provide the Goods and/or Services.
- 3.2 The Supplier agrees that time is of the essence for the performance of the Supplier's obligations under the Purchase Order Terms.

## **4 Invoices**

- 4.1 EY'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 EY at the rate and in the manner prescribed by applicable law, subject to receipt of a valid VAT invoice (or equivalent). Invoices will be payable by EY by electronic bank transfer within 30 days of receipt of a correct, undisputed and properly due invoice. EY shall not be liable for any amounts not explicitly set out in the purchase order. EY may, without limiting its other rights or remedies, set off any amount owing to it by Supplier against any amount payable by EY to Supplier under this Purchase Order Terms.
- 4.2 If EY notifies the Supplier prior to the due date for payment that it disputes a part or the whole of any invoice, EY 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 EY's notification, the dispute will be resolved accordance with clause 18.2. 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 EY. Nothing in the Purchase Order Terms will preclude EY from claiming repayment of any amount incorrectly paid to the Supplier notwithstanding that no dispute was previously noted.

## **5 Indemnification**

- 5.1 The Supplier indemnifies and holds EY harmless against loss or damage suffered by, or claims made against EY arising out of or in connection with:
- (1) an allegation by a third party that any intellectual property supplied by the Supplier infringes the third party's intellectual property rights;
  - (2) any misconduct, negligence or breach of the Purchase Order Terms by the Supplier;
  - (3) 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
  - (4) claims for taxes, interest or penalties against EY that are obligations of the Supplier.
- 5.2 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 EY 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.
- 5.3 If a claim against EY 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:
- (1) procure for EY the right to continue using the allegedly infringing intellectual property; or
  - (2) modify the allegedly infringing intellectual property so as to render it non-infringing; or
  - (3) replace it with intellectual property that is at least functionally equivalent.
- 5.4 If the Supplier determines that none of these alternatives is reasonably available, EY will cease using the intellectual property and the Supplier will give EY a credit equal to the amount paid by EY for the allegedly infringing intellectual property or Services received through the use of the allegedly infringing intellectual property.
- 5.5 If the Supplier does not take steps to defend or settle the claim within the time period permitted for the taking of such steps, EY may do so and proceed with the defence or settlement of the

claim in its sole and absolute discretion. The Supplier must on demand reimburse all of EY's costs of doing so together with any amounts which EY agrees to pay to the claimant or any amounts awarded against it.

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

## **6 Limitation of liability**

- 6.1 EY is not liable to the Supplier for any Losses comprising consequential damages, loss of profit, data or goodwill.
- 6.2 To the extent permitted by law, regulations applicable to EY, in no event will EY'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 EY to the Supplier under the Purchase Order Terms as at the date of the event giving rise to the claim.
- 6.3 The limitation of liability in clause 6.2 does not apply to Losses which comprise or are caused by fraud.
- 6.4 Where EY 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.
- 6.5 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.

## **7 Supplier's obligations: Services**

- 7.1 The Supplier must:
- (1) perform the Services in accordance with the Purchase Order Terms;
  - (2) must perform the Services in accordance with Best Practices;
  - (3) use adequate numbers of appropriately skilled, qualified and experienced Personnel, and all equipment, assets and other resources necessary to provide the Services;
  - (4) over time improve its understanding of the environment of EY in which the Services are being performed, consider the requirements of EY and apply its expertise to ensure that it renders the Services in a manner which, in its expert judgement, meets the needs of EY;
  - (5) cooperate with EY Personnel and transfer skills where possible. It must ensure that the best interests of EY are served when performing the Services and communicate all

information, findings and knowledge gained during the Services that are, or may be, beneficial to EY;

- (6) provide its Personnel with all equipment and resources necessary for their performance of the Services;
- (7) ensure that the Services comply with the Enterprise Architecture;
- (8) comply with all EY, security, usage and access policies and procedures applicable to contractors, including **Error! Reference source not found.B Error! Reference source not found.** ;
- (9) comply with all applicable laws;
- (10) 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
- (11) be an expert in any Services unless EY agrees otherwise in writing.

7.2 The Supplier is not responsible for any failure to provide Services to the extent attributable to acts or omissions of EY or its contractors or to EY's breach of the Purchase Order Terms, if it:

- (1) nevertheless, used commercially reasonable endeavours to provide the Services;
- (2) promptly informed EY of the reason why it could not provide the Service, including where practicable by providing advance notice;
- (3) took any steps in addition to commercially reasonable endeavours that EY may reasonably have requested and for which EY agreed to bear the reasonable costs.

## **8 Supplier's obligations: Goods**

8.1 All Goods must:

- (1) be new;
- (2) be robust and of high-quality workmanship;
- (3) be sourced from reputable manufacturers and suppliers;
- (4) be fit for their intended purpose;
- (5) be in full working order on delivery; and
- (6) carry a manufacturer's or supplier's warranty, the benefit of which must be capable of being given to EY, against all manufacturing defects for at least 12 months from the date of supply to EY.





- 8.2 Goods must be supplied on the dates and to the locations specified on the Purchase Order.
- 8.3 All manuals pertaining to the Goods developed or obtained by the Supplier must simultaneously be given to EY.
- 8.4 Goods must be securely packaged to guard against damage during transit and loading and offloading.
- 8.5 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 EY, excluding taxes and delivery costs.
- 8.6 The Supplier must:
- (1) where applicable comply with all EY, security, usage and access policies and procedures applicable to contractors, including **Error! Reference source not found. Error! Reference source not found.**; and
  - (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.
- 8.7 EY 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 8.2 will be accepted by EY, failing which they will be Rejected. The Supplier must remove Rejected Goods and replace them without delay at no cost to EY. Rejected Goods will be considered undelivered.
- 8.8 Acceptance of the Goods does not extinguish EY's right to subsequently Reject the Goods if EY discovers that the Goods were damaged or did not meet the requirements of clause 8.2 on delivery.
- 8.9 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 EY.
- 8.10 EY may commence use of the Goods on physical delivery but ownership passes to EY at the date agreed between the Parties or on payment in full, whichever is the earlier.

## 9 Delivery and Ownership of Goods and Work Products

- 9.1 Work Products and Goods must be supplied to EY 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.
- 9.2 EY 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 EY 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, EY may:

- 9.2.1 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 EY. This clause 9.2.1. applies to the re-submitted Work Products or Goods until there is no further cause for Rejection;
  - 9.2.2 accept the Work Product or Goods at a charge equitably reduced to take into account the deficiencies in the Work Product or Goods;
  - 9.2.3 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;
  - 9.2.4 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
  - 9.2.5 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. EY 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 EY. EY 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.
- 9.3 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.
  - 9.4 EY 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. EY 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.
  - 9.5 Acceptance of any Work Product or Goods does not constitute a waiver by EY 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 EY.
  - 9.6 Work Products are owned by EY, and to the extent that Work Products contain Supplier Intellectual Property or Third Party Intellectual Property, clause 10 applies.

## **10 Intellectual property**

### **EY Background Intellectual Property**

- 10.1 EY retains all rights and interests in EY Background Intellectual Property except as stated in the Purchase Order Terms.
- 10.2 The Supplier may access and use EY Background Intellectual Property solely as necessary for performing the Services.

### **Supplier Background Intellectual Property**

- 10.3 The Supplier retains all rights and interests in the Supplier Background Intellectual Property except as stated in the Purchase Order Terms.
- 10.4 Supplier Background Intellectual Property must be original or novel and must not infringe any third parties' rights.
- 10.5 The Supplier grants to EY a licence on the terms stated in clause 10.18 in respect of any Supplier Background Intellectual Property embedded or incorporated in a Work Product or which is otherwise made available to EY.

### **Deliverables and Bespoke Intellectual Property**

- 10.6 Bespoke Intellectual Property, whether incorporated within Work Products or not, is owned by EY.
- 10.7 If Work Products or Bespoke Intellectual Property contain:
- (1) Supplier Background Intellectual Property or Third Party Intellectual Property, clauses 10.5 and 10.16 respectively apply; and
  - (2) know how, formats, processes, templates, methodologies and techniques which cannot be assigned to EY, the Supplier waives all rights to use them unless used to provide services to EY.
- 10.8 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 EY upon its development, and EY accepts that transfer. The Supplier must, at EY's request and expense, do all things and sign all documents required to transfer the Bespoke Intellectual Property and Work Products to EY 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 10.8.
- 10.9 If any patentable Bespoke Intellectual Property is developed during the course of the Services, the Supplier must immediately notify EY so that EY may register a patent, alternatively if the Supplier registers a patent it will immediately transfer the patent to EY.
- 10.10 The Supplier must be competent to transfer the Bespoke Intellectual Property to EY.

- 10.11 The Supplier must do all things necessary and sign all documents necessary to:
- (1) assist EY or any successor in title in registering or otherwise protecting or asserting EY's rights in, or ownership of, the Bespoke Intellectual Property transferred to EY in terms of the Purchase Order Terms; and
  - (2) prove the subsistence of any Bespoke Intellectual Property for the purpose of enforcement and protection of the Bespoke Intellectual Property.
- 10.12 All Bespoke Intellectual Property arising in the course of the Services must be compatible with the current Enterprise Architecture. If the Supplier is aware of future developments in the Enterprise Architecture, the Supplier will enquire, and if so instructed by EY, will develop the Bespoke Intellectual Property so that it is compatible with the future Enterprise Architecture. If the Enterprise Architecture changes and Bespoke Intellectual Property is no longer compatible, the Supplier must modify it to render it compatible with the Enterprise Architecture. If the modifications will incur cost or change the manner in which the Supplier delivers the Services or Goods or EY receives or uses the Services or Goods, the Supplier may agree the charges with EY in writing.
- 10.13 The Supplier waives all personality and moral rights in Bespoke Intellectual Property.
- 10.14 The Supplier must not disclose any information regarding EY's Background Intellectual Property and the Bespoke Intellectual Property to any person other than is necessary in the performance of the Services.

### **Third Party Intellectual Property**

- 10.15 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, EY will use reasonable endeavours to assist the Supplier. The Supplier must comply with any conditions imposed by the other contractor.
- 10.16 If Third Party Intellectual Property is provided by the Supplier, the Supplier must procure a licence for EY on the terms stated in clause 10.18.
- 10.17 The Supplier must indemnify EY against any claims caused by its breach of clauses 10.15 and 10.16 and at its own cost take all steps necessary to rectify the breach upon the demand of EY.

### **Licence terms**

- 10.18 Any Supplier Background Intellectual Property or Third Party Intellectual Property (**Licensed Intellectual Property**) provided by the Supplier is subject to the following license terms:
- (1) EY 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 EY.

- (2) Where necessary to fully use the Licensed Intellectual Property EY 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.
- (3) EY 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.
- (4) EY may not sell or sub-license the Licensed Intellectual Property but may sell products in which the Licensed Intellectual Property is embedded.
- (5) Any manuals developed or obtained by the Supplier pertaining to the Licensed Intellectual Property must be given to EY.
- (6) The Supplier will, at no additional cost and on receipt of a written request from EY, make readily available to EY any information necessary to enable EY to render the Licensed Intellectual Property interoperable with other items to the extent that this is permitted by law.

#### **Intellectual property of subcontractors**

10.19 The Supplier must ensure that its contracts with its subcontractors include written:

- (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;
- (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 10.19 (3); and
- (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.

10.20 If the Supplier breaches clause 10.19.310.19(3) it will indemnify EY against any Losses and at its own cost take all steps necessary to rectify the breach upon the demand of EY.

10.21 Without derogating from the Supplier's obligation under clause 10.20, 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.

#### **Intellectual Property Rights in Goods**



Except for any Supplier Background Intellectual Property, intellectual Property contained in Goods supplied to EY will be transferred and licensed to EY subject to the terms of the Purchase Order Terms. The Supplier agrees to indemnify EY against any Losses incurred.

#### **Other materials**

- 10.22 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 EY and Bespoke Intellectual Property is used.
- 10.23 EY 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.

#### **Survival**

- 10.24 This clause 10 survives termination of the other terms of the Purchase Order Terms, in perpetuity.

### **11 EY's Reputation**

- 11.1 The Supplier acknowledges that as EY is an auditor, its business is highly sensitive to reputational risks.
- 11.2 The Supplier must take particular care to avoid any actions which will or might adversely affect the good name and reputation of EY. If the Supplier becomes aware of any such occurrence it will inform EY without delay.
- 11.3 If EY 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, EY may terminate the Purchase Order Terms immediately on written notice, without liability.

### **12 Sole Recourse**

- 12.1 The Supplier's sole recourse for any Losses arising from, or in connection with, the Purchase Order Terms and Purchase Order is against EY and not the EY Network Firms and Personnel.

### **13 Publicity**

- 13.1 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.

13.2 Both Parties will take all reasonable steps to ensure that the provisions of this clause 13 are observed by their Personnel. The Supplier will also take all reasonable steps to ensure the observance of the provisions of this clause 13 by its subcontractors.

## **14 Source code escrow**

14.1 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 EY to modify and operate the software, into escrow, this will be subject to the terms of this clause 14. The Supplier shall identify in writing to EY the software that will be placed in escrow and identify the escrow agent.

14.2 Not later than 30 days after delivery of the software to EY, 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 EY in respect of the source code of the software.

14.3 The Supplier must enrol EY as a beneficiary under the escrow agreement.

14.4 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 EY to modify and operate the software available to EY:

- (1) upon the provisional or final insolvency of the Supplier;
- (2) if the Supplier ceases to maintain or support the software;
- (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
- (4) the Supplier ceases to carry on business.

14.5 Upon delivery to EY, 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 EY to modify and operate the software, with the escrow agent.

14.6 If EY is entitled to the source code under the escrow agreement, EY may directly or through a third party modify, improve and maintain the source code and the software compiled from the source code. EY will own the copyright in the changes made by it to the source code.

## **15 Compliance**

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 EY to be in breach of any such laws or regulations.

## **16 Termination**

EY 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 EY 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 EY 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).

## **17 No Use of Name**

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

## **18 Insurance**

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 EY's request.

## **19 Confidential Information**

19.1 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;

19.2 Confidential Information shall not include information that:

- (1) is or becomes part of the public domain through no act or omission of the Receiving Party;
- (2) was in the Receiving Party's lawful possession prior to initial disclosure by the Disclosing Party;
- (3) is lawfully disclosed to the Receiving Party by a third party without restriction on disclosure;
- (4) is independently developed by the Receiving Party; or
- (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.



- 19.3 The Supplier's obligations under this clause 19 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.
- 19.4 Supplier shall not, at any time during or after the Term, use any Confidential Information received from EY for any purpose other than carrying out its obligations under this Purchase Order Terms.
- 19.5 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 EY Confidential Information (in every form and medium), and certify such return or destruction in writing.
- 19.6 Notwithstanding the foregoing, unless prohibited by law, Supplier understands and agrees that EY may disclose Supplier Confidential Information received from Supplier to other EY Network Member, and EY Network 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. EY shall be responsible to Supplier for maintaining the confidentiality of Supplier Confidential Information.
- 19.7 Clause 19.5 does not apply to any Confidential Information which EY is required to retain to comply with any law or professional obligation to which it is subject or which EY requires for purposes of any legal, judicial or similar proceedings.

## **20 Dispute resolution and governing law**

- 20.1 This Purchase Order Terms shall be governed by, and construed in accordance with, the laws of the Republic of South Africa.
- 20.2 Notwithstanding clause 20.1, Any dispute arising out of or in connection with this Purchase Order Terms, must first be resolved in terms of this clause 20.2:
- 20.2.1 If a dispute cannot be resolved amicably between the Parties through negotiation of the Parties' senior executives, the dispute must be referred to arbitration.
- 20.2.2 The arbitration will be held subject to the provisions of the Purchase Order Terms:
- (1) at Sandton;
  - (2) with only the Parties, their legal representatives, arbitrator/s and any witnesses who may be called to give evidence present;
  - (3) otherwise in accordance with the provisions of the Arbitration Foundation of Southern Africa (AFSA); and
  - (4) conducted in the English language.
- 20.2.3 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 chairman of AFSA at the request of either Party.

- 20.2.4 All information and evidence regarding the proceedings will be confidential.
- 20.2.5 The arbitrator will be obliged to give written reasons for the award.
- 20.2.6 Nothing contained in this Purchase Order Terms will prevent either Party from applying to court for urgent or interdictory relief.

## **21 Data Protection**

- 21.1 In this clause 21 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.
- 21.2 With respect to Personal Data provided in pursuance of the Services, EY 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 EY. 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.
- 21.3 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 EY in writing, before the processing of the Personal Data.
- 21.4 The Supplier will and will procure that its subcontractors will:
  - (1) Process Personal Data in accordance with the requirements as imposed under applicable law and the Regulation on processors.
  - (2) Process Personal Data only in accordance with documented instructions from EY (which may be specific instructions or instructions of a general nature as set out in this Purchase Order Terms or as otherwise notified by EY 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 EY if, in its opinion an instruction infringes the Regulation or any other applicable law;
  - (3) unless otherwise requested by EY, process Personal Data only to the extent, and in such manner, as is necessary for the provision of the Services;
  - (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 EY 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;

- (5) assist EY by appropriate technical and organisational measures, insofar as this is possible, for the fulfilment of EY's obligation to respond to requests for exercising the data subject's rights laid down in Chapter III of the Regulation;
  - (6) at the request of EY, assist in carrying out a data protection impact assessment relating to the processing of Personal Data;
  - (7) notify EY 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 EY informed of any related developments. The notification to EY 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 EY, the Supplier shall provide all additional information with regard to the breach and will assist EY in notifying the breach to a supervisory authority and/or the data subjects concerned;
  - (8) At the direction of EY, securely delete or return all Personal Data to EY after the end of the provision of the Services relating to processing unless applicable law requires storage of the Personal Data.
- 21.5 Make available to EY all information necessary to demonstrate compliance with the obligations laid down in this Safeguarding of Data clause. The Supplier will ensure:
- (1) the reliability of any employees and subcontractor personnel who have access to Personal Data;
  - (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
  - (3) that persons authorized to process Personal Data have committed themselves to confidentiality and that they will treat Personal Data as Confidential Information.
- 21.6 The Supplier will promptly inform EY if it receives:
- (1) a request from a data subject concerning any information that may be contained in Personal Data; or
  - (2) a complaint, communication or request relating to EY's obligations under the Regulation or the Promotion of Access to Information Act 2 of 2000.
- 21.7 Upon reasonable request of EY, 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 EY (or any independent or impartial inspection agents or auditors, selected by EY 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.
- 21.8 The Supplier will at its own reasonable expense assist EY 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 EY to breach any of its obligations under the Regulation, the POPIA or any other applicable data protection legislation.

## **22 Data and Enterprise Architecture**

- 22.1 EY owns all EY Data and the Supplier acquires no rights in it.
- 22.2 Data generated by the Supplier for and on behalf of EY is owned by EY.
- 22.3 EY 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 EY necessary to restore the data.
- 22.4 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.
- 22.5 Where any media storing data belonging to EY is removed from EY's control, the Supplier must inform EY and ascertain whether EY requires the data to be backed up, or removed. The Supplier must comply with EY's instructions regarding the data.
- 22.6 All information technology Work Products must be compatible with the current Enterprise Architecture. If the Supplier is aware of future developments in the Enterprise Architecture, the Supplier will enquire, and if so instructed by EY will develop the Work Products so that they are compatible with the future Enterprise Architecture. If the Enterprise Architecture changes and Work Products are no longer compatible, the Supplier must modify them to render them compatible with the Enterprise Architecture. If the modifications will incur cost or change the manner in which the Supplier delivers the Services or EY receives the Services, the Supplier and EY may agree on the additional costs.

## **23 Change of Control**

- 23.1 The Supplier must notify EY of any intended Change of Control as soon as legally and practically possible and provide any information reasonably requested by EY in relation to the Change of Control. The Parties will discuss the intended Change of Control and endeavour to address any concerns that EY has. If the Parties are unable to address such concerns to the reasonable satisfaction of EY, then EY may terminate Purchase Order Terms by written notice to the Supplier with effect from the dates of termination stated in its notice.
- 23.2 EY 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.

## **24 Independence**

- 24.1 EY must comply with the law, including the rules of all relevant governmental, regulatory, professional, or other bodies. In particular, EY 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. EY must also, as a professional services provider, ensure that it does not have a conflict of interest when rendering services to its clients.

24.2 EY renders external audit as well as non-audit services to numerous clients and has business relationships with many persons. It is therefore an EY 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.

24.3 The Supplier must:

- (a) immediately provide EY with information requested by EY 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;
- (b) immediately notify EY, 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
- (c) indemnify EY and each EY Network Firm against all Losses (including legal fees on the scale as between attorney and own client) suffered by EY or any EY Network Firm, arising from, or in connection with, a breach by the Supplier of its obligations in this clause 24.

24.4 EY 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 24, 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.

24.5 Should it be deemed by EY that a conflict or independence concern exists or has come into existence in relation to the Purchase Order Terms, EY and the Supplier will take reasonable steps to attempt to resolve the conflict or independence concern.

24.6 Where it is not reasonably possible to resolve a conflict or independence concern, EY 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 EY and the EY Network Firms and their Personnel for any Losses suffered by it. EY 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.

## **25 Anti-bribery and corruption**

25.1 Each Party confirms that, in connection with the Purchase Order Terms:

- (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);
- (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;
- (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 EY on the date set out in the Purchase Order Terms;
- (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;
  - (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;
  - (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;
  - (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 25 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.
  - (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;
  - (9) it will monitor compliance with the Anti-Bribery Obligation; and
  - (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.
- 25.2 Each Party must ensure that its subcontractors are subject to equivalent written obligations and that this clause 25 is brought to the attention of all its Personnel who must be informed of the importance of compliance with this clause.
- 25.3 The Supplier will indemnify EY and the EY Network Firms and its Personnel against all Losses arising from or in connection with a breach by it or its Personnel or subcontractors of this clause 25.
- 25.4 A breach of this clause 25 shall be considered a material breach.
- 25.5 If EY terminates this Purchase Order Terms for breach of this clause 25, 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.

## **26 General**

- 26.1 The Purchase Order Terms is the whole agreement between the Parties in regard to its subject matter.
- 26.2 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.
- 26.3 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.
- 26.4 The Parties undertake to do everything reasonable in their power necessary for or incidental to the effectiveness and performance of the Purchase Order Terms.



- 26.5 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.
- 26.6 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.

#### **ANNEXURE A: SUPPLIER CODE OF CONDUCT**

Please access the latest Supplier Code of Conduct using the following link:  
<http://www.ey.com/suppliercodeofconduct>



Background: Our purpose is to build a better working world. To stay true to that purpose, we will continue to enhance the way we engage with our suppliers to encourage the continual improvement of the way we, and our supplier base, address and manage important issues. Our revised expectations and minimum standards within the enclosed document are the product of not only the increasing regulatory environment globally with respect to particular issues, but also the increasing expectations of our clients and the wider community.

EY Organizations (EY) values our supplier relationships and is committed to working with, and supporting, our suppliers to achieve mutual objectives. A supplier's performance and adherence to high business standards is an important and integral part of the value chain for EY. EY promotes and expects the application of high legal, ethical, environmental and employee-related standards within our own business and among our suppliers.

Our commitment to integrity and professionalism is set forth in our Global Code of Conduct, which provides a clear set of standards for all of our business conduct. Our Global Code of Conduct can be found on [ey.com](http://ey.com). We believe that deviations from, or violations of, the Global Code of Conduct are unacceptable, and that our clients or suppliers should feel able to raise issues without any fear of retaliation or discrimination. To that end, we provide an [ethics hotline](#) to deal with sensitive ethical issues.

This Supplier Code of Conduct sets forth the minimum standards of business conduct that we expect from all of our suppliers:

**1. Compliance with laws:**

Suppliers shall comply fully with all laws and regulations applicable to them.

**2. Environmental sustainability:**

EY expects its suppliers to demonstrate a clear understanding of the environmental risks, impacts and responsibilities associated with the products and services they provide:

- 2.1 Suppliers should have in place an effective environmental policy, statement or program to mitigate environmental risks, the implementation of which should be evident throughout all levels of the company.
- 2.2 Suppliers should have processes in place to ensure that their operations conform to all applicable environmental legislation. All required environmental permits, approvals and registrations are to be obtained, maintained and complied with in accordance with the conditions and requirements defined therein.
- 2.3 Environmental performance should be measured, monitored and reviewed regularly. The supplier should endeavour to make continuous improvements in environmental performance through practicable measures and employ leading practices where possible.
- 2.4 Suppliers should make practical efforts to minimize the use of energy, water and raw materials. Where possible, these should be renewable or sustainably sourced.
- 2.5 Emissions to air that are likely to cause pollution or contribute to climate change should be monitored, controlled and minimized where possible.
- 2.6 Suppliers shall make practical efforts to eliminate or reduce levels of generated waste and should reuse and recycle waste materials wherever possible. The handling, storage, movement,



treatment and disposal of all waste must be carried out in accordance with applicable regulations and in an environmentally responsible manner.

- 2.7 Suppliers should consider the environmental credentials and performance of vendors within their own supply chain and require them to operate to a minimum set of standards.
- 2.8 Products and services provided to EY should include options that offer reduced environmental impact by utilizing environmentally sound technologies, processes and sustainable materials, etc.

### **3. Human rights and social sustainability:**

Policies should be in place to confirm the supplier's commitment to points 3.1—3.12, and improvement programs should be in place where relevant:

- 3.1 **Freedom from forced labour, bonded labour and human trafficking:** All employment shall be freely chosen by the worker. Workers shall be free to leave their employment at any time (subject to reasonable and paid notice periods) and shall not be subject to any coercion or restriction through, for example, the holding of original copies of employee passports, identity documents or monetary deposits. There shall not be any use of bonded labour. Work must be undertaken for fair compensation and must not be undertaken to repay a debt incurred (i.e., as a result of deceptive recruiting practices).
- 3.2 **Recruitment agencies:** Where recruitment agencies/brokers are used by the supplier, appropriate due diligence and ongoing management must be undertaken to ensure that risks of worker exploitation, such as debt bondage, are effectively mitigated. Reasonable evidence of these activities is to be available to EY upon request, within a reasonable notice period.
- 3.3 **Child labour:** Suppliers should adhere to local laws relating to the minimum working age and not engage in the employment of child labour, directly or indirectly. According to the International Labour Organization (ILO) minimum age convention (C138) of 1973, child labour refers to any work performed by children under the age of 12, non-light work done by children aged 12—14 and hazardous work done by children aged 15—17.

Suppliers should also ensure that working hours for those of school age are not exceeding the maximum hours on a school day. In cases where child labour is found, programs should be in place to support the child into education.

- 3.4 **Wages and benefits:** At a minimum, the legal minimum wage standard must be adhered to across the entire workforce, employees should receive clear information on their wages, and unfair deductions from wages as a disciplinary measure are not permitted.
- 3.5 **Working hours:** Working hours must be limited according to national or local law, including breaks. Overtime should be voluntary, should not replace regular employment and must be fairly compensated.
- 3.6 **Freedom of association, collective bargaining or parallel means:** Employees have the right to join or form a trade union without facing discrimination or intimidation. Where freedom of association and collective bargaining is restricted under law, employees should have the right to develop parallel means.
- 3.7 **Health and safety and working conditions:** A safe and hygienic working environment should be provided with an awareness of any industry-specific hazards. Relevant training should be provided to employees.

- 3.8 Regular employment: All employees should be provided with a written employment contract setting out their terms and conditions in accordance with the local relevant legal jurisdiction. We expect all employment and the termination of employment to be carried out in a fair manner.
- 3.9 No harsh or inhumane treatment: Abuse, threat of abuse, and sexual or other harassment or intimidation should be prohibited by suppliers. Suppliers shall make available to all workers within their operations and supply chain a mechanism for which grievances relating to labour practices can be anonymously raised, without fear of retribution. Suppliers shall investigate and take appropriate action to remedy all grievances raised.
- 3.10 Subcontracting: Where authorized subcontracting is used to support the execution of services for EY, the supplier shall confirm that the subcontractor meets the minimum expectations set out in Section 3 of this document through the following controls:
- Supplier shall take necessary steps to obtain and maintain visibility over labour rights risks within the operations and supply chains of subcontractors.
  - Supplier shall attain the right to audit over subcontractor operations.
  - Records of audits undertaken of subcontractors shall be available on request.
  - Supplier shall have written agreements in place with subcontractors to ensure that any further subcontracting by the subcontractor company (a) is authorized and (b) meets the standards set out in this document.
- 3.11 Right to audit: Suppliers shall attain the right to audit over their suppliers to assess the working conditions and extent to which workers' labour rights are being upheld. Records of audits undertaken of the suppliers' supply chain shall be available on request.
- 3.12 Incident response: Suppliers shall take the following actions, at a minimum, when an incident of forced labour, bonded labour, human trafficking or child labour is identified:
- Disclosing the incident/high risk to relevant authorities
  - Disclosing the incident/high risk to EY
  - Taking appropriate actions to remedy the incident
- 3.13 Demonstration of reasonable modern slavery due diligence: EY expects that our suppliers will maintain an active view on the inherent risk of modern slavery in their supply chain (this includes third-party certifications in relation to human rights and social compliance standards). Among other modes of inquiry, we would expect this to include engaging human rights specialists to perform validation audits of high-risk suppliers on an intermittent, but no less than annual, basis.
- In addition to the above minimum requirements, the supplier shall define a minimum standard of human rights that applies across all jurisdictions and demonstrate how compliance to this is encouraged and observed. Such standards should refer to, at a minimum, the UN Guiding Principles on Business and Human Rights.

#### **4. Diversity and inclusiveness:**



Our sourcing decisions, contracts and management of supplier relationships will reflect and promote the principles of the EY Diversity and Inclusiveness policy (incorporating equal opportunities) in that they will seek to ensure that suppliers do not victimize, harass or discriminate against any employee or party to the contract due to their sex, gender identity/expression, marital or civil partnership status, race, ethnicity or national origin, disability, religion, sexual orientation, age or part-time status.

Suppliers will be required to meet the requirements of any applicable discrimination legislation. Our suppliers will be treated fairly and equally during the tendering and purchasing process, with decisions made on the basis of clear selection criteria:

- 4.1 EY expects suppliers to have a policy in place to consider usability by, and inclusion of, individuals with disabilities when designing products and/or delivering services to EY. As part of the policy, there are accessibility standards and/or processes in place that conform to disability guidelines when suppliers are designing products and/or delivering services.
- 4.2 EY expects suppliers to have a policy that explicitly bans discrimination/bullying and harassment based on sexual orientation, race, gender or gender identity/expression. In addition, suppliers are also encouraged to have evidence of diversity and inclusiveness training that is inclusive of sexual orientation and gender identity/expression.
- 4.3 Our Inclusive Procurement strategy's key objective is to identify, develop and utilize certified diverse businesses (defined below) that can enhance our competitive advantage and provide innovative and cost-effective products and services for us and our clients. It is our expectation that all suppliers use their best efforts themselves to procure diverse businesses to compete for goods and services to become preferred suppliers to the supplier and/or as its subcontractor(s). In accordance with the terms of its agreement with an EY entity, suppliers commit to comply with all relevant regulatory agency requirements, as well as with any local diversity regulations and programs.
- 4.4 For the purposes of this Supplier Code of Conduct, a "diverse business" is a company that is certified to be at least 51%-owned, -operated and -controlled by one or more minority, woman, LGBT+ person, person with a disability, veteran, service-disabled veteran, or aboriginal or indigenous person. In addition, historically underutilized business and social enterprises as defined by the local country will be included in the diverse- business classification.
- 4.5 It is our commitment that diverse business enterprises shall have equal opportunity to compete for all goods and services to become preferred suppliers and/or subcontractor(s) for the organization. EY is committed to the development and growth of diverse business enterprises to build a better working world and to expand networks to build trusted and enriched relationships.
- 4.6 EY expects suppliers to have equivalent policies to promote diversity in their supply chains and purchase from diverse businesses. Suppliers agree to make a reasonable effort to utilize diverse suppliers and provide evidence to EY upon request.

## **5. Ethics:**

The highest standard of integrity is expected in all of our business dealings. Any and all forms of corruption, extortion, bribery (including facilitation payments), and embezzlement are strictly prohibited and may result in immediate termination and legal action:

- 5.1 Suppliers will not offer or provide money or anything of value to any person if the circumstances indicate that it is probable that all or part of the money or other thing of value is being given to another individual or entity to influence official action or to obtain a business advantage.



- 5.2 Suppliers are expected to understand relevant EY gift and hospitality policies before offering or providing EY personnel with any gift and/or business entertainment. Gifts or entertainment should never be offered to EY personnel or representatives under circumstances that create the appearance of impropriety.
- 5.3 Suppliers must comply with all applicable trade control laws and regulations in the import, export, re-export or transfer of goods and services (including software and technology). All invoices and any customs or similar documentation submitted to EY or governmental authorities in connection with transactions involving EY must accurately describe the goods and services provided and the price thereof.
- 5.4 Suppliers shall not share or exchange any prices, costs or other competitive information, or undertaking of any collusive conduct with any other third party to EY with respect to any proposed, pending or current EY procurement.
- 5.5 Suppliers will use only subcontractors or other third parties who comply with all applicable laws and regulations, and who adhere to the same (minimum) standards set forth in this guide.

**6. Monitoring:**

EY may conduct annual compliance surveys to confirm compliance with this Supplier Code of Conduct. However, EY expects that suppliers will actively audit and monitor their day-to-day management processes with respect to the EY Code of Conduct and provide evidence to EY upon request.

**ANNEXURE C: PURCHASE ORDER TEMPLATE**



[Insert EY Buying Entity Company Name]  
[Insert EY Buying Entity Business Address]  
Tax ID: [Insert Tax Registration ID of EY Buying Entity]

[Insert EY Entity Office Tel#]  
[Insert EY Entity Fax#]

**Purchase Order**

Vendor Address	
Attention:	[Insert name of Vendor contact person]
Company Name:	INSERT VENDOR COMPANY FULL NAME [Insert official registered business address] [Insert contact person email address] [Insert contact number]

Information	
PO Number:	Insert PO#
Date:	[INSERT DATE OF PO   dd mmm yyyy]
Incoterm:	[INSERT AGREED INCOTERM] Location:
Terms of Payment:	Net 30 / 45 / 60 days
Contact Person	[EY CONTACT PERSON]
Telephone:	[INSERT EY CONTACT PERSON'S NUMBER]
Email:	[INSERT EY CONTACT PERSON'S EMAIL]

Ship To / Delivery Address
[INSERT ADDRESS WHERE OR ITEMS / SERVICES ORDERED TO BE DELIVERED TO]

Invoice-To Address
[INSERT EY ENTITY NAME AND ADDRESS THAT THE SUPPLIER WILL CHARGE THE ORDER INVOICE TO]
Note-Please send invoice in PDF format to the email address above

No.	Item Number / Description	Qty	UoM	Unit Price	Net Amount	Delivery Date
001	Sample Item# 1 25MM White [Supplier Part#: 0123456]	20	EA	11.00	220.00	20 Nov 2019
002	Sample Item# 2 25MM Black (10 ea/pack) [Supplier Part#: 0123455]	2	PACK	55.00	110.00	20 Nov 2019
003	Sample Item# 3 25MM Brown (12 ea/box) [Supplier Part#: 0123454]	1	BOX	10.00	10.00	10 Dec 2019
004						
005						
006						
007						
008						
009						
010						
<b>Total Amount (Add in currency)</b>					<b>340.00</b>	

**Terms & Conditions:** This purchasing document incorporates the terms and conditions at <http://www.EY.com/terms>. By accepting this purchasing document, you agree to those terms.

*For EY internal use only*

Reviewed & Approved by:	Date:	Cost Centre/ Engagement Code:
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