

KCSSA WEST AFRICA's TERMS AND CONDITIONS OF PURCHASE:

(For the supply of Goods and/or services)

These Terms and Conditions of Purchase shall regulate the supply to KCSSA West Africa Limited by the Vendor of goods and/or services ordered under a Purchase Order of KCSSA West Africa

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

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

- 1.1. words importing -
 - 1.1.1. any one gender include the other two genders;
 - 1.1.2. the singular include the plural and *vice versa*; and
 - 1.1.3. natural persons include created entities (incorporated or unincorporated) and the state and *vice versa*;
- 1.2. the following terms shall have the meanings assigned to them hereunder and cognate expressions shall have corresponding meanings, namely –
 - 1.2.1. “**Agreement**” means this service level agreement including any annexures, schedules and appendices to it, including the Commercial Conditions to Kimberly-Clark of South Africa Terms and Conditions of Purchase;
 - 1.2.2. “**Business Day**” means a day other than a Saturday, Sunday or official Nigerian public holiday;
 - 1.2.3. “**Commencement Day**” means the date stipulated in clause 4, being the date on which this Agreement becomes of full force and effect;
 - 1.2.4. “**Goods**” means the goods to be supplied by the Vendor to KCSSA West Africa in terms of this Agreement, the details, Specifications and prices of which goods are set out in the PO or Schedule 1 to this Agreement;
 - 1.2.5. “**KCSSA West Africa**” means KCSSA West Africa Limited, a company duly incorporated in accordance with the laws of Nigeria with registration number: RC: 1004920 , with business address at Etiebets Place, 4th Floor, 21, Mobolaji Bank Anthony Way, Ikeja, Lagos, Nigeria;
 - 1.2.6. “**KCSSA West Africa's Rules and Regulations**” means the internal rules, regulations and policies of KCSSA West Africa, as amended from time to time;
 - 1.2.7. “**KC Supervising Officer**” means KCSSA West Africa trained and appointed officer tasked with managing the job or task activities of the Vendor whilst the Vendor is on the premises o KCSSA West Africa;
 - 1.2.8. “**Key Personnel**” means the Vendor's key personnel who will be involved in supervising or rendering the Services, as set out in Schedule 2 or in the PO;
 - 1.2.9. “**Parties**” means the parties to this Agreement, namely KCSSA West Africa and the Vendor, and the “**Party**” shall mean a reference to any of them as the context may require;
 - 1.2.10. “**Purchase Order (PO)**” means the purchase order to be issued by KCSSA West Africa for placing an order with the Vendor for specific Goods and/ Services and which may contain details on pricing, specifications of Goods and/or Services and other information determined by KCSSA West Africa at its sole discretion for purposes of this Agreement;
 - 1.2.11. “**RFI**” means the relevant request for information together with any supporting documents as despatched by KCSSA West Africa to the Vendor prior to the conclusion of this Agreement;
 - 1.2.12. “**RFQ**” means the relevant request for quote together with any supporting documents as despatched by KCSSA West Africa to the Vendor prior to the conclusion of this Agreement;
 - 1.2.13. “**Services**” means the Services to be provided by the Vendor to KCSSA West Africa in terms of this Agreement, the details, specifications and prices of which are set out in the PO or Schedule 1 to this Agreement;
 - 1.2.14. “**Signature Date**” means the date of signature of this Agreement by the Party signing last;
 - 1.2.15. “**Specifications**” means the information regarding the Goods or the Services, which fully describes certain minimum standards and requirements regarding the Goods or the Services;
 - 1.2.16. “**Vendor**” means the other party from whom KCSSA West Africa procures goods or services in terms of this agreement.
- 1.3. any reference to an enactment is to that enactment as at the Signature Date and as amended or re-enacted from time to time;
- 1.4. if any provision in this definition clause is a substantive provision conferring rights or imposing obligations on any Party, notwithstanding that it is only in the definition clause, effect shall be given to it as if it were a substantive provision in the body of the Agreement;

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

2. RECORDAL

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

3. DURATION

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

4. SUPPLY OF GOODS

- 4.1. The Vendor shall sell and supply to KCSSA West Africa, and KCSSA West Africa shall purchase from the Vendor, such Goods as KCSSA West Africa orders [by way of Purchase Order] from time to time from the Vendor at the applicable prices as set out in the PO or Schedule 1 and upon the terms and conditions set out in this Agreement.
- 4.2. In the event that KCSSA West Africa submits to the Vendor any estimates of KCSSA West Africa's projected requirements of the Goods for the (the "**Projection**"). Such estimates are given for Vendor's planning purposes only and do not constitute any obligation on KCSSA West Africa to order or purchase any of the Goods as set out in the Projection.
- 4.3. The Vendor shall ensure that it has enough Goods for sale and delivery to KCSSA West Africa as stipulated in the Projection.
- 4.4. Nothing contained in this Agreement will constitute an obligation on the part of KCSSA West Africa to order or purchase any minimum quantity of the Goods other than the agreed minimum (if any) as set out in the PO or Schedule 1.
- 4.5. If KCSSA West Africa wishes to purchase the Goods, it shall provide the Vendor with a PO for Goods concerned. On the Vendor's receipt of the PO, an agreement of Sale of Goods concerned by the Vendor to KCSSA West Africa shall automatically have come about on the terms and conditions of this Agreement as read with that PO.



KCSSA West Africa Limited

- 4.6. The Vendor shall be obliged to confirm in writing within 48 (forty eight) hours of its receipt of the PO each and every PO so received by it from KCSSA West Africa and such confirmation shall include:
- 4.6.1. the applicable PO Price;
 - 4.6.2. the applicable quantity and details of the Goods ordered;
 - 4.6.3. Confirmation that the delivery of the Goods will be made in accordance with clause 5 (*Delivery of Goods*).

5. DELIVERY OF GOODS

- 5.1. The Vendor shall deliver the Goods on a date as may be stipulated by KCSSA West Africa in the PO or such later date as otherwise agreed in writing between the parties.
- 5.2. The Goods shall be delivered by the Vendor to KCSSA West Africa at St.Nicholas House (10th Floor), Catholic Mission Street, Lagos, Nigeria, at such address included in the Purchase Order or as otherwise agreed in writing between the Parties.
- 5.3. The quantities of the Goods which the Vendor must so deliver to KCSSA West Africa must be as is set out in the PO. KCSSA West Africa will accept a maximum of 5% (five percent) deviation from the quantities stipulated in the PO.
- 5.4. Notwithstanding the time lines set out in this clause 5, KCSSA West Africa may reasonably request from time to time, and the Vendor shall use its best endeavours to comply with any such request, to have the Goods manufactured, packaged and shipped on an expedited basis.

6. OWNERSHIP AND RISK

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

7. QUALITY OF GOODS

- 7.1. The Vendor shall implement all necessary quality controls to ensure that the Goods meet the agreed Specifications.
- 7.2. Each item of the Goods shall bear appropriate trademarks and shall be in appropriate packaging, which shall meet the Specifications.
 - 7.2.1 All goods packaged shall comply with all laws and regulatory requirements, shall be securely packaged, carried and shall be delivered free of defects.
 - 7.2.2 Certificates of conformance in relation to the packaging of the goods may be required from time to time and shall be submitted by the Vendor to KCSSA West Africa at the request of KCSSA West Africa before delivery of the goods will be accepted by KCSSA West Africa.
- 7.3. KCSSA West Africa shall be entitled from time to time to amend the Specifications by mutual agreement in writing with the Vendor.
- 7.4. All Goods must be manufactured and packaged under appropriate sanitary conditions (the "**Conditions**"), and shall comply in all respects with the Specifications and with the quality standards of KCSSA West Africa, medical clearances, raw material standards (the "**Standards**") and packaging standards applicable to the Goods.
- 7.5. KCSSA West Africa or its designee shall have the right upon reasonable notice at any reasonable time or times to inspect those portions of the facilities and equipment used by the Vendor in the converting, packaging and/or processing otherwise (including, without limitation, the manufacturing and storing) of the Goods to ensure compliance with Conditions, Standards and Specifications. Any such inspection of the Goods and review of the Vendor's quality assurance program will not constitute acceptance of any Goods and shall not be construed as relieving the Vendor from any of its obligations under this clause 7 (Quality of Goods).
- 7.6. KCSSA West Africa is entitled not to accept (and/or to refuse delivery of) any Goods which do not conform to any of the Conditions, Standards and/or Specifications and any other standards set out in the PO or Schedule 1 or in KCSSA West Africa's Rules and Regulations or any previously approved samples.
- 7.7. The Vendor shall ensure that the Goods, (including, without limitation, its packages, labels, direction sheets, cartons and containers used in connection with the Goods) conform to any previously approved samples, and the Vendor shall not make (nor allow anyone else to make) any change to any of them or to any Goods without the prior written consent of KCSSA West Africa.
- 7.8. Payment for the Goods shall not constitute acceptance by KCSSA West Africa of the Goods.
- 7.9. As soon as practicably possible KCSSA West Africa shall notify the Vendor of any defective or non-conforming Goods and shall give the Vendor a reasonable opportunity to inspect same. Subject to KCSSA West Africa's availability, the Vendor shall inspect the Goods concerned and shall within 7 (seven) days afterwards either repair or replace all non-conforming or defective Goods with conforming Goods at no additional charge to KCSSA West Africa.
- 7.10. Any defective Goods delivered to KCSSA West Africa by the Vendor and not accepted by KCSSA West Africa shall, if KCSSA West Africa so requests the Vendor be properly disposed of by the Vendor. KCSSA West Africa may request certificate of safe disposal, which the Vendor shall provide at the request of KCSSA West Africa. The Vendor may not use any of those defective Goods or resell any defective Goods to anyone else without KCSSA West Africa's prior written consent. Any such defective Goods may be disposed of by KCSSA West Africa at the written request of the Vendor. All costs relating to such disposal shall be borne by the Vendor, which cost shall be payable upon demand.. If KCSSA West Africa chooses not to dispose of defective

Goods itself, it will be entitled to demand that the Vendor removes the defective Goods from KCSSA West Africa's premises within 7 (seven) days of the inspection contemplated in clause 7.9 and disposes of the defective Goods in accordance with this clause 7.10.

7.11. The Vendor shall notify KCSSA West Africa immediately in writing once it becomes aware of or has a reason to believe that any Goods delivered to KCSSA West Africa are defective or do not conform with the applicable Conditions, Standards and/or Specifications in any manner whatsoever. The Vendor will cooperate with KCSSA West Africa to determine whether the Goods are so defective or non-conforming. In addition, if a defect or non-conformity is or may be present, the Vendor shall cooperate with KCSSA West Africa in good faith (i) to correct the cause of the defect or non-conformity, and (ii), if requested by KCSSA West Africa, to provide KCSSA West Africa with all and any information about the Goods to assist KCSSA West Africa to identify and recover any such defective or non-conforming Goods that may have been distributed or made available by KCSSA West Africa to any third parties and comply with KCSSA West Africa's Non-Conformance Procedure, set out in Schedule 3 of this Agreement.

7.12. Complaint Handling

7.12.1. Each Party shall provide the other with an opportunity to review and inspect any records that are maintained by that Party regarding complaints received by that Party regarding the Goods.

7.12.2. The Vendor shall promptly notify KCSSA West Africa upon the receipt by the Vendor of any consumer complaint regarding any of the Goods supplied by the Vendor to KCSSA West Africa.

8. DELIVERY DOCUMENTS

8.1. Only the Goods set out in the applicable Purchase Order will be accepted by KCSSA West Africa, unless any change to that Purchase Order was consented to in writing by KCSSA West Africa prior to the delivery of the Goods concerned in which case the Goods must be as is set out in that amended Purchase Order.

8.2. Every delivery of the Goods to KCSSA West Africa shall be accompanied by at least the following documents, to be furnished to the specific facility of KCSSA West Africa to which the goods are delivered, as per the delivery address on the PO :

8.2.1. delivery document or a goods received note

8.2.2. a valid tax invoice for the supply of the Goods, which must reflect at least:

8.2.2.1. the applicable KCSSA West Africa Purchase Order number;

8.2.2.2. line item number;

8.2.2.3. the Vendor's delivery note number;

8.2.2.4. the delivery date;

8.2.2.5. the description of the Goods;

8.2.2.6. the applicable price/s for the Goods;

8.2.2.7. any other information as prescribed by applicable legislation or reasonably requested by KCSSA West Africa;

together with an acceptance document signed on behalf of KCSSA West Africa by a person duly authorised by KCSSA West Africa to accept such delivery on behalf of KCSSA West Africa being "**Delivery Documents**".

8.3. It will be the responsibility of the Vendor to ensure the correctness of the Delivery Documents. Any inaccuracies in the Delivery Documents may delay receipt of the Goods and possible return of the Goods as well as non-payment.

9. PROVISION OF SERVICES

The Vendor must –

9.1. render the Services agreed upon to KCSSA West Africa in accordance with at least the practices and the highest professional standards in well managed entities providing similar services to these Services herein agreed;

9.2. at all times exercise all reasonable skill, care and diligence in rendering the Services and in the performance of all its obligations in terms of this Agreement;

9.3. observe and comply with all reasonable directives from time to time issued by KCSSA West Africa in relation to the Services;

9.4. as soon as possible, but in any event, by not later than the Commencement Date have and maintain sufficient professional indemnity insurance for the duration of this Agreement, against any of its potential liabilities that may arise as a result of the provision of the Services and provide KCSSA West Africa with proof of such insurance cover in the form of a certificate issued by the Vendor's insurer;

9.5. refrain from engaging in any activity that may prejudice or the business of KCSSA West Africa or place it in risk;

10. VARIATION OF THE SCOPE OF SERVICES

10.1. KCSSA West Africa may in writing inform the Vendor that the performance of a particular Service is no longer required, in which case that particular Service will cease to be part of the Services from the date that the Vendor is so informed in writing to that effect.

10.2. KCSSA West Africa may in writing request the Vendor that:

10.2.1. the performance of an additional service should become part of the Services;

10.2.2. a variation be made to a particular element of the Services or the performance of the Services; and/or

10.2.3. a change be made to the date for commencement of the Services or any part of the Services,

in which case the Parties shall use their respective reasonable endeavours to consent to the variations, which consent shall not be unreasonably withheld upon the treatment of that request and to amend this Agreement, accordingly, together with the PO or

Schedule 1. In the event of either party's refusal to consent to a contract variation request, the other party may refer the matter for dispute resolution, set out in terms of this Agreement

11. **KEY PERSONNEL**

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

12. **INTELLECTUAL PROPERTY**

The Parties acknowledge and agree to the following –

- 12.1. save for information which is proprietary to the Vendor at the Commencement Date, the rendering of the Services may include the reviewing, amending, development, drafting, creation and design, for or under instruction of KCSSA West Africa, of documents, diagrams and other written works in which KCSSA West Africa is interested ("**Intellectual Property**");
- 12.2. all such Intellectual Property which the Vendor develops, and all rights, including intellectual property rights in and to such Intellectual Property, will vest in KCSSA West Africa absolutely and as sole beneficial owner thereof;
- 12.3. the Vendor shall not own any rights in or to the Intellectual Property;
- 12.4. the Vendor shall, if and when so required by KCSSA West Africa, and at the expense of KCSSA West Africa, apply or join in applying for the registration of appropriate protection in respect of the Intellectual Property on behalf of KCSSA West Africa and will, at the expense of KCSSA West Africa, execute all documents and do all things necessary for vesting the protection and all right, title and interest in respect of the Intellectual Property in KCSSA West Africa or in any person which KCSSA West Africa may specify;
- 12.5. the rights in or to the Intellectual Property, as well as all the rights to any Intellectual Property in all works created during the course of the Vendor's appointment in terms of this Agreement will vest in KCSSA West Africa;
- 12.6. the Vendor shall not divulge, nor authorise or allow anyone else to divulge, either during its appointment or afterwards, any knowledge of the subject matter of the Intellectual Property. Without limiting the generality of the foregoing, the provisions of clause 31 (*Confidentiality*) shall apply to the Vendor in this regard;
- 12.7. in the event that, and as soon as, any Intellectual Property rights, particularly, but without limitation, copyright, come into existence in respect of documents on which the Vendor works, this clause serves as an automatic assignment of all rights to any Intellectual Property in all works created during the course of the Vendor's appointment in terms of this Agreement to KCSSA West Africa; and
- 12.8. the above assignment shall be of all Intellectual Property rights, including, but without limitation, copyright, which came into existence along with all accrued rights therein, including the right to sue for infringement, which may have taken place prior to the date of recording any such assignments.

13. **PRICES**

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

14. **PAYMENT FOR GOODS AND SERVICES**

- 14.1. No payment to the Vendor in respect of Goods and/or Services in terms of this Agreement will be made unless KCSSA West Africa has received the Delivery Documents as set out in clause 8.2.
- 14.2. The Vendor shall invoice KCSSA West Africa for the Goods and/or Services monthly in arrears or as otherwise agreed in writing between the parties. The invoice rendered shall comply with clause 8.2.2.
- 14.3. The Delivery Documents specified in clause 8.2 and the invoice in respect of the Goods and/or Services are contemplated in clause 14.2 must be submitted by the Vendor to KCSSA West Africa on or before the date of delivery.
- 14.4. The Delivery Documents must be submitted to KCSSA West Africa at the following address: *St. Nicholas House (10th Floor), Catholic Mission Street, Lagos, Nigeria*
- 14.5. Payments of invoices shall be made strictly 60 (sixty) days from date of invoice
- 14.6. KCSSA West Africa shall make payment to the Vendor of the whole undisputed amount against the Vendor's invoices, in accordance with payment terms agreed to herein or as otherwise agreed between the parties. Any disputed amount will be referred for resolution in accordance with clause 32 **Error! Reference source not found.** (*Dispute resolution*).
- 14.7. The Vendor acknowledges that KCSSA West Africa shall not be under any obligation to pay based on the Delivery Documents or invoices which are provided to KCSSA West Africa after 3 (three) calendar months after the month within which the delivery of the relevant Goods or the provision of the relevant Services took place except if, as an outcome of dispute declared and determined in terms of this Agreement, the Vendor is entitled to payment of any amount that it had previously not invoiced KCSSA West Africa for, in which case then the Vendor shall be entitled to provide KCSSA West Africa with the invoice in respect of any such amount within 3 (three) months of the outcome of that dispute being declared or determined.
- 14.8. The onus resides on the Vendor to verify any change of banking details, consequently KCSSA West Africa shall not be responsible for fraudulent changes to bank details that have not been verified and KCSSA West Africa is hereby indemnified against any resultant losses or damages

15. **PAYMENTS BY ELECTRONIC FUNDS TRANSFER ("EFT")**

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

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

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

17. **VERIFICATION OF VENDOR INFORMATION**

The Vendor hereby consents and grants authority to KCSSA West Africa for KCSSA West Africa to verify Vendor information through *inter alia* credit checks, searches and verifications in respect of the Vendor, its shareholders, directors, members, partners and any other related parties, with any credit bureau or similar verification agency or other third parties related to the Vendor through business conducted, which KCSSA East Africa may at its sole discretion consider expedient or necessary.

18. **SUBCONTRACTORS**

- 18.1. Unless KCSSA West Africa provides express prior written consent, the Vendor may not;
 - 18.1.1 sub-contract all or any of its obligations under this Agreement; nor
 - 18.1.2 cede, delegate, assign or encumber all or any of its rights and/or obligations under this Agreement.
- 18.2. Notwithstanding such consent granted under clause 18.1, the Vendor shall remain responsible for the actions of the sub-contractor, as if it was the Vendor itself that performed the service or delivered the goods agreed to. All subcontractors shall be subject to KCSSA West Africa's policies and procedures, similarly to the Vendor herein and shall ensure compliance with KCSSA West Africa's occupational health and safety requirements as set out in clause 24 hereof.

19. **VENDOR WARRANTIES AND INDEMNITIES**

- 19.1. The Vendor represents and warrants to KCSSA West Africa that:
 - 19.1.1. the Vendor and the signatory to this Agreement on behalf of the Vendor have the necessary power and authority to sign this Agreement and to accept its terms and conditions on behalf of the Vendor;



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- 19.1.2. the Vendor has the necessary skill and knowledge to perform the Services and supply the Goods in accordance with this Agreement;
 - 19.1.3. the Goods and the Services conform to the required Specifications, Conditions and Standards and that the Goods comply with, and are fit for, the purpose for which they are intended;
 - 19.1.4. it is fully experienced in the rendering of the Services and other obligations substantially similar to rendering the Services and its employees possess and will apply the highest level of skill and expertise in the rendering of the Services and the performance of the Vendor's obligations in terms of this Agreement;
 - 19.1.5. all the necessary actions to authorise the Vendor's entering into of this Agreement and the performance of its obligations under this Agreement have been taken;
 - 19.1.6. the rendering of the Services and the supply of the Goods by the Vendor will not contravene –
 - 19.1.7. any provision of the Vendor's constitutional documents;
 - 19.1.8. any order or decree of any court or arbitration award which is binding on the Vendor; nor
 - 19.1.9. any documentation or legal obligation which is binding upon the Vendor;
 - 19.1.10. the Vendor is not subject to and will not subject itself to any obligation, compliance with which has, or is likely to have, a material adverse effect on the ability of the Vendor to perform its obligations under this Agreement, nor is it aware, having made due and careful enquiry, of any reason why it would be subject to any such obligation; and
 - 19.1.11. no proceedings or other steps have been taken and not discharged for its winding-up or dissolution, or for it to be placed in business rescue or for the appointment of a business rescue practitioner, receiver, administrator, liquidator, trustee or similar office in relation to any of its assets or revenue.
- 19.2. The Vendor represents and warrants to KCSSA West Africa in respect of the Goods delivered to KCSSA West Africa that:
- 19.2.1. they do not constitute unsafe goods;
 - 19.2.2. there is no product failure, defect or hazard in any of those Goods; and
 - 19.2.3. there is not any need to display instructions or warnings to consumers in respect of any hazard from or associated with the use of those Goods.
- 19.3. The Vendor indemnifies and holds harmless KCSSA West Africa against any and all loss, damages, liability, cost and or expense incurred or suffered by KCSSA West Africa as a result of:
- 19.3.1. any Goods constituting unsafe goods; or
 - 19.3.2. a product failure, defect or hazard in any of the Goods; or
 - 19.3.3. any need to display instructions or warnings to consumers in respect of any hazard from or associated with the use of the Goods, including, without limitation, as a result of any third party;
 - 19.3.4. anyone suffering death, injury or illness as a result of; or
 - 19.3.5. anyone suffering any loss of, or physical damage to, any property as a result of the Goods, regardless of whether or not the property concerned is movable or immovable; or
 - 19.3.6. any environmental impairment, fines or penalties; or
 - 19.3.7. anyone suffering any economic loss as a result of any harm contemplated in clauses 19.3.4 or 19.3.5.
- 19.4. If, notwithstanding clause 19.1, any such unsafe product characteristic, failure, defect, hazard or need to display (collectively "Defect") is found to exist in or in respect of any of the Goods:
- 19.4.1. that Defect is, as between the Parties, *prima facie* but rebuttably presumed to have existed in or in respect of the Goods prior to its delivery to KCSSA West Africa in terms of this Agreement; or
 - 19.4.2. to the extent that the rebuttable presumption in clause 19.4.1 is rebutted, that Defect is, as between the Parties, *prima facie* but rebuttably presumed to be wholly attributable to compliance by KCSSA West Africa with instructions provided to KCSSA West Africa by the Vendor.
- 19.5. In addition to the provisions of clause 19.3 and any other indemnities under in this Agreement, the Vendor hereby indemnifies and holds KCSSA West Africa harmless against any and all damages, losses, liabilities, claims, demands, actions and causes of action for loss or damage arising from any act or omission of Vendor, its directors, officers, agents or employees or anyone else for which it is vicariously liable in connection with the supply, processing, treatment, manufacture, packaging, shipment and/or delivery of the Goods under this Agreement for any reasons other than those contemplated in clause 19.3.

20. LIMITATION OF LIABILITY

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

21. **INSURANCE**

- 21.1 The Vendor shall acquire adequate insurance cover, in an amount acceptable to KCSSA West Africa in respect of:
- 21.1.1 The goods, prior to delivery thereof to the Vendor or the services, prior to acceptance and satisfactory completion thereof at the discretion of KCSSA West Africa until the expiration of any warranty periods that are applicable to the goods or services or in accordance with a specific written agreement between the parties.
- 21.1.2 The Vendor's public liability and all other legal liabilities hereunder and in respect of its employees, workmen, agents and third parties.
- 21.2 The insurance policies listed in clause 21.1 shall cover all legal liabilities of the Vendor in terms of this Agreement.
- 21.3 The Policies shall contain an endorsement that the Vendor's policies shall be primary in all instances regardless of the policies claimed by KCSSA West Africa.
- 21.4 At the request of KCSSA West Africa the Vendor shall provide certificates of insurance in respect of the goods or services to the value as directed and determined by KCSSA West Africa, in its sole discretion.

22. **USE OF KCSSA WEST AFRICA NAME**

- 22.1. The Vendor shall not without the express prior written consent of KCSSA West Africa represent, advertise or publish in any manner whatsoever, the fact that the Vendor is contractually associated with KCSSA West Africa or supplies Goods and/or Services to KCSSA West Africa.
- 22.2. The Vendor shall not without the express prior written consent of KCSSA West Africa use KCSSA West Africa's name or logo.

23. **COMPLIANCE WITH LAWS, RULES AND REGULATIONS**

- 23.1. The Vendor shall, in performing this Agreement, comply with all and any applicable laws governing this Agreement and all and any applicable Rules and Regulations of KCSSA West Africa.
- 23.2. The applicable KCSSA West Africa Rules and Regulations are available on request. It is the responsibility of the Vendor to request the copy of and acquaint itself with the content of all applicable KCSSA West Africa's Rules and Regulations.
- 23.3. KCSSA West Africa reserves the right to amend its Rules and Regulations from time to time without the Vendor's consent. Any such amendment shall be binding on the Vendor once KCSSA West Africa notifies the Vendor of such amendment in writing.
- 23.4. The Vendor must obtain and maintain all permits and/or similar permissions required for the purposes of providing the Goods and/or Services under this Agreement. The Vendor indemnifies and holds KCSSA West Africa harmless against and from all the consequences of any failure to do so.
- 23.5. The Vendor shall give all and any notices, pay all taxes, duties and fees, and obtain and maintain all permits, licenses and approvals required by all applicable laws in relation to the supply, rendering and provision of the Goods and Services and the remedying of any defects. The Vendor indemnifies and holds KCSSA West Africa harmless against and from all consequences of any failure to do so.

24. **OCCUPATIONAL HEALTH AND SAFETY**

- 24.1. The Vendor shall:
- 24.1.1. ensure that all employees, workmen and sub-contractors of the Vendor are inducted in their area of work,
- 24.1.2. ensure that all Occupational Health and Safety legal requirements under the applicable laws of Nigeria are complied with,
- 24.1.3. ensure that KCSSA West Africa's Critical Safety rules are complied with by the employees, workmen or sub-contractors of the Vendor ('workers of the Vendor),
- 24.1.4. prior to commencement of the contract, provide KCSSA West Africa with a certificate of fitness for every safety critical worker to the satisfaction of KCSSA West Africa before such workers of the Vendor commence with safety critical work at the premises of KCSSA West Africa..
- 24.2. The Vendor shall ensure that the workers of the Vendor that occupy safety critical positions and that will be on the premises of KCSSA West Africa, for a period in excess of one week undergo regular fitness evaluations to determine their fitness for the performance of their jobs.
- 24.3. The KC Supervising Officer shall determine on the basis of the specific safety critical jobs undertaken by the workers of the Vendor, how often the workers of the Vendor are required to undergo the fitness evaluations.
- 24.4. The Vendor shall provide KCSSA West Africa with copies of the certificates of fitness.
- 24.5. For purposes of this clause 24 'Safety file' shall include all relevant information that are significant to health and safety risks that KCSSA West Africa must be made aware of and consequently consider to address at its discretion prior to conclusion or during execution of this Agreement. The relevant documentation shall be completed and submitted to the Safety Officer of KCSSA West Africa before entry to site
- 24.6. The fitness evaluations shall be performed by Occupational Health Service Providers that are approved by KCSSA West Africa.
- 24.7. The costs for performing the medical and physical fitness evaluations shall be borne by the Vendor.

25. **ANTI-CORRUPTION COMPLIANCE**

- 25.1. The Parties acknowledge that KCSSA West Africa, being a member of the Kimberly-Clark Corporation (KCC), is subject to the provisions of the United States Foreign Corrupt Practices Act 1977 ("FCPA") and the United Kingdom's Bribery Act of 2010



KCSSA West Africa Limited

("Bribery Act"). Therefore, each of the Parties undertakes to adhere to the standards of conduct required under the FCPA and the Bribery Act.

- 25.2. The Vendor shall not offer or give, directly or indirectly, whether through any agent or intermediary or otherwise, anything of value to any person to encourage that person to perform his or her job duties or functions improperly or to reward that person for having done so in violation of any anti-corruption law applicable to KCC ("Improper Payment").
- 25.3. The Vendor shall conduct its business in compliance with the requirements of the FCPA and the Bribery Act (even if these laws are not otherwise applicable to the Vendor).
- 25.4. The Vendor shall maintain books and records that are accurate and complete. In the event that Vendor is found to have made any Improper Payment, then KCSSA West Africa shall have the right to terminate this Agreement and/or any Purchase Order for cause, and, in addition to any other right that KCSSA West Africa may have, to recover from the Vendor:
 - 25.4.1. the amount or value of the Improper Payment, and
 - 25.4.2. any fines or expenses incurred by KCSSA West Africa in connection with the Improper Payment.
- 25.5. The Vendor indemnifies and holds harmless KCSSA West Africa from all costs, fees, interest payments, fines and/or other liabilities incurred by KCSSA West Africa in connection with or arising from the investigation of or defence against any litigation or other judicial, administrative or other legal proceedings brought against KCSSA West Africa arising from any act or omission of the Vendor or any of its subcontractors, agents, workmen or any other person for when it is vicariously liable in violation of, or alleged to be in violation of, the anti-corruption law of any jurisdiction.

26. **BENEFITS**

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

27. **BREACH AND TERMINATION**

- 27.1. KCSSA West Africa may terminate this agreement for any reason whatsoever, without costs or liabilities by furnishing the Vendor with 30 (thirty) days' written notice of termination. All costs and liabilities due and payable before termination shall remain and payable under the provisions of this agreement.
- 27.2. Should any Party breach any provision of this Agreement and fail to remedy such breach within 14 (fourteen) days after receiving a written notice requiring such remedy from the other Party, then the Party giving such notice shall, by further written notice, be entitled to, without prejudice to any of its other rights in law including any right to claim damages, to cancel this Agreement or to claim immediate specific performance of all of the defaulting Party's obligations then due for performance.
- 27.3. KCSSA West Africa shall furthermore be entitled to cancel this Agreement with immediate effect, without prejudice to any of its other rights in law including any right to claim damages, if:
 - 27.3.1. the Vendor files a voluntary application for liquidation or judicial management or curatorship or for corporate reorganization under the insolvency laws of its jurisdiction;
 - 27.3.2. the Vendor becomes subject to the granting of any provisional liquidation or judicial management or curatorship order;
 - 27.3.3. the Vendor becomes subject to the granting of a final order of liquidation or judicial management or curatorship by a court of competent jurisdiction; or
 - 27.3.4. the Vendor attempts to compromise creditors generally; or is unable to meet its debts as they mature.
 - 27.3.5. the Vendor generally does or omits to do anything which may prejudice the rights of KCSSA West Africa in terms of this Agreement or causes KCSSA West Africa to suffer any loss or damage; or
 - 27.3.6. the Goods do not conform with the Specifications, Conditions or Standards and the Vendor has not remedied the defect or replaced the Goods in accordance with clause 7.9.

28. **DELAY PENALTIES**

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

29. **FORCE MAJEURE**

- 29.1. Neither Party shall be liable for a delay or failure to perform under this Agreement which results from any occurrence or event entirely outside of its control and which could not have been reasonably avoided including, but not limited to, accident, action of the elements, act of God, civil commotion, war (whether or not declared), enemy action, epidemic, explosion, fire, flood, insurrection, strike, lockout or other labour trouble or shortage, natural catastrophe, riot, unavailability or shortage of material, equipment or transportation, act, demand or requirement of law or of the Government of Nigeria or any other competent governmental authority ("Force Majeure"); provided however, that the Party in default or failure shall make all reasonable efforts to remove or overcome the effects of such occurrence or event and, in any event, shall promptly resume performance after cessation of such occurrence or event.
- 29.2. If a Party is or will be prevented from performing any of its obligations under this Agreement by Force Majeure, then it shall give written notice to the other Party of the event or circumstances constituting the Force Majeure and shall specify the obligations, the performance of which is or will be prevented. The notice shall be given within 7 (seven) days after the Party became aware, or should reasonably have become aware, of the relevant event or circumstance constituting Force Majeure.

- 29.3. The notifying Party shall, having given the written notice, be excused from performance of such directly affected obligations for so long as such Force Majeure strictly prevents it from performing them.
- 29.4. The notifying each Party shall at all times use all reasonable endeavours to minimise any delay in its performance of this Agreement as a result of Force Majeure.
- 29.5. A Party shall give written notice to the other Party when it ceases to be affected by Force Majeure.
- 29.6. Either Party may terminate this Agreement if Force Majeure continues for a period of 30(thirty) days or more.

30. **DOMICILIUM AND NOTICES**

- 30.1. The Parties choose *domicilium citandi et executandi* ("*domicilium*") for all purposes of the giving of any notice, the serving of any process and for any other purpose arising from this Agreement, as follows:
- 30.1.1. KCSSA West Africa: St.Nicholas House (10th Floor), Catholic Mission Street, Lagos, Nigeria.
- 30.1.2. The Vendor: on the address stipulated in the PO or as otherwise provided by the Vendor in writing
- 30.2. Each of the Parties shall be entitled from time to time, by written notice to the other of them, to vary its *domicilium* to any other physical address, provided that the change shall become effective on the 5th (fifth) Business Day from the receipt of the notice by the other Party.
- 30.3. Any notice given by either Party to the other shall be in writing and if delivered by hand during the normal business hours of the addressee at the addressee's *domicilium* for the time being shall be presumed to have been received by the addressee at the time of delivery.
- 30.4. Notwithstanding anything to the contrary contained in this clause 30, a written notice or other communication actually received by a Party shall be adequate written notice or communication to it notwithstanding that the notice was not sent or delivered to that Party's *domicilium*.

31. **CONFIDENTIALITY**

- 31.1. No Party will, without the prior written consent of the other Party (which consent shall not be unreasonably withheld or delayed), disclose to any person:
- 31.1.1. any details of this Agreement, any details of the negotiations leading to this Agreement (including the details contained in the RFI and the RFQ), any confidential information handed over to such Party during the course of those negotiations nor any confidential details of any transaction, agreement or matter contemplated by or set out in this Agreement; nor
- 31.1.2. any confidential information relating to the operations and affairs of another Party, (together the "**Confidential Information**").
- 31.2. The Parties shall keep all Confidential Information confidential and disclose it only to their directors, officers, employees, consultants and professional advisers who:
- 31.2.1. have a need to know (and then only to the extent that each such person has a strict need to know);
- 31.2.2. are aware that the Confidential Information must be kept confidential;
- 31.2.3. are aware of the disclosing Party's undertaking in relation to such information in terms of this Agreement; and
- 31.2.4. have been directed by the disclosing Party to keep the Confidential Information confidential and have undertaken to keep the Confidential Information confidential and not to directly or indirectly use it for its own or any third party's benefit.
- 31.3. The obligations of the Parties in relation to the maintenance and non-disclosure of Confidential Information in terms of this Agreement do not extend to information that:
- 31.3.1. is disclosed to the receiving Party in terms of this Agreement but at the time of such disclosure such information is known to be in the lawful possession or control of the receiving Party (other than the Confidential Information obtained from the other Party during the negotiations leading to the signature of this Agreement) and not subject to an obligation of confidentiality;
- 31.3.2. is developed independently by one of the Parties without knowledge and having access to the other Party's Confidential Information;
- 31.3.3. is or becomes public knowledge, otherwise than pursuant to a breach of this Agreement by the Party (or any of its directors, employees, representatives, officers, consultants, advisers, agents or representatives) who discloses such confidential information;
- 31.3.4. is required by law (including the provisions of any law, statute or regulation and including further disclosures required to be made by any director/s of any Party under his or her duty of skill, care and diligence or under his or her fiduciary duties or under his or her duties under any applicable law) or during or for any threatened, pending, anticipated or instituted legal or administrative proceedings, or by the rules or regulations of any recognised stock exchange of competent jurisdiction, to be disclosed and subject to the Party concerned having taken all reasonable steps to limit, as far as reasonably possible, the extent of such disclosure and to notify the other Party as soon as practicably possible of the necessity of having have to make such disclosure; or
- 31.3.5. is required to be disclosed for purposes of the implementation of this Agreement.
- 31.4. The provisions of this clause 31 shall survive the termination of this Agreement.



32. DISPUTE RESOLUTION

- 32.1. If any dispute arises between the Parties in connection with this Agreement or its subject matter and which cannot be resolved amicably by the Parties and/or their legal representatives, who will promptly meet to consider whether there is a possibility of resolution by mediation or conciliation.
- 32.2. In the event that Parties are unable to resolve the dispute by mediation or conciliation within 14 (fourteen) days of referral to mediation or conciliation, the parties will promptly consider whether to refer the dispute to Arbitration or Litigation.
- 32.3. In the event that the Parties cannot decide whether to refer the matter to Arbitration or Litigation, the Party instituting proceedings shall determine whether to proceed by way of Arbitration or Litigation.
- 32.4. If the Parties agree to refer the dispute to Arbitration, the Parties shall appoint one or more arbitrators under the Rules of Arbitration of the International Chamber of Commerce. The arbitration shall be conducted in Lagos, Nigeria, and the language used in arbitration shall be English.
- 32.5. The award of the arbitrator shall have the effect of an order of court and may be subject to appeal.
- 32.6. If the Parties decide to refer the matter to Litigation, then the Parties hereby consent and submit to the jurisdiction of the courts of Nigeria, having jurisdiction in respect of the proceedings in connection with the agreement.
- 32.7. Nothing in this clause shall prevent either Party from obtaining injunctive or interim relief in the courts pending the outcome of or pending the consideration of the alternative dispute resolution procedures contemplated in this clause.
- 32.8. The provisions of this clause are without prejudice to any other rights that the aggrieved Party may have in terms of this agreement or in law and these provisions will not prevent the aggrieved Party from instituting proceedings to recover any amount that may be due to it by the defaulting Party or to exercise any of its rights consequent upon breach by that defaulting Party.

33. INDEPENDENT CONTRACTOR RELATIONSHIP

- 33.1. The Vendor is acting under this Agreement as an independent contractor engaged in the supply of the Goods and/or the rendering of the Services and upon the order of KCSSA West Africa. Nothing contained herein shall constitute or be deemed to constitute the Vendor as the agent, employee, partner, representative or joint venture partner of KCSSA West Africa and KCSSA West Africa shall not be responsible for any violation by the Vendor of any applicable law or regulation.
- 33.2. The Parties specifically record that KCSSA West Africa is entitled under this Agreement to issue certain instructions and directions to the Vendor, to make certain requests to the Vendor, to provide the Vendor with certain matters, to inform the Vendor of certain matters, to approve certain matters in respect of the Vendor and otherwise to take certain actions in respect of the Vendor to ensure that the Services rendered and the Goods supplied are in accordance with the Specifications, Conditions, Standards and other requirements set out in this Agreement.

34. JURISDICTION

Save as otherwise provided herein, the Parties irrevocably agree that the courts of Nigeria shall have non-exclusive jurisdiction to settle any disputes or claim that arises out of or in connection with this agreement or its subject matter or formations (including non-contractual disputes or claims).

35. COUNTERPARTS

This Agreement –

- 35.1. may be executed in separate counterparts none of which need contain the signature of all the Parties, each of which shall be deemed to be an original and all of which, when taken together, shall constitute one agreement;
- 35.2. shall be valid and binding upon all the Parties hereto, notwithstanding that one or more of the Parties may have signed a facsimile copy thereof and whether or not such facsimile copy contain the signature of any other Party.

36. INDEPENDENT ADVICE AND FAIRNESS OF THE AGREEMENT

Each of the Parties hereby acknowledges and records that:

- 36.1. it has been free to secure independent legal and other professional advice (including financial and taxation advice) as to the nature and effect of all of the provisions of this Agreement and that it has either taken such independent advice or has dispensed with the necessity of doing so; and
- 36.2. all of the provisions of this Agreement and the restrictions herein contained are fair and reasonable in all the circumstances and are in accordance with the Party's intentions.

37. CESSION

The Vendor shall not be entitled to cede, assign or delegate, transfer or otherwise dispose of or encumber any of its rights, obligations, interest or benefits in terms of this Agreement without the prior express written consent of KCSSA West Africa.

38. SEVERABILITY

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

39. **GENERAL**

- 39.1. This Agreement as read with the relevant Purchase Orders constitutes the sole record of the agreement between the Parties in relation to the subject matter hereof.
- 39.2. No addition to, novation, variation, or agreed cancellation of this Agreement shall be of any force or effect unless in writing and signed by or on behalf of the Parties.
- 39.3. No indulgence which any Party may grant to the other shall constitute a waiver of or, whether by estoppel or otherwise, limit any of the existing or future rights of the grantor in terms hereof and the grantor shall not thereby be precluded from exercising any rights against the grantee which may have arisen in the past or which might arise in the future save in the event and to the extent that the grantor has signed a written document expressly waiving or limiting such right.
- 39.4. Without prejudice to any other provision of this Agreement, any successor in title, including any executor, heir, liquidator, judicial manager, curator or trustee, of any Party, shall be bound by this Agreement.

40. **COSTS**

Each of the Parties shall pay its own costs incurred by it in connection with the negotiation, drafting, preparation and execution of this Agreement.

SIGNED by the parties and witnessed on the following dates and at the following places respectively:

<u>DATE</u>	<u>PLACE</u>	<u>WITNESS</u>	<u>SIGNATURE</u>
_____	_____	1. _____	For: KCSSA WEST AFRICA LIMITED
_____	_____	2. _____	_____
<u>DATE</u>	<u>PLACE</u>	<u>WITNESS</u>	<u>SIGNATURE</u>
_____	_____	1. _____	For: VENDOR
_____	_____	2. _____	_____



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

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

SCHEDULE 2 – KEY PERSONNEL

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

SCHEDULE 3- NON-CONFORMANCE PROCEDUREVendor obligations

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