



Neotel (Pty) Ltd
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GENERAL TERMS AND CONDITIONS OF CONTRACT

NEOTEL (PTY) LTD

REGISTRATION NO. 2004/004619/07 (VAT REG NO. 4800224455)

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2052

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Supplier Acceptance:

I/we, the undersigned (Print name/s) _____;

Hereby agree to these General Terms and Conditions unless otherwise agreed with Neotel.

Signature/s

Date

Designation

(Please initial all other pages of this document)

Liquid Telecom Offices

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1 Definitions and Abbreviations

- 1.1 **"The Appointment"** means the terms used to describe the relationship between Neotel and the Supplier, and refers to the scope of work, period and all terms and conditions agreed between Neotel and the Supplier, documented in the original tender, any correspondence, contracts, SLA's and minuted meetings;
- 1.2 **"Appointment letter"** means a letter issued by Neotel to inform a bidder that he or she has been successful, and will represent the final elements of a contract in some instances, where no SLA or further contractual agreements are required;
- 1.3 **"Bench Mark Quote"** means a form of RFQ for services where the cost or expected cost is generally known, an appropriate supplier is selected from the supplier database;
- 1.4 **"Beneficial use"** means the use of a supply or service which has been delivered, partially or completely installed and commissioned and is available for use;
- 1.5 **"Bidder"** means any natural or legal person submitting a tender or a price quotation;
- 1.6 **"Breakout tenders"** means a procedure followed whereby a portion of a tender or an awarded contract is broken out specifically to improve the BEE participation and spend within a contract to achieve Neotel's empowerment objectives;
- 1.7 **"Closed tender"** means the procedure followed whereby the nature of the Goods or Services required is such that a public tender process is not feasible, due to limited number of suppliers being available or due to proprietary issues or determined as such at Neotel's sole discretion;
- 1.8 **"Closing time"** means the date and hour specified in the tender specifications for the receipt of tenders;
- 1.9 **"Contract or Contracted Work"** means the agreement which results from the acceptance of a tender, quote or proposal and includes Neotel's General Terms and Conditions entered into between Neotel and the Supplier including the Purchase Order, Notification of Award, Tender Documents, Conditions of Contract, Scope of Work and/or Technical Specifications, detailed material list for Goods and Services, and subsequent amendments mutually agreed in writing in accordance with the provisions specified herein;
- 1.10 **"Contractual breakout"** means a form of breakout tender whereby specific BEE participation objectives are included in the contract of the successful bidder;
- 1.11 **"Delivery"** means the handover of Goods, Services and/or sites recorded in writing and signed off by a duly authorised representative of Neotel and the Supplier, which will constitute the transfer of the risk and rewards of ownership;
- 1.12 **"Delivery ex-stock"** means immediate delivery directly from stock actually on hand;
- 1.13 **"Delivery into consignee's store or to his site"** means delivered and unloaded in the specified store or depot or on the specified site in compliance with the conditions of the Contract or Order, the Supplier bearing all risks and charges involved until the Goods are so delivered and a valid receipt is obtained;
- 1.14 **"ECA"** means the Electronic Communications Act 36 of 2005 as may be amended from time to time
- 1.15 **"Formal contract"** means a written contract, all the terms of which are embodied in a single or composite document signed by all the parties thereto and duly witnessed;

- 1.16 **“Goods”** means the Equipment and/or Software and/or products purchased by Neotel under a Contract and **“Services”** shall mean the installation, commissioning, testing and training provided by the Supplier to Neotel.
- 1.17 **“Imported content”** means that portion of the tender/quoted price represented by the costs of components, parts or materials which have been or are still to be imported (whether by the vendor or his sub-suppliers) and which costs are inclusive of the costs abroad, plus freight and other direct importation costs such as landing costs, dock dues, import duty, sales duty, or other similar tax or duty at the South African place of entry as well as transportation and handling charges to the factory in the Republic where the Goods which have been tendered for are manufactured;
- 1.18 **“Indices”** means indices published by the Central Statistical Services, SEIFSA and other bodies approved by Neotel reflecting price adjustments or changes in cost;
- 1.19 **“Invitation documents”** means any form of written formal invitation to provide a proposal or an RFI, RFP, RFB or RFQ.
- 1.20 **“Local content”** means that portion of the tender/quotation price which is not included in the imported content provided that local manufacture does take place;
- 1.21 **“Manufacture”** means the production of products in a factory using labour, materials, components and machinery and includes fabrication, assembly or processing;
- 1.22 **“Neotel”** means Neotel (Pty) Ltd a company registered under the laws of the Republic and having registration number 2004/004619/07; and situated at 44 Old Pretoria Main Road, Halfway House, Midrand; 1685
- 1.23 **“Non-firm prices”** means all prices other than “firm” prices;
- 1.24 **“Order”** means an official written order issued by Neotel for the supply of Goods or the rendering of a Service;
- 1.25 **“Offer”** means a response to an RFP, or RFB or RFQ, which response specifically indicates the price and that will be binding to the Supplier should it be accepted by Neotel.
- 1.26 **“Performance”** means performance of the Service and/or effecting delivery of the Goods by a Supplier to Neotel, as contemplated in the formal contract.
- 1.27 **“Period contract”** means a contract entered into for the supply of Goods, the rendering of Services or the disposal of Goods over a specified period of time;
- 1.28 **“Production”** means the production of Goods, whether in a factory or not, and includes manufacturing and other activities such as mining and agriculture;
- 1.29 **“Republic”** means the Republic of South Africa as constituted from time to time;
- 1.30 **“Request for bid” “(RFB)”** means the procedure followed where there is a detailed specification available, with commercial terms and conditions also fixed, and suppliers are invited to submit pricing proposals;
- 1.31 **“Regulator”** means the Independent Communications Authority of South Africa, an institution that is established in terms of the Independent Communications Authority Act 13 of 2000, as amended.
- 1.32 **“Request for information” “(RFI)”** means the procedure followed where there is no clear certainty with regard to the technology to be used, the basic need is specified and Suppliers are invited to submit proposals, with tentative pricing. Suppliers are normally not appointed through an RFI process. An RFI process may lead to an RFP, or an RFB or closed tender process;

- 1.33** “Request for proposal” “(RFP)” means the procedure followed whereby a detailed specification is available but no finality on the commercial terms and conditions has been agreed, and Suppliers are invited to submit proposals, with pricing. An appointment may be done from an RFP or it may lead to an RFB process;
- 1.34** “Request for quote” “(RFQ)” means the process normally followed when soliciting a quotation for a bench mark quote or multiple quotations for a 3 quote procedure;
- 1.35** “Respondent” means any person that responds on an invitation document or written correspondence on behalf of himself or herself or the legal entity that he or she represents;
- 1.36** “Set aside tender” means a principle of awarding tenders where it is possible to appoint multiple Suppliers from which to procure Goods and Services. The principle in this instance is to set aside a percentage of the tender/ contract for participation by BEE compliant suppliers, when awarding a contract;
- 1.37** “Service Level Agreement” “(SLA)” means a document that contractually determines all the terms and conditions of quality of Goods or Services, price variables, roles and responsibilities and any other legal clauses not captured in the invitation documents, appointment letters or General Terms and Conditions of Contract (this document);
- 1.38** “Scheduling Agreement” means a procurement procedure that is used specifically where the nature of supply is reoccurring (e.g. stationary, computers, media placements, etc), in which instance a Supplier is selected through a three quote procedure or tender procedure and all prices are fixed upfront for an agreed upon period. In this instance, the Order is issued against the Scheduling Agreement list price;
- 1.39** “Special conditions or procedures” means the conditions or procedures that are specified separately in an invitation documentation that is different from the general terms and conditions or not covered by the general terms and conditions;
- 1.40** “Sub-suppliers” or “sub-contractors” means the suppliers and service providers contracted by a contracted Supplier;
- 1.41** “Supplier”, “Service Provider” and “Vendor” means any natural or legal person who has been awarded a contract to supply Goods and/ or Services. These words can be used interchangeably;
- 1.42** “Tender” means a written offer on the official tender specifications forming part of an invitation to tender;
- 1.43** “Tender Contract” means a contract whereby the Supplier of a specific solution has been sourced via a tender procedure. In this instance orders are issued in terms of the contractually agreed milestones and deliverables;
- 1.44** “Tender specification” means the set of documents that details the terms and conditions of the tender, templates to be completed and all specifications relating to the required Goods or Services;
- 1.45** “The Works” means the services and material, as well as any element affected by the actual process or methodology used by the Supplier;
- 1.46** “Three Quote Procedure (Contractual)” means a form of RFQ for whereby the value (above R1 million) of the purchase or the nature of the purchase (capital expenditure) requires that written terms and conditions be agreed upon. In this instance, orders are issued in terms of the contractually agreed milestones and deliverables;

- 1.47 “Three Quote Procedure (Outright)”** means a form of RFQ for where three appropriate suppliers are selected from the database. Quotes are collected and an Order is issued to the Supplier who quotes the best price, considering BEE contribution level, quality and delivery time;
- 1.48 “Three way breakout”** means a form of breakout tender where the contract is awarded to a Primary - and Secondary Supplier, with the Primary Supplier being the equipment Supplier and project manager, while the Secondary Supplier represents the installation and maintenance Service Provider. A contract is agreed upon between Neotel, the Primary - and the Secondary Supplier. Neotel will pay the Secondary Supplier and the Primary Supplier directly. Neotel’s payment to the Secondary Supplier is subject to sign-off from the Primary Supplier;
- 1.49 “Written” or “in writing”** means handwritten in ink or any form of mechanical writing;

2 General

2.1 Conditions and procedures

- 2.1.1 The following general terms and conditions have been laid down for all Tenders, Contracts and Orders, unless otherwise directed by the Invitation Documents, Appointment Letters, Orders or SLA.
- 2.1.2 Where such special conditions or procedures are in conflict with these General Terms and Conditions and procedures, the said special conditions or procedures shall apply.
- 2.1.3 These General Terms and Conditions, may at Neotel’s sole discretion, be amended or supplemented.
- 2.1.4 Neotel’s receipt of, acceptance of receipt of, or any acknowledgment of receipt or such other similar document from Supplier or an agent of Supplier, does not in any form or fashion, constitute Neotel’s offer to engage with Supplier in terms of an RFB, RFI, RFP or RFQ, or any other similar document quote offer is without engagement.

2.2 Correspondence

All signed written correspondence, including faxes, and e-mail received from a Respondent will be regarded as binding to the party and company whom it represents, to the extent that it confirms, adds or removes terms and conditions of the Contract provided it is received and countersigned by Neotel.

3 Invitations to Respond

3.1 General

- 3.1.1 Unless otherwise indicated in the invitation documentation, Neotel shall not be liable for any expense incurred by bidders in the preparation and submission of a tender.
- 3.1.2 All invitations to respond will be done in terms of Neotel’s Supply Chain Management policy. Neotel does, however, reserve the right to restrict the invitation to limited Suppliers, and reserves the right to exclude specific Suppliers from an invitations procedure due to the nature of the Goods or Services required, the deemed capacity of a Supplier or any other reasonable consideration.

3.2 Cancellation of an Invitation

Neotel reserves the right to cancel any invitation without providing prior notice or reasons thereof.

3.3 Availability of reference documents

Where the invitation refers to any statute, regulation or specification published by another company or statutory authority, it is the bidder's responsibility to obtain these documents directly from the particular company or authority.

3.4 Closing of invitation

All invitations will specify a closing date for responses to be received. Neotel is under no obligation to consider responses received after the specified closing date and time. Neotel may, at its sole discretion, extend the Closing Time if circumstances justify this action.

4 Responses

4.1 Submission of Responses

Unless otherwise specified in writing, all responses must be submitted on or before the closing date of the invitation in the specified format as follows:

By Fax:

Attention: Head of Procurement

Facsimile: (+27) 11 585-0001

By E-mail:

Attention: General Manager: Strategic Sourcing and Procurement

E-mail address: Samir.Godambe@neotel.co.za

By Hand:

Attention: General Manager: Strategic Sourcing and Procurement

401 Old Pretoria Main Road

Halfway House

Midrand

1685

By Post:

Postnet Suite 612

Private Bag X29

Gallo Manor

2052

Sealing of Submissions: In all instances where a response is presented by mail or by post the response must be sealed with the tender number or requisition reference number indicated on the outside of the envelope.

Quantities

One of the following methods of indicating the quantity /scope required shall be adopted and specified in the response:

- A quantity /scope which may not be varied without mutual written consent;

- a quantity /scope subject to a percentage increase or decrease;
- a quantity /scope not specified; or
- a quantity /scope not guaranteed.

4.2 Validity Period of Offers

The period within which an offer is to remain valid and binding on the bidder shall be indicated in the tender specifications and is calculated from the closing time on the understanding that offers are to remain in force and binding until the close of business on the last day of the period calculated and if this day falls on a Saturday, Sunday or public holiday, the tender shall remain valid and binding until the close of business on the following Business Day.

5 Prices and delivery periods

5.1 Price validity period

Notwithstanding clause 5.3 and any other provision in these General Terms and Conditions, the price contained in the Offer shall be valid and binding on the bidder for a period of at least sixty (60) calendar days after the closing of the invitation.

5.2 Firm prices

5.2.1 "**Firm prices**" are deemed to be fixed and only subject to adjustments in accordance with the actual increase or decrease resulting from the change, imposition, or abolition of customs or excise duty and any other duty, levy, or tax which, in terms of a law or regulation is binding upon the Supplier and demonstrably has an influence on the prices of any Goods, or the rendering costs of any Services, for the execution of the Contract.

5.2.2 If the Contract is awarded on the basis of firm prices and during the contract period - a customs or excise duty or any other duty, levy or tax (excluding any anti-dumping and countervailing duties or similar duties), is introduced in terms of any Act or regulation, or any such duty, levy or tax is legally changed or abolished, the said prices shall be adjusted accordingly.

5.3 Exchange rate fluctuations

5.3.1 In terms of any contract or transaction done in a foreign currency Neotel will arrange the necessary forward cover as per its internal policies and procedures.

5.3.2 In terms of any contract or transaction done in South Africa Rands (ZAR) but the price is subject to rate of exchange adjustments, the following procedure will apply unless specifically otherwise agreed:

- Neotel will only agree to an ROE adjustment clause for transactions linked to the Euro (€) or United states Dollar (\$)
- Prices quotes at Euro (€) or United states Dollar (\$) for the portion of foreign content and in South Africa Rands (ZAR) for the local content, and shall indicate/substantiate the base rate of exchange (ROE) used to convert the foreign portion to South African currency. Any increase or reduction in the relevant amount as a result of any fluctuation in the rate of exchange or revaluation of currencies shall, irrespective of whether the price is firm or not, be subject to the following conditions:

- a. Fluctuations between contract bill of material rates and quotes: Will be fully exposed to ROE adjustments with the ROE determined at the average buy and sell rate on the quote date based on the FNB closing rates of the previous day (day before the quote date);
- b. Fluctuations between quote date and order date: The order amount in South African currency will be placed on the Supplier less, or plus, an amount reflecting any change in the exchange rate exceeding 2 % compared to the quoted rate, determined at the average buy and sell rate on order date based on the FNB closing rates of the previous day (day before the PO date);
- c. Fluctuations between order date and invoice settlement date: Any further fluctuation in the ROE, which may occur between the purchaser order and the date of the invoice settlement, shall be absorbed by the Supplier. Where it is required of the Supplier to remit part or the entire amount abroad before he can invoice Neotel and this is indicated in his tender and subsequently separately substantiated, the date of such remittance will be regarded as the date in respect of which the adjustments are to be made.

5.3.3 All quotes and invoices relating to rate of exchange claims shall be accompanied by the following documentary evidence (failure to comply with any condition may delay or invalidate claims):

- Printouts of the FNB closing rates from the FNB website (www.fnb.co.za).
- A detail calculation indicating the amount related to ROE adjustment and applying the applicable exchange rate to it. The rate may be rounded off to a maximum of four decimals below zero.

5.3.4 No adjustment shall be done in respect of any amount or percentage of a tender price which was remitted abroad and which exceeds the amount which is indicated in the tender for that purpose.

5.3.5 When the amount remitted abroad constitutes a larger or smaller amount or percentage of the tender price than that indicated for that purpose in the tender, and the Supplier, as a result thereof obtains a financial benefit, such benefit shall devolve upon Neotel and shall, where applicable, be brought into consideration in computing any claim for compensation.

5.4 Delivery periods

Expressions such as "soonest" or "earliest" or delivery periods which are unspecified are not acceptable and a failure by Supplier to effect delivery of the Goods or Services within the specified period shall constitute a breach of contract, which breach shall entitle Neotel to cancel the Contract and exercise any of its rights in terms of these General Terms and Conditions.

5.5 Samples

5.5.1 When samples are called for in the invitation or specifications, samples (marked with the Respondents' name and address) shall be dispatched to the addressee mentioned in the invitation documents. Samples shall be supplied by the Respondent at its own expense and risk. Neotel shall not be obliged to pay for such samples.

5.5.2 If samples are not submitted as requested, the submission of the respondent may be declared invalid.

5.5.3 Samples shall not be submitted in support of an invitation unless called for in the invitation documents.

- 5.5.4 Samples shall be supplied by a bidder at his own expense and risk. Neotel shall not be obliged to pay for such samples.
- 5.5.5 Unless otherwise specified in the tender specifications Neotel is not liable for the cost of samples supplied by a bidder and reserves the right not to return such samples and to dispose of them at its discretion.
- 5.5.6 Where a tender is accepted for the supply of Goods according to a sample submitted by the bidder, such sample becomes the contract sample and further samples as required for the purposes of the Contract shall be provided by the Supplier as requested by Neotel and at the Supplier's own expense and risk.
- 5.5.7 When samples have served their purpose and are to be returned to the bidders, the bidders shall be given written notice to remove the samples at their own expense and risk within a specified period, failing which the bidder concerned forfeits ownership and the samples shall forthwith be disposed of at the discretion of Neotel.

6 Administration of Contracts

6.1 Formal contracts

Formal contracts are concluded with Suppliers only where this requirement is stated in the tender specification

6.2 Orders

Goods shall be delivered and Services rendered only upon receipt of a written official Order from Neotel, and accounts shall be rendered as indicated on the official Order or in the Contract, as the case may be. Neotel retains the right to withhold payment on any transaction not initiated with an Order unless otherwise agreed between the Parties in writing.

6.3 Packaging and transport

The Supplier is responsible for ensuring that Goods to be transported are properly packed for transport. Any special packing requirements such as palletising, containerisation, etc. shall be provided by the Supplier, if necessary, or if so required, in the tender specifications.

6.4 Technical, Safety and Storage

- 6.4.1 The Supplier shall take all reasonable measures prescribed by law and/or any other reasonable measures necessary for the prevention of accidents in its performance at Neotel's premises or any other premises designated by Neotel.
- 6.4.2 The Supplier shall, where applicable, inform Neotel in writing of any valid safety precautions and shall ensure that personnel of the Supplier responsible for safety matters are present during the period of performance.
- 6.4.3 Neotel, in its sole discretion, may refuse or suspend performance if Neotel finds that safety is not sufficiently guaranteed.

6.5 Documentation

- 6.5.1 The Supplier warrants that all documentation and licenses required in connection with the export, import, installation and operation of the Goods shall be available at the time of delivery of the Goods.
- 6.5.2 Neotel shall keep any information received, if so required, confidential and shall use the information solely for the proper performance of the Contract.

6.6 Compliance with Laws

The Supplier hereby indemnifies and agrees to defend and hold Neotel harmless from any liability arising or alleged to arise out of any failure of the Goods and/or Services to conform to any laws, orders, regulations, requirements or standards. The Supplier shall bear any cost of inspection of the Goods and/or Services if so required by any law and/or regulation.

6.7 Terms for Performance

- 6.7.1 Place for Performance: The place of Performance shall be stated in the formal Contract. If the formal Contract does not specify a place of Performance, such place shall be determined by Neotel at its sole discretion.
- 6.7.2 Times of Performance:
- i. The time(s) or periods of Performance shall be stated in the formal Contract. Any time or period of Performance that differs from the formal Contract shall only be binding if they have been agreed upon by Neotel in writing.
 - ii. If the formal Contract does not specify the time of Performance, such time shall be determined by Neotel at its discretion after consulting the Supplier.
- 6.7.3 Transfer of Risk:
- i. The Supplier will be responsible for the physical security of all Goods up to the point where all conditions of delivery and/or installation has been met as per the conditions of Contract and/or Order.
 - ii. The risk of destruction or deterioration of the Goods as a whole or of self-contained parts shall be deemed to have been transferred to Neotel on signature by Neotel of the delivery notice in respect of the delivered Goods.
 - iii. The risk of destruction or deterioration in provision of the Services as a whole or of self-contained parts shall be deemed to have been transferred to Neotel at the moment Neotel notifies the Supplier of the completion of the provision of the Services. If a trial run is agreed upon, the transfer of risk shall take place upon completion of successful trial run.
 - iv. Should the provision of Services or the trial run be interrupted, stopped or delayed the risk of accidental destruction or deterioration of the Services provided shall deemed to have been transferred to the Supplier during the period of the interruption, stoppage or delay.

- v. In the instance where The Works under the control of the Supplier is lost or damaged and it is covered in terms of insurance as stipulated in paragraph 6.8 then the Supplier will remain fully liable should he fail to report and claim as stipulated by the relevant insurance company and policy.

6.8 Insurance and risk management

6.8.1 Insurance obligations of Supplier:

Unless otherwise agreed with Neotel, the Supplier will be responsible to comply with the following:

- i. The Supplier shall effect all insurances for which he is responsible with an insurer registered in the Republic and in terms approved by Neotel, which approval shall not be unreasonably withheld, and he shall provide evidence to Neotel prior to the commencement of work at the Site that the insurances required under the Contract have been effected and shall within 60 days of the commencement date, and thereafter within 30 days of each renewal date or when required by Neotel, provide to Neotel the insurance policies then in force together with receipt for payment of the premiums for the current period. When providing such evidence and such policies to Neotel. Such insurance policies shall be consistent with the terms agreed prior to the issue of the Letter of Acceptance.
- ii. If the Supplier or any Sub-contractor fails to effect and keep in force any of the insurances required to be effected by the Supplier under the Contract, or fails to provide the policies and receipts of premium payment to Neotel within the period or at the times required by Sub-Clause 68 hereof, then and in any such case Neotel may at its sole discretion effect and keep in force any such insurances and pay any premium as may be necessary for that purpose and from time to time deduct the amount so paid from any monies due or to become due to the Supplier, or recover the same as a debt due from the Supplier.
- iii. In the event of the Supplier or anyone with whom he contracts for the purposes of carrying out, completing and rectifying any defect in The Works failing to comply with the Conditions imposed on them by the policies of insurance effected pursuant to the Contract, the Supplier shall indemnify Neotel against all losses, costs (including but not limited to legal costs) and claims arising from such failure and Neotel shall so indemnify the Supplier against failure of Neotel to comply with any conditions imposed on Neotel by such conditions of insurance except where Neotel's failure to comply with the said conditions is attributable to the Supplier's failure to meet his obligations to Neotel under the Contract in which case the Supplier's indemnity to Neotel herein contained shall extend to his failure.
- iv. The Supplier shall ensure that all potential and appointed Sub-contractors have arranged insurances in a like for like manner.
- v. With a view to fulfilling, but not derogating from the Supplier's obligations under the contract, imposed by any insurance policies and legislation, the Supplier (and Sub-contractors) are required to keep incidents of loss or damage to the Works and any moveable or immovable property to a minimum. The Supplier (and Sub-contractors) are required to avoid injury (including death and disease) to any person in the course of performing the Contract. The Supplier shall perform in terms of the Contract as cost effective as possible. The Supplier shall make ensure that his Sub-contractors comply with the Policy Conditions, Memoranda, Warranties and Endorsements to ensure that the cost of risk and loss is reduced to a minimum and to further ensure the most cost effective insurance coverage.

6.8.2 Principal Controlled Insurance – Insurance of Works:

Notwithstanding anything elsewhere contained in this general terms and conditions and without limiting the obligations, liabilities and responsibilities of the Supplier and/or Sub-contractor in any way whatsoever (including but not limited to any requirements for the provision by the Contract for any other insurances), Neotel may effect and maintain as appropriate in the name of the Neotel, Supplier and where relevant Sub-contractors the following insurances which are subject to the terms limits exceptions and conditions of the Policy/s:

- i. The Works together with Plant and Materials for incorporation therein and all temporary works (as defined in the policy) including Contract Works SASRIA. The policy will provide cover against accidental physical loss or damage and will be subject to the normal terms, exceptions and conditions applicable to this type of insurance but will specifically exclude any loss or damage to any part of the property insured which is itself defective in workmanship, material, design, plan or specification and will also exclude Marine Import to site in respect of plant and materials for incorporation in the works. Cover will incept once delivered, unloaded and checked on site.
- ii. Contractors Public Liability providing cover against legal liability for accidental death of or injury to third party person and accidental loss of or damage to third party property arising out of or in connection with the Suppliers performance of the contract. Neotel may maintain this insurance to provide cover until the date of issue of the Performance Certificate, for loss or damage for which the Supplier and/or Sub-contractors are liable arising from a cause occurring prior to the issue of the Final Acceptance Certificate, and for loss or damage caused by the Supplier and/or Sub-contractors in the course of any other operations in terms of the appointment (including those under Clause 6.10 (Guarantee)).

6.8.3 PCI – Payment of Contract Works insurance, Contractors Public Liability:

Any amount which becomes payable to the Supplier as a result of a claim under the Contract Works Insurance shall be paid net of the Deductible to Neotel who shall pay the Supplier from the proceeds of such payment upon rectification, repair or reinstatement of the loss or damage, but this provision shall not in any way affect the Supplier's obligations, liabilities or responsibilities in terms of the this general terms and conditions. In respect of any amount which becomes payable to a Third Party as a result of a claim under the Contractors Public Liability the Supplier or any of his Sub-contractors shall be required to pay the amount of the appropriate deductible to the Insurer to facilitate the settlement of the Third Party claim.

6.8.4 PCI – Responsibility for Amounts not Recovered:

Any amounts not insured or not recovered from the insurers in respect of the Contract Works and Public Liability insurance shall subject as herein provided be borne by Neotel or the Supplier in accordance with the responsibilities under paragraph 6.7.3 (Transfer of Risk). The Supplier shall be responsible for the amount of the deductible in respect of any claim made by the Supplier or Sub-contractor under the insurance effected by Neotel.

6.8.5 PCI – Adequacy of Insurance:

Neotel and where relevant the Supplier shall notify Neotel's Insurance Broker of any change in the nature, extent or programme for execution of The Works to ensure that the insurance shall at all times be in accordance with the terms of the Contract. No variation shall be made to the insurances by either Neotel or the Supplier that would reduce the indemnity provided. The Supplier may effect at his own cost any additional insurance to that effected by Neotel, which he deems necessary to

his own interests. Neotel reserves the right to call for full information regarding insurance costs included by the Supplier.

6.8.6 PCI – Remedy on Employer’s Failure to Insure:

If an so far as Neotel fails to effect and keep in force any of the insurances referred to in paragraph 6.8.2 hereof, then the Supplier may effect and keep in force any such insurance and pay any premium as may be necessary for that purpose and add the amount so paid to any monies due or to become due to the Supplier, or recover the same as a debt due from Neotel.

6.8.7 PCI – Reporting of Insurance Claims:

The Supplier shall immediately, in accordance with the procedures to be agreed with the Insurers and the Employees Insurance Broker, in addition to any statutory requirements or other requirements contained in the insurance:

- i. Report all incidents which may give rise to claims in terms of the Contract Works and Public Liability insurance and report all loss or damage to The Works or any part thereof or to any Materials or Plant for incorporation therein to Neotel’s Insurance Broker.
- ii. Negotiate settlement of claims with the Insurers through Neotel’s Insurance Broker and shall when required to do so obtain Neotel’s approval of such settlement.
- iii. Be liable to Neotel for the price of any work done or of Materials and Plant to be incorporated into The Works paid to the Supplier by Neotel which would have been recoverable from the insurers under the policy of insurance had it not been for the failure of the Supplier to comply with the obligations herein contained.

Neotel, their Insurance Broker and Insurers shall have the right to make all and any enquiries on the Site of The Works or elsewhere as to the cause and result of any such occurrence and the Supplier and/or Sub-contractor shall co-operate in the carrying out of such enquiries.

6.8.8 PCI – Limitations and Exclusions:

Notwithstanding anything elsewhere contained in this general terms and conditions and without limiting the obligations, liabilities and responsibilities of the Supplier and / or Sub-contractor in any way whatsoever (including but not limited to any requirement for the provision by the Contract for any other insurances) the Supplier and / or Sub-contractor shall, for the duration of the Contract , effect and maintain as appropriate in the joint names of Neotel, the Supplier and where relevant Sub-contractor the following insurances:

- i. Insurance of Supplier’s Equipment and Temporary Works: The Supplier without limiting his obligations and responsibilities under Clause 6.10 shall insure the Supplier’s Equipment, Temporary Works and all other things (other than Materials and Plant for incorporation in the Works) brought onto the Site by the Supplier as well as existing and new chattels against all risks of loss or damage for a sum sufficient to provide for their replacement at Site. Such insurances shall be extended to include SASRIA (Riot) insurance.
- ii. Off site Insurance: Where the Contract involves manufacturing and / or fabrication of the Works or parts thereof at premises other than at the Site the Supplier shall satisfy Neotel that all Materials and Plant for incorporation in The Works are adequately insured during manufacture and / or fabrication and during Marine transit to the Site. In the case of shipment by sea the

Supplier shall ensure that the policy of marine insurance contains a Marine Contribution Clause as follows:-

CONTRIBUTION CLAUSE – MARINE AND ENGINEERING: It is noted that in the event of loss or damage to the property insured due to a peril insured against being discovered after cover under this policy has terminated and if after investigation it is not possible to ascertain whether the cause of such loss or damage happened prior to termination of the marine venture or subsequently it is understood and agreed that Insurers hereon shall make every effort to agree with the relevant Engineering Insurers that the Insurers hereon shall contribute 50 percent less 50 percent of the applicable Engineering deductible. Such contribution to be without prejudice and adjusted subsequently in accordance with final apportionment of the claims as may be agreed between the Insurers hereon and the Engineering Insurers, should agreement not be reached then neither the Insurers of this policy nor the Engineering Insurers will contribute to the loss. The Assured shall make reasonable effort to ensure that the property insured be visually examined as soon as reasonably possible after arrival at the contract site.

In the event of Neotel having an insurable interest in such Materials and Plant during manufacture of fabrication and shipment, then such interest shall be included in the relevant policies of insurance

- iii. Motor Vehicle Liability Insurance: The Supplier shall, in addition to any compulsory insurance required in terms of legislation and without limiting his obligations and responsibilities, insure against liabilities in respect of motor vehicles and items of mobile plant whilst not operating as a tool of trade and including Passenger Liability Indemnity with a limit of Indemnity of not less than R5,000,000.00 (Five million Rand) for any one occurrence.
- iv. Insurance Against Accidents to Workmen: The Supplier shall also insure against any liability under the Compensation for Occupational Injuries and Diseases Act of 1993 (COID) as may be amended and compliance with the provisions of the Occupational Health and Safety Act No 85 of 1993 as may be amended and shall further ensure that every Sub-contractor (whether nominated or otherwise) has insured their Workmen in terms of this legislation. The Supplier shall insure against such liability and shall continue such insurance during the whole of the time that any persons are employed by him on The Works. Provided that, in respect of any persons employed by any Sub-contractor, the Supplier's obligations to insure as aforesaid under this Sub-Clause shall be satisfied if the Sub-contractor shall have insured against the liability in respect of such persons in such manner that Neotel is indemnified under the policy, but the Supplier shall require such Sub-contractor to produce to Neotel, when required, evidence of compliance with the aforementioned Acts and the receipt for the payment of the current premium / levy.
- v. Employer's Liability Insurance: In addition to the insurance required in terms of Sub-Clause 6.8.8 iv the Supplier shall effect Employer's Liability insurance with a limit of Indemnity of not less than R5,000,000.00 (Five Million Rand) and shall include the name of Neotel as joint insured.
- vi. Unemployment Insurance Act of 1966 as amended: The Supplier shall provide insurance in terms of this legislation.

6.8.9 PCI – Sub-Contractors:

The Supplier shall; ensure that all potential and appointed Sub-Contractors are aware of the whole content of this general terms and conditions and enforce compliance by Sub-Contractors with these terms and conditions.

6.9 Quality

- 6.9.1 Goods supplied and Services rendered shall be in accordance with, and the Supplier guarantees that they are equal in all respects to, the samples, patterns, drawings and specifications stipulated in the contract or order and unless otherwise specified, Goods shall be new and unused. Where specific grades and special brands are specified, such grades and brands shall only be supplied unless Neotel agrees otherwise.
- 6.9.2 The Supplier will ensure conspicuous notice on all products labelled as reconditioned or gray market Goods. In addition, if any Goods bearing trademarks and which have been imported without approval or license or registered owner of that Trade Mark, Supplier must ensure conspicuous notice to that effect is applied.
- 6.9.3 The Supplier may not use, supply, sell, offer for sale or lease or hire any type of electronic communications equipment or electronic communications facility, including radio apparatus, used or to be used in connection with the provision of electronic communications, unless such equipment, electronic communications facility or radio apparatus has been approved by the Authority as prescribed in terms of Section 35 of the Electronic Communications Act 36 of 2005.
- 6.9.4 The Supplier shall provide accurate descriptions on all product packaging and labelling with the core purpose of avoiding inaccurate trade descriptions

6.10 Duties of the Supplier

- 6.10.1 The Supplier shall at all times remain contactable by Neotel.
- 6.10.2 The Supplier is required to perform the Services with promptness, diligence and courtesy.
- 6.10.3 The Supplier shall at all times execute the Services in a workmanlike manner and in a professional manner and in accordance with the practices and professional standards applicable to that particular Service or work.
- 6.10.4 The Supplier shall be responsible for monitoring and measuring its performance of the Services against the service levels and the industry levels.
- 6.10.5 If the Supplier fails to meet the performance standard or level, the Supplier shall:
- I. investigate and report on the cause for the failure;
 - II. Promptly correct the problem and take steps to meet the requisite performance standard;
 - III. Advise Neotel of all the remedial actions the Supplier has undertaken; and
 - IV. Take preventative measures to ensure that the problem does not recur in future.
- 6.10.6 The Supplier shall provide Neotel with the following information, in respect of all persons who will be assigned to perform the work or render the Service:
- I. Names as well identity numbers;
 - II. Scope of Services to be performed by each individual person;
 - III. The hours of work of each assigned person;

- IV. The rate of payment applicable to each assigned person; and
 - V. The Supplier may be required to provide Neotel with periodic time sheets in respect of all work performed under the Order.
- 6.10.7 The Supplier shall at all times employ and/or retain suitably qualified and trained assigned staff members to perform The Works or provide Services to Neotel;
- 6.10.8 The Supplier shall take reasonable precautions to ensure that the staff members assigned to Neotel are efficient, reliable and diligent;
- 6.10.9 The Supplier shall ensure that the assigned staff members dedicate the required time to achieve the objectives of the Contract;
- 6.10.10 The Supplier shall maintain a high standard and quality of Service as can be expected from a reasonable Service provider and/or Supplier;
- 6.10.11 The Supplier warrants that the assigned persons have the appropriate qualifications and/or expertise and/or skills;
- 6.10.12 The Supplier must exercise care and skill in performing the Works or rendering of the Service to Neotel;
- 6.10.13 The Supplier shall ensure that all the assigned staff members who render the Service or perform the Works for Neotel are fit to carry out the Work or to render the Service;
- 6.10.14 Neotel shall be entitled, by giving 48 hours written notice to the Supplier, setting out reasons therefore, require the Supplier to remove any its staff members provided by the Supplier and to immediately replace that individual, if so required by Neotel;
- 6.10.15 The Supplier undertakes to ensure that it materially complies in all aspects, with all regulatory and other obligations imposed upon it in terms of any law;
- 6.10.16 The Supplier shall be obliged to adhere to Neotel's safety and security regulations;
- 6.10.17 The Supplier shall notify Neotel, immediately after the Supplier learns of any act or omission by the employees of the Supplier or those of Neotel or any other person or any event, which may negatively impact upon the provision of Services or the delivery of the Goods;
- 6.10.18 The Supplier shall be responsible for developing and/or maintaining documentation pertaining to any Service and/or Goods provided to Neotel; and
- 6.10.19 The Supplier shall divulge all information pertaining to the use or appointment of intermediaries in as much as it relates to contact information and/or the Services or products they are mandated to supply and deliver.

6.11 Guarantee

- 6.11.1 Unless the Contract stipulates otherwise, the Supplier shall guarantee for a period of twelve months that no faulty material or workmanship was used in the manufacture of Goods or in the execution of services and that the finish is not defective. Should the guarantee not be complied with, Neotel may, without prejudice to any other rights it may have at law, demand that the goods be replaced and the services repaired without cost to Neotel.
- 6.11.2 The period of guarantee shall commence on the date of delivery or Service is brought into commission, as determined by the Contract and/or Order.
- 6.11.3 The liability of the Supplier under the guarantee shall *inter alia* also cover the free delivery of Goods required in replacement of defective Goods, and where parts are to be replaced the liability shall include their free installation. The Goods and the parts so replaced or the Services so rendered shall be guaranteed for a similar period.
- 6.11.4 The Supplier shall to the extent permissible and necessary, cede to Neotel the benefits of warranties and indemnities received from any third party manufacturers, lessors or licensors of Goods or Services provided to Neotel under any agreement between the Supplier and such manufacturers, lessors or licensors.
- 6.11.5 The Supplier acknowledges and agrees that in all its negotiations and agreements with such manufacturers, lessors and licensors, it shall be obliged to ensure that all such warranties and indemnities are capable of cession. In the event that cession is not possible, the parties shall cooperate to achieve an alternative arrangement acceptable to Neotel.

6.12 Neotel's Duties

- 6.12.1 Neotel shall grant the Supplier reasonable access to data, information, equipment and facilities, as reasonably required by the Supplier in order to effectively perform its duties and obligations in terms of its Contract with Neotel.
- 6.12.2 Neotel shall ensure that the Supplier is afforded reasonable assistance by its staff for the purpose of effectively carrying out its duties and obligations in terms of the Contract.
- 6.12.3 Neotel shall notify the Supplier, immediately after it has learned of any act or omission by the employees of Neotel or those of the Supplier or any other person or any event, which may negatively impact upon the provision of Services or the delivery of Goods.

6.13 Substitution for local products

- 6.13.1 In the event of a Contract being concluded for the supply of Goods produced in the Republic, a Supplier desiring to substitute imported products therefore may do so only if he obtains the prior approval of Neotel.
- 6.13.2 The Supplier shall provide descriptions of Trade Mark in relation to the country of origin on all products in accordance with international agreements

6.14 Payment for Goods and Services

6.14.1 Neotel reserves the right to pay for Goods and Services on or after the date of delivery. Neotel will pay for Goods and Services within 30 days after receiving the Supplier and/or the Service Provider's month-end account statement, unless otherwise agreed upon in writing. Only where Suppliers are prepared to offer a further discount for COD (Cash on Delivery) payment, and this is clearly indicated on their quotes and invoices, or where early settlement discounts are offered, will interim payments be made.

6.14.2 No prepayments will be made unless expressly agreed upon in writing by the Parties to the Contract.

6.15 Inspections, tests and analyses

6.15.1 If it is a tender condition that Goods to be produced or services to be rendered should at any stage during production or execution or on completion be subject to inspection, the premises of the bidder or Supplier shall be open, at all reasonable hours, for inspection by a representative of Neotel or of an entity acting on behalf of Neotel.

6.15.2 Inspections, tests and analyses may be carried out prior to dispatch in regard to such Contract Goods as may be deemed necessary by Neotel. The Supplier shall provide, if required, all the required facilities for the inspections, tests and analyses of the Goods or Services free of charge to Neotel and shall, if required, provide all the materials, samples, labour and available apparatus which may be required for the purpose of such inspections, tests and analyses free of charge unless otherwise specified.

6.15.3 If there are no inspection requirement in the tender specifications and no mention thereof is made in the letters of acceptance, but during the Contract period it is decided that inspections shall be carried out, Neotel shall effect the necessary arrangements, including payment arrangements, with the testing authority concerned.

6.15.4 If the inspections, tests and analyses referred to in the previous paragraphs show the Goods or Services to be in accordance with the contract requirements, the cost of the inspections, tests and analyses shall be defrayed by Neotel; otherwise the cost shall be defrayed by the Supplier and Neotel shall have the right, without prejudice to any other legal remedy it may have, to deduct such costs from payments due to the Supplier under the Contract or under any other contract.

6.15.5 Where the Goods or Services do not comply with the contract requirements, but such Goods or Services are nevertheless accepted at whatever price, the cost in connection with the inspections, tests or analyses thereof shall be defrayed by the Supplier. Goods and Services which do not comply with the contract requirements may be rejected.

- 6.15.6 Neotel reserves the right to inspect, test or analyze any Goods or Services on or after delivery. Neotel reserves the right to reject any Goods or Services that do not, in Neotel's sole discretion, comply with the contractual requirements. Any Goods or Services that Neotel rejects for non-compliance with the contractual requirements shall be held at the cost and risk of the Supplier who shall, when called upon, remove them immediately at his own cost and forthwith substitute them with Goods which do comply with the requirements of the Contract. Failing such removal, the rejected Goods shall be returned at the Supplier's cost and risk. Should the Supplier fail to provide the substitute Goods or Services forthwith, Neotel may, without giving the Supplier further opportunity to substitute the rejected Goods or Services, purchase such Goods or Services as may be necessary at the expense of the Supplier.
- 6.15.7 Transport costs and any other expenses with regard to the rejected Goods shall be refunded to Neotel by the Supplier.
- 6.15.8 The provisions of the paragraphs related to inspections, tests and analyses shall not prejudice the right of Neotel to cancel the Contract on account of a breach of the conditions thereof, or to recourse to any appropriate remedy it is entitled to in law.

6.16 Intellectual Property

- 6.16.1 The Supplier acknowledges and agrees that all rights in and to Neotel's Intellectual Property made available to the Supplier from time to time, vests and shall remain vested in Neotel and that Neotel is the owner thereof.
- 6.16.2 The Supplier acknowledges and agrees that Neotel shall own all rights in all the Intellectual Property prepared and/or created by the Supplier, whether in whole or in part, pursuant to its Contract with Neotel.
- 6.16.3 The Supplier acknowledges that Neotel shall have the right to modify any of the Intellectual Property material at its sole discretion.
- 6.16.4 Unless the Supplier has obtained prior written consent from Neotel, the Supplier shall not at any time, copy, duplicate or reproduce in any manner or form, the material or any part thereof or make any adaptations or translations to Neotel's Intellectual Property.

6.17 Payment of duties, levies and taxes

A Supplier for projects in the Republic who is not based in the Republic, or who is based in the Republic but makes purchases for the Contract outside the Republic, is responsible for paying all relevant duties, levies and taxes which may be due on the importation of the purchases into the Republic and the Supplier indemnifies Neotel against any liability for the payment of such duties, levies and taxes. If so required by Neotel, a Supplier must indicate the gross value of the relevant purchases and also furnish the necessary proof that all such duties, levies and taxes have been paid.

6.18 Stamp duty, bank charges, etc.

Where required, the Supplier is responsible for stamp duty, bank charges, bank interest and other like charges in respect of a Contract.

6.19 Royalties and patent rights

The Supplier is responsible for all expenses and other liabilities in regard to royalties, patent rights, trade marks or other protected rights in respect of the Goods supplied by it to Neotel. The Supplier indemnifies Neotel against any claims which may arise in connection with such rights, unless the rights and obligations of such royalties, patent rights, trade marks or other protected rights are expressly transferred to Neotel.

6.20 Neotel property in possession of a Supplier

6.20.1 Neotel property supplied to a Supplier for the execution of a Contract remains the property of Neotel and shall at any time be available for inspection by Neotel or its duly authorised representative. Any such property in the possession of the Supplier on completion of the Contract shall, at the Supplier's expense, be returned to Neotel forthwith.

6.20.2 The Supplier shall be responsible at all times for any loss of or damage, given fair wear and tear, to Neotel property in its possession and if required the Supplier shall furnish such security for the payment of any such loss or damage as Neotel may require.

6.21 Security

6.21.1 Where security is required particulars thereof are indicated in the Tender Specifications. Unless otherwise agreed, security covering the following amounts is required from Suppliers:

- Where payment is to be made to Neotel: the estimated amount which is to be paid.
- Where Neotel property is to be handed to Suppliers: the value of Neotel property which may be in the possession of the Supplier at any time.
- Where approval has been granted for advance or progress payments to a Supplier, the security to be provided by the Supplier is determined by Neotel.

6.21.2 The security required consists of a guarantee by a banking institution registered in terms of the Banks Act, 1965 (Act No. 23 of 1965); or such other form of security as Neotel approves.

6.22 Cession

Neotel shall have the right on written notice to the Suppliers to cede and assign this Agreement to a special purposes vehicle specifically incorporated for the purposes of funding Neotel, provided: Neotel shall remain severally accountable for the performance of its obligations in terms of this Agreement.

6.23 Right to procure outside of the contract

No provision in a Contract shall be deemed to prohibit the obtaining of Goods or Services from other suppliers or service providers, unless expressly agreed to in writing.

6.24 Amendment of contracts

No agreement to amend or vary a Contract or order or the conditions, stipulations or provisions thereof shall be valid and of any force and effect unless such agreement to amend or vary is entered into in writing and signed by the contracting parties. Any waiver of the requirement that the agreement to amend or vary shall be in writing, shall also be in writing.

6.25 Failure to comply with conditions and delayed execution

- 6.25.1 Should the Supplier fail to comply with any of the conditions of a Contract, Neotel shall be entitled, without prejudice to any of its other rights, to cancel the Contract.
- 6.25.2 Upon any delay beyond the contract period in the case of a Goods contract, Neotel shall, without canceling the Contract, be entitled, forthwith, to purchase Goods of a similar quality and up to the same quantity in substitution of the Goods not supplied in conformity with the Contract and to return any Goods delivered later at the Supplier's expense and risk, or forthwith to cancel the Contract and buy such Goods as may be required to complete the Contract and without prejudice to its other rights, be entitled to claim damages from the Supplier.
- 6.25.3 Upon any delay beyond the contract period in the case of a service contract, Neotel shall, without prejudice to any other right and without canceling the Contract, be entitled, forthwith, to arrange for the execution of the Service not rendered or not rendered in conformity with the Contract, by itself or by another service provider or to cancel the Contract and without prejudice to its other rights, be entitled to claim damages from the Supplier.
- 6.25.4 In the event of Neotel availing itself of the remedies provided for in the previous paragraphs:
- the Supplier shall bear any adverse difference in price of the said Goods or Services and these amounts plus any other damages which may be suffered by Neotel, shall be paid by the Supplier to Neotel immediately on demand or Neotel may deduct such amounts from monies (if any) otherwise payable to the Supplier in respect of Goods or services rendered or to be rendered under the Contract or under any other contract or any other amount due to it; or
 - if the Supplier fails to supply the Goods or render the Service within the period stipulated in the Contract, Neotel shall have the right, unless otherwise agreed upon, in its sole discretion either to deduct as a penalty from the value of the Contract sum an amount of 0.5% (half a percent) thereof per day for the period of delay or to claim any damages or loss suffered in lieu of such penalty: Provided that where beneficial use of the completed portion is enjoyed, the penalty shall be applied to the value of the outstanding portion only.
- 6.25.5 No penalty or damages shall be claimed in respect of any period of delay which the Supplier can prove to be directly due to a war, sanctions, strikes, lockouts, damage to machinery as a result of accidents, fire, flood or tempest or Force Majeure, which could not be foreseen or overcome by the Supplier, or to any act or omission on the part of persons acting in any capacity on behalf of Neotel, or otherwise agreed upon in the Contract or SLA.
- 6.25.6 If the delivery of the Goods or the rendering of the Service is likely to be delayed or is in fact delayed on account of any of the reasons mentioned in this clause 6, full particulars of the circumstances shall be reported forthwith in writing to Neotel. The Supplier shall indicate, in writing, the extension of time for the delivery of Goods or rendering of the service that it requires from Neotel.

6.26 Breach

If either Party breaches the Contract or these Terms and Conditions and fails to remedy such breach within fourteen (14) days of written notice from the other Party calling for the breach to be remedied, then the non-breaching Party shall be entitled, without prejudice to any other rights that it may have in law, whether under the Contract or otherwise, to cancel the Contract without notice or to claim immediate specific performance of all the defaulting Party's obligations, whether or not due for performance, in either event without prejudice to the aggrieved Party's right to claim damages.

6.27 Remedies in the case of death, sequestration, liquidation or judicial management

6.27.1 In the event of the death of a Supplier or the provisional or final sequestration of the Supplier or of its cession or transfer of the Contract without the approval of Neotel or of the surrender of its business or it reaching a compromise with its creditors or of the provisional or final liquidation of a Supplier's company or the placing of its affairs under judicial management, Neotel may, without prejudice to any other rights it may have at law, exercise any of the following options:

- Cancel the Contract and accept any of the tenders which were submitted originally with that of the Supplier or any offer subsequently received to complete the Contract. In such a case the Supplier shall not be relieved from liability for any claim which has arisen or may arise against the Supplier in respect of Goods not delivered or work not carried out by it under the Contract. Neotel shall have the right to hold and retain all or any of the securities and retention monies held by it at the date of the aforesaid occurrence until such claim has, at Neotel's sole discretion, been satisfied; or
- allow the executor, trustee, liquidator or judicial manager, as the case may be, for and on behalf of and at the cost and expense of the business of the Supplier to carry on with and complete the Contract; or
- for and on behalf of and at the cost and expense of the business of the Supplier, itself carry on with and complete the Contract. In such event, Neotel may take over and utilise, without payment, the Supplier's tools, plant and materials in whole or in part until the completion of the Contract. In this instance, Neotel shall give notice of its requirements to the executor, trustee, liquidator or judicial manager of the Supplier's estate and should the said executor, trustee, liquidator or judicial manager fail within fourteen (14) days of the dispatch of such notice to make provision to the satisfaction of Neotel for the fulfillment of such requirements, or should no executor, trustee, liquidator or judicial manager be appointed within fourteen (14) days, Neotel may apply any remedy open to it in terms of the Contract as if a breach thereof had taken place. Should Neotel act in these terms the Supplier must leave the premises immediately and may not occupy such premises on account of retention or any other right that Neotel may have at law.

6.28 Dispute resolution

6.28.1 Any unresolved dispute between the Parties arising out or in connection with these Terms and Conditions, including its existence, application, breach, interpretation, validity, termination or cancellation, shall be referred to the Senior Manager Supply Chain Management of Neotel as well as the Chief Executive Officer/Managing Director of the Supplier, who undertake to meet at least twice within the period of seven (7) days after being requested by either Party, in order to resolve the dispute.

6.28.2 Only thereafter shall the matter be submitted to and decided by arbitration in terms of The Arbitration Act, 1965, of the Republic of South Africa, subject to the following provisions:

- The tribunal shall consist of one arbitrator.
- The arbitration proceedings shall be in accordance with the formalities and/or procedures determined by the arbitrator.
- The arbitration shall be held in Johannesburg or Sandton, as determined by the arbitrator.
- The language of the arbitration shall be English.
- The arbitrator's decision shall be binding and final and shall not be appealable to any court in any jurisdiction. Any Party may, however, enter such decision in any court having competent jurisdiction.
- The Parties shall endeavour to ensure that the arbitration is completed within ninety (90) days after notice requiring the claim to be referred to arbitration is given.
- The decision of the arbitrator shall be in writing. The arbitrator shall give reasons for his award.
- The proceedings and decision shall be confidential to the Parties and their advisers.
- The arbitrator shall be a practicing attorney or advocate of not less than ten (10) years standing or a retired judge, who, in the absence of agreement reached within fourteen (14) days of the arbitration being demanded, shall be appointed by the President or acting President of the Law Society of the Northern Provinces.

6.28.3 Notwithstanding the provisions of the above clause:

- This arbitration clause shall not preclude a Party from seeking urgent relief in a court of appropriate jurisdiction, where grounds for urgency exist; and
- In the event of either Party having a claim against the other Party for a liquidated amount or an amount which arises from a liquid document, then the Party having such claim shall be entitled to institute action therefore in a court of law rather than in terms of the above clauses, notwithstanding the fact that the other Party may dispute such claim.

7 Notices and Legal process

7.1 Governing Law

The law governing these Terms and Conditions, including without limitation its interpretation and all disputes arising out of this Agreement, is the law of South Africa, the Parties submit to the exclusive jurisdiction of the South African courts in respect of any matter arising from or in connection with these Terms and Conditions, including its termination, unless expressly agreed otherwise.

7.2 Notices

7.2.1 Each Party chooses as its address for all purposes under these Terms and Conditions ("chosen address"), whether for serving any court process or documents, giving any notice, or making any other communications of whatsoever nature and for any other purpose arising from these Terms and Conditions ("notice"), as its domicilium citandi et executandi. A domicilium citandi et executandi shall be chosen in the Republic stated in the response.

- 7.2.2 Any notice required or permitted under these Terms and Conditions shall be valid and effective only if in writing.
- 7.2.3 Any Party may by notice to the other Party change its chosen address to another physical address in the Republic of South Africa and such change shall take effect on the seventh day after the date of receipt by the Party who last receives the notice.
- 7.2.4 Any notice to a Party contained in a correctly addressed envelope and delivered by hand to a responsible person during ordinary business hours at its chosen address, shall be deemed to have been received on the date of delivery.
- 7.2.5 Notwithstanding anything to the contrary herein, a written notice actually received by a Party, including a notice sent by telefax, shall be an adequate notice to it notwithstanding that it was not sent or delivered to its chosen address.

7.3 Interpretation

- 7.3.1 Clause and paragraph headings are for purposes of reference only and shall not be used in interpretation.
- 7.3.2 Unless the context clearly indicates a contrary intention, any word connoting:
- any gender includes the other two genders;
 - the singular includes the plural and vice versa;
 - natural persons includes artificial persons and vice versa;
 - insolvency includes provisional or final sequestration, liquidation or judicial management.
- 7.3.3 A reference to a Business Day is a reference to any day excluding Saturday, Sunday and a public holiday in the Republic of South Africa.
- 7.3.4 When any number of days is prescribed such number shall exclude the first and include the last day unless the last day falls on a Saturday, Sunday, or a public holiday in the Republic of South Africa, in which case the last day shall be the next succeeding Business Day.
- 7.3.5 A reference to an enactment is a reference to that enactment as at the date of signature hereof and as amended or re-enacted from time to time.
- 7.3.6 The rule of interpretation that a written agreement shall be interpreted against the Party responsible for the drafting or preparation of that agreement shall not apply.
- 7.3.7 If any provision in a definition 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.
- 7.3.8 The eiusdem generis rule shall not apply and accordingly, whenever a provision is followed by the word "including" and specific examples, such examples shall not be construed so as to limit the ambit of the provision concerned.

7.3.9 Where any term is defined within the context of any particular clause in these Terms and Conditions, then, unless it is clear from the clause in question that the term so defined has limited application to the relevant clause, the term so defined shall bear the meaning ascribed to it for all purposes in terms of these Terms and Conditions, notwithstanding that that term has not been defined in the definition clause.

7.4 Waivers

No relaxation or indulgence which any Party may grant to any other shall constitute a waiver of the rights of that Party and shall not preclude that Party from exercising any rights which may have arisen in the past or which might arise in future.

7.5 Survival of obligations

Any provision of these Terms and Conditions which contemplates performance or observance subsequent to any termination or expiration of these Terms and Conditions shall survive any termination or expiration of these Terms and Conditions and continue in full force and effect.

7.6 Approvals and consents

An approval or consent given by a Party under these Terms and Conditions shall only be valid if in writing and shall not relieve the other Party from responsibility for complying with the requirements of these Terms and Conditions nor shall it be construed as a waiver of any rights under these Terms and Conditions except as and to the extent otherwise expressly provided in such approval or consent, or elsewhere in these Terms and Conditions.

7.7 Limitation of Liability

7.7.1 Unless otherwise provided in any further written agreement, neither Party shall be liable to the other for any indirect, consequential, special, incidental or punitive damages, including without limitation, loss of use or lost business, revenue, profits, anticipated savings, reputation or goodwill arising in connection with the Contracted Work, the Services, related products, documentation and/ or the intended use thereof under any theory of delict, contract, warranty, strict liability or negligence even if the Party has been advised, knew or should have known of the possibility of such damages.

7.7.2 Nothing in these Terms and Conditions shall restrict either Party's liability for:

- (a) Fraud; or
- (b) Death or personal injury caused by its negligence or intentional or willful act;
- (c) Damage to real or tangible personal property caused by its negligence or intentional or willful misconduct; or
- (d) Any breach of obligations under these Terms and Conditions in respect of confidentiality and intellectual property; or
- (e) Any other liability that cannot be excluded by law.

- 7.7.3 If a Party is in breach of any obligations under these Terms and Conditions (or any other documents supporting it) to the other Party or if any liability is arising (including for negligence and breach of statutory duty) then, subject to paragraph 7.7.2 above, such Party's liability to the other Party shall be limited to the lesser of the annual recurring cost of all services encompassed under the Contracted Work or the stated value of the Contracted Work (The appropriate amount will be determined based on the value of the Contracted Work.)
- 7.7.4 Notwithstanding any other provision in these Terms and Conditions, Neotel's overall cumulative liabilities to Supplier in respect of direct damages under or in connection the Contracted Work shall not exceed the Contracted Work value.
- 7.7.5 The limitation of liability contained in this paragraph 7.7 shall apply to the fullest extent permissible in law and shall be for the benefit of the Parties and their directors, employees and agents in relation to the performance of the Contracted Work.

8 Confidentiality

The Parties agree that the terms of these Terms and Conditions and all confidential and proprietary information of the Parties communicated to them in connection with these Terms and Conditions shall be received in strict confidence and be used only for the purposes of these Terms and Conditions. Each Party shall use the same means as it uses to protect its own confidential information, but in no event less than reasonable means, to prevent the disclosure and to protect the confidentiality of such information. No such information shall be disclosed by the recipient Party, its agents, representatives or employees without the prior written consent of the other Party.

These provisions do not apply to information which is:

- publicly known or becomes publicly known through no unauthorised act of the recipient Party;
- rightfully received by the recipient Party from an outside Party;
- independently developed by the recipient Party without use of the other Party's information;
- disclosed by the other Party to an outside Party without similar restrictions;
- required to be disclosed pursuant to a requirement of a governmental agency or any applicable law, so long as the Party required to disclose the information gives the other Party prior notice of such disclosure; or
- Publicly disclosed with the other Party's written consent.

END