



## General Terms and Conditions

### 1. Introduction

These terms are the general terms of the relationship between us and you. These terms cover any transactions where we provide services to you. These terms cover the supply of advertising services across multiple advertising platforms and participating websites including but not limited to online, mobile and television platforms, campaign management, strategy services, creative development or the providing of educational training and insights services.

By signing an order with us or by using any of our services including content or information provided as part of the services, you acknowledge and agree to these terms and any other terms and conditions stated in the order.

### 2. Definitions

These words are defined as follows:

**ad** means any advertisement provided by you;

**advertising materials** means artwork, copy, or active URLs for ads;

**agency** means the advertising agency listed on the applicable order contracting on behalf of their client;

**agreement** means the agreement between us and you, consisting of any terms and any orders the parties enter into;

**business day** means any day within business hours, other than a Saturday, a Sunday, or a holiday (including a public or bank holiday) in the jurisdiction where our entity that entered into the relevant order is based, and any other reference to a **day** means a calendar day;

**click fraud** means the practice of repeatedly clicking on an advertisement hosted on a website with the intention of generating revenue for the host website or depleting revenue from the advertiser. Click fraud occurs in PPC (pay per click) advertising where the owners of the advertisements are paid an amount of money relative to the number of visitors to the site that click the advertisement;

**CPA deliverables** means deliverables sold on a cost per acquisition basis;

**CPC deliverables** means deliverables sold on a cost per click basis;

**CPL deliverables** means deliverables sold on a cost per lead basis;

**CPM deliverables** means deliverables sold on a cost per thousand impression basis;

**deliverable** means the deliverables as defined in each order or related material;

**effective date** means in respect of each order, the effective date stipulated in each order. In the absence of such the effective date will be the date order is accepted by us;

**fees** means the fees, charges, or price you will pay to us in respect of the services we provide under orders;

**insertion order** means a mutually agreed insertion order that incorporates these terms and conditions, and under which we will deliver the agreed services for your benefit;

**intellectual property** means without limitation, all trademarks, service marks (whether registered or unregistered), copyright, patents, designs, know-how, confidential information, methods, manuals, specifications, technical information relating to the services and other proprietary rights whether existing now or in the future;

**network properties** means websites specified on an order that are not owned, operated, or controlled by us, but that we have has a contractual right to serve ads on.

**order** means a services order, such as an insertion order or credit application form, agreed to and signed by both the parties describing the specific services that we will provide to you;

**our technology** means any technology that we have created, acquired or otherwise have rights in and may, in connection with performing our obligations under the agreement, employ, provide, modify, create or otherwise acquire rights in and includes any: concepts or ideas; methods or methodologies; procedures or processes; know-how or techniques; function, process, system, data, or object models; templates; the generalised features of the structure, sequence and organisation of software, user interfaces and screen designs; general purpose consulting and software tools, utilities, routines or frameworks; logic, coherence and methods of operation of systems; and patches or enhancements to open source libraries;

**parties** means the parties to this agreement being you and us, and **party** refers to either of us as the context requires;

**personnel** means any representative, including any director, employee, agent, affiliate, consultant, or contractor;

**policies** means advertising criteria or specifications made conspicuously available, including content limitations, technical specifications, privacy policies, user experience policies, policies regarding consistency with our public image, community standards regarding obscenity or indecency (taking into consideration the portion(s) of the site on which the ads are to appear), other editorial or advertising policies, and advertising;

**privacy notice** means our notice regulating data use and protection, accessible from our website;

**related** and **related persons** means natural and juristic persons who are connected to one another in the manner contemplated in applicable law;

**representative** means any director, officer, employee, consultant, contractor, agent or attorney for an entity or related person;

**services** means any services we or related persons provide to you in terms of orders which include the supply of advertising services across multiple advertising platforms and participating websites including but not limited to online, mobile and television platforms, campaign management, strategy services, creative development and the providing of educational training and insights services;

**service levels** means the levels according to which we will provide each service as agreed by the parties in writing and signed;

**sign, signed or signing** means the handwritten signature, an advanced electronic signature, or an electronic signature that the parties agree to use, of each of our duly authorised representatives;

**signature date** means the date of signature by the party signing last;

**site** means our properties and network properties;

**tax** means any tax (including value added tax, income taxes, pay-as-you-earn tax or other taxes levied in any jurisdiction), duty, tariff, rate, levy, or any other governmental charge or expense payable;

**terms** means these terms, consisting of:

- these general terms and conditions; and
- any other relevant specific terms, policies, disclaimers, rules and notices that the parties agree on, (including any that may be applicable to any services like the insertion order or credit application form);
- Where applicable, LinkedIn Terms relating to Advertising **Terms** and **Advertising Policy**. Depending on the service you request from us you will be bound by these terms please ensure you are familiar with them.

**third party ad server** means a third party that will serve or track ads.

**third party contractor** means any contractor, supplier, vendor, service provider or licensor any of the services, which are not a party to the agreement;

**third party software** means all third party software owned by a third party but legally licensed to us for use in providing the services;

**third party partner** means a partner that we have a separate agreement with who aids us in providing the services;

**we, us, or our** means Turn Left Media (registration number: 2016/195304/07) and those related to it;

**writing** or **written** means the reproduction of information or data in physical form (includes handwritten documents, hard copy printouts and fax transmissions) or any mode of reproducing information or data in electronic form that the parties agree to use (like pdf files), but excludes information or data in the form of email, text message or instant message;

**you** or **your** means the customer which can either be an agency for a customer or a straightforward customer that enters into an agreement with us and, if specified in the agreement, those related to it;

**your data** means your data (including information about an identifiable person) that:

you (or any third party on your behalf) provide to us; or

we generate, process, or supply to you in providing the goods or services; but excludes any derived data that we create for our own internal purposes or which is proprietary or confidential to us or our third party contractors; and

**your technology** means any technology that you have created, acquired or otherwise have rights in and may, in connection with performing your obligations under the agreement, employ, provide, modify, create or otherwise acquire rights in and includes any: concepts or ideas; methods or methodologies; procedures or processes; know-how or techniques; function, process, system, data, or object models; templates; the generalised features of the structure, sequence and organisation of software, user interfaces and screen designs; general purpose consulting and software tools, utilities, routines or frameworks; logic, coherence and methods of operation of systems; and patches or enhancements to open source libraries.

## 2.1. Definitions in the order

Words defined (or assigned a meaning) in an order will have that meaning in these terms unless the context clearly indicates otherwise.

## 2.2. Interpretation

All headings are inserted for reference purposes only and must not affect the interpretation of the agreement. Whenever 'including' or 'include', or 'excluding' or 'exclude' follow a term together with specific examples or items, they will not limit its ambit. Terms other than those defined within the agreement will be given their plain English meaning. References to any law or enactment will include the enactment as re-enacted, amended, or extended. A reference to a person includes a natural and juristic person and a reference to a party includes the party's successors or permitted assigns. Unless otherwise stated in the agreement, when any number of days is prescribed in the agreement the first day will be excluded and the last day included. The rule of construction that an agreement must be interpreted against the party responsible for its drafting or preparation does not apply. GMT +2 will be used to calculate any times.

## 2.3. Conflict

If there is a conflict of meaning between these terms and any order, the order will prevail in respect of your use of the relevant services. This clause is subject to the limitations of liability clause below.

## 3. Duration

The terms commence on acceptance of an order and continue until terminated according to the terms.

### Orders

#### 3.1. Capacity

You represent and warrant that you (and any person who places an order):

- are old enough under applicable law to enter into the agreement;
- are legally capable of concluding any transaction;
- possess the legal right, full power, and authority to enter into the agreement; and
- will submit true, accurate and correct information to us.

### **3.2. Valid and binding order**

The parties only conclude a valid and binding order when we accept the offer made by you. We will accept and sign the agreed upon order and give you a signed copy.

### **3.3. Fees**

The fees for any services are as provided in the relevant order.

### **3.4. Time and place**

The parties conclude any agreement between each other at the date of the last signature of the parties and at the place where you have your head office.

### **3.5. Orders**

Each order will create a separate agreement. Despite that, we may consider your breach of any one order to constitute a breach of any or all agreements.

## **4. Services**

### **4.1. Insertion order (IO)**

Each order must be in our required format. We will endeavour to accept the order within 2 business days of receipt or make commercially reasonable efforts to notify you within 2 business days of receipt of an IO if the specified inventory is not available.

**4.1.1.** Acceptance shall be on delivery by us of the first ad impression in terms of the order.

#### **4.1.2. Technical specification**

Within 2 business days of acceptance of an order, we will provide you with the final technical specifications for the services. If those specifications change after that period then you may suspend the start date of the ad by a reasonable period to allow it to:

- provide a revised ad;
- request that we resize the ad at our expense;
- agree to a comparable replacement in good faith; or
- failing all of the above, within 5 business days, cancel the then remainder of the IO without a penalty.

#### **4.1.3. Revisions**

Revisions to the IO shall not be binding unless signed by both parties.

#### **4.1.4. Deviations**

We may deviate from the IO if you have agreed to the deviation or we believe we are acting in a manner that we consider to be in the best interest of the client.

#### **4.1.5. Website modification notice**

If we become aware of any material changes to the platform that may potentially materially change the target audience or significantly affect the size or placement of any services in terms of the IO we will endeavour to give you 5 business days' website modification notice. If we supply you with a website modification notice or facts exist that reasonably entitle you to such a notice then you may cancel the remained of the IO. This cancellation must be in writing and be done within 5 days of receiving the website modification notice. In terms of this cancellation, you will not be charged for the affected ad.

#### **4.1.6. Compliance with IO**

We will comply with all the services listed in the IO, including all ad placement restrictions, and, will attempt to create a reasonably balanced delivery schedule. We will provide, within the scope of the IO, an ad to the site specified on the IO.

#### **4.2. Compliance with policies**

You must comply with all of our policies, criteria and specifications including as to content, technical specifications, privacy, user experience, public image, obscenity and indecency. These policies will be made available to you at your request. We may remove, or suspend, any services that we determine as non-compliant, or if we are instructed to by our third-party partners. This removal will constitute an immediate cancellation of such IO with no further obligations owing by either party to each other.

#### **4.3. Click fraud**

We use all reasonable effort to prevent click fraud. However, instances of it may still occur. You will have no claim of any nature whatsoever against us in the event of any click fraud arising in respect of one of your ads.

#### **4.4. Advertising agency commission**

The fees payable to advertising agencies will be negotiated on an individual basis.

#### **4.5. Representation**

If you are represented by an agent or are located outside of South Africa, we may require you to confirm your agent's representative capacity and may impose further conditions relating to our acceptance of the order, including advance payment.

#### **4.6. Removal based on reputation**

We reserve the right to reject or remove from any sites or ads for which your advertising materials or the website to which the ad is linked are, or may bring, disparagement, reputational damage or ridicule to us. However, if we approved this ad before use on the site then we will not remove the ads before making a reasonable effort to acquire mutually acceptable alternative advertising materials from you.

#### **4.7. No modification without consent.**

We will not edit or modify the submitted ads in any way, including, resizing the ad, without your consent.

#### **4.8. Ad tags**

Third party ad server tags will be implemented so that they are functional in all aspects, where applicable.

### **5. Reporting**

#### **5.1. Confirmation of campaign initiation**

We will report to you within 2 business days of the start date on the order, either electronically or in writing, whether the components of the order have begun delivery.

#### **5.2. Our reporting**

If we are serving the campaign, then we will make reporting available in the manner agreed to in the order. Once we have provided the online or electronic report you are entitled to reasonably rely on it, subject to delivery of the campaign. Delivery dates of the campaign may differ from those dates stated in the IO.

#### **5.3. Reporting failure**

If you inform us that we have delivered an incomplete or inaccurate report, or no report at all, we will remedy that failure within 5 business days of you informing us. If we fail to remedy the situation it may result in non-payment for all activity for which the data is incomplete or missing until we deliver reasonable evidence of performance. Evidence of performance will be delivered within 30 days of us being made aware of this failure or, if we are not made aware, within 180 days of delivery of all deliverables.

### **6. Advertising material and late material supply**

#### **6.1. Late material**

Material is deemed to be late material when you deliver material less than 5 business days prior to the rendering of the first ad contemplated in the order. Material includes advertising material.

## **6.2. Charges related to late material**

If late material is not received by the order start date we will charge you, from the order start date. This charge will be on a pro rata basis based on the full order, excluding performance-based portions, for each full day the late materials are not received. The materials are late based on an issue relating to our policies we will not be required to guarantee full delivery of the order.

## **6.3. No liability for late material**

We will endeavour to implement the late material in time to render the first ad contemplated in terms of the order. However, we are not liable to you or any third party if:

- the first ad is not rendered by the specified campaign start date in the order and
- the supply of the late material affects our ability to meet our obligations as per the order however, we will reasonably endeavour to meet the order delivery requirements for CPM campaigns.

## **6.4. Your liability.**

You will remain liable for the full payment of the order, notwithstanding our failure to meet our delivery obligations as a result of your supply of late material.

## **6.5. Non-standard CPM advertising**

If you supply late material to us to be implemented in respect of nonstandard CPM advertising placement orders, including but not limited to sponsorships, newsletters, promo-mailers and packaged offers, you will forfeit those days affected by the supply of the late material. You will remain liable for the full order price including the cost of the forfeited placements.

## **6.6. Suitable replacements**

If material is received late this could impact on the planned advertising inventory booked. We are not liable for the effect of late material on your campaign however, we will reasonably endeavour, inventory permitting, to deliver as per the original order requirements. You will not be entitled to withhold any payments due to us should we be unable to find suitable replacement inventory or placements.

## **6.7. Damaged advertising materials**

If the advertising material that you provided to us is damaged, not to our specifications or otherwise unacceptable then we will notify you within 2 business days of receipt of the advertising material, where reasonably possible.

## **7. Delivery of the services**

### **7.1. Services involving a bidding system**

Some of the platforms that we use for delivering our services use a bidding system for buying advertising impressions or actions. Due to the nature of the bidding system the availability and price fluctuates with the market. Therefore, we can only provide you with an estimate for an impression in the IO that you sign with us. This estimate is based on the recommended bid prices which are subject to change.

### **7.2. No liability for difference between estimate and final cost**

You accept that that we provide you with an estimate for this service only and cannot guarantee the exact cost. The cost of the impression that we bid for will impact the cost of the impression delivered and this will be reflected in your invoice. We will aim, where reasonably possible, to achieve the estimate in the IO. However, we are not liable for any difference between the estimated price and the ultimate actual price.

### **7.3. Impression error**

Should an error occur with the impressions that you have ordered in the IO, we will deliver corrected bonus impressions to a maximum of 10% of the originally booked services. No bonus or discrepancy allowances will be applicable to any sponsorship campaigns.

#### **7.4. Use of third party delivery platforms or technology**

We enable you to use third party delivery platforms and technologies. However, we reserve the right to decline use of those platforms or technologies if we deem them to have a negative impact on our trading, delivery or functionality. If we decline the third-party delivery platforms and technologies, we will notify you in writing and the affected order will be cancelled with immediate effect. No further obligations will be owed by either party to the other from the time of cancellation.

#### **7.5. Our ad serving technology**

We will make all reasonable efforts to ensure that delivery between our ad serving technology and your technology, including third party delivery platforms and technologies, correspond. If a discrepancy occurs the parties will facilitate a reconciliation effort between their technologies. If no reconciliation can be concluded then our ad serving technology and reporting will be considered correct.

### **8. Self-Managed Account Agreement specific terms**

#### **8.1. Login details.**

We will provide you with secure login details for the Facebook Grey Account (FGA) and LinkedIn Grey Account (LGA), including but not limited to a username and password for the FGA and LGA.

#### **8.2. No change**

You will not be able to change the logins that we supply to you.

#### **8.3. Your rights**

You will have complete control of its your spending and the information captured in the FGA and LGA and the FGA and LGA will be seen as accurate and correct at all times.

#### **8.4. Additional terms**

The services relating to FGA and LGA will be deliver according to the Self-Managed Account Agreement respectively and should be read and accepted in conjunction with these terms.

### **9. Non-solicitation**

#### **9.1. Restriction**

Unless otherwise agreed, no party will, during the currency of any order or for a period of 12 calendar months following termination, directly or indirectly solicit, offer employment to, employ, or contract in any manner with any personnel of the other party who were involved in the implementation or execution of the order.

#### **9.2. Recruitment fee**

If a party whose personnel is recruited (affected party):

- consents to any such employment, the recruiting party (recruiting party) will pay the affected party a recruitment fee equal to 50% of the gross annual package (including any quantifiable bonuses or incentives and annualised if necessary) paid by the affected party to the member of personnel concerned (gross package); or
- does not consent to any such employment, the recruiting party will, on written demand from the affected party, pay the affected party a recruitment fee equal to 60% of the gross package of the personnel concerned.

### **10. Assignment and subcontracting**

#### **10.1. No assignment**

No party may delegate its duties under this agreement or assign its rights under this agreement, in whole or in part without the other party's prior written consent, which may not be unreasonably withheld. We may assign this agreement to any successor or purchaser of our business or some of our assets, provided we inform you of the change.

## **10.2. Consent**

We may cede and assign all rights and obligations under this agreement to a related person with your prior written consent, which may not be unreasonably withheld.

## **10.3. Our third-party contractors**

We may sub-contract or delegate our obligations under this agreement to third party contractors. We will remain liable for performance of the third-party contractors. No one may require us to disclose the terms (including payment terms) of any sub-contract entered into with respect to our obligations under this agreement.

## **11. Relationship**

### **11.1. No temporary employment service or partnership**

Nothing in this agreement will be construed as constituting a temporary employment service or as creating a partnership between the parties and no party will have any authority to incur any liability on behalf of the other or to pledge the credit of the other party.

### **11.2. No employment relationship**

Each party enters into the agreement as an independent contractor. The agreement does not create any other relationship, including employment for any purpose, partnership, agency, trust or joint venture relationship.

## **12. Fees and payment**

### **12.1. Due dates**

You will be liable for and pay the fees specified in the order, and any additional fees, promptly on the due date specified in the relevant order, without any deduction, set off or demand and free of exchange and bank charges in the currency specified in the order. If no due date is specified or agreed, the due date is within 30 days of the date of invoice.

### **12.2. Exchange rates**

The prices stated in any order are calculated based on our exchange rate for the month, which rate is obtainable from our Finance Manager on (+27 21 001 2400). We reserve the right to change this rate from time to time because of the nature of the variation in exchange rates. This means that amounts may be revised on your order any time prior to your acceptance of the order. There may be specific foreign exchange rates that apply to the service you have requested. These provisions will be the relevant order for that service.

## **13. Manner of payment.**

**13.1.** You must make payment in the manner specified in this agreement.

### **13.2. Late payments**

Any additional surcharges and penalties specified will apply to any payment received after the due date to cover collection fees and additional administration costs. You must pay the surcharges and penalties to us on-demand. We may withhold or halt the provision of any goods or services until you have paid all amounts that are due.

### **13.3. Interest on overdue amounts**

To the extent permitted by applicable law, any amount not paid by you on the date of the statement of outstanding invoices will bear interest for our benefit, from the due date until the date you pay it. The rate of interest will be either 2% per annum above the prime overdraft rate of our bankers published from time to time or 15% per annum, whichever is higher. A letter signed by a general, branch or other bank manager setting out their rate will be proof of the rate. Interest will be payable on a claim for damages from when the damages were suffered.



**13.4. Appropriation**

We may appropriate any payment received from you towards the satisfaction of your indebtedness to us under the agreement. In the event we instruct our Turn Left attorneys to recover money from you, you will be liable for all legal costs incurred by Turn by us on an attorney/client scale, inclusive of collection commission.

**13.5. Withhold payment**

You may not withhold or set off payment of any amount due to us for any reason.

**13.6. Certificate**

A certificate, signed by an accountant appointed by us, of the amount due by you and the date on which it is payable will be proof of the correctness of the certificate's contents and the amount that you must pay pending you providing evidence that such an amount is not due.

**13.7. Tax**

All fees exclude any tax, which will be payable by you where applicable in addition to the fees.

**13.8. Payment profile**

You and any signatory consent and agree that we may provide any registered credit bureau with information about the payment of amounts.

**13.9. Copy insertion or unique order number**

You may request us to quote your unique order number or copy insertion on your invoice or other documentation. We will, wherever possible try to assist in this regard but it is expressly agreed that this is an administrative process and a courtesy we offer to you. If we do not carry out this request or it is not carried out correctly or completely, this will not remove your obligations and liability to pay us in terms of the agreements.

**13.10. Credit terms**

Any credit terms that exist between you and us are fixed and are not subject to you being paid by a third party, including your client where applicable.

**13.11. Credit and re-invoicing**

Where you require an invoice to be credited or re-invoiced, either whole or in part for a campaign that has already been invoiced then the credit terms and period shall run from the date of the original invoice and not from the date of the re-invoice.

**13.12. Specific payment terms relating to Facebook Grey Accounts**

**13.12.1. Invoicing time**

We will invoice to you based on the FGA report within the first 3 business days of the month. The amount billed to you will be based on the spend in the previous month.

**13.12.2. Timely payment**

All invoices relating to the FGA must be paid 30 days from the date of invoice. If you fail to pay on time, the FGA logins may be revoked or suspended. You will remain liable to us for any existing obligations related to the FGA.

**13.12.3. FGA account discrepancies**

You must resolve any discrepancies with the FGA with Facebook. Such discrepancies do not allow you to withhold payment to us.

**14. Performance and good faith**

The parties will cooperate with each other and at all times act in good faith towards each other in performing this agreement and any orders.

## **15. Intellectual property**

### **15.1. Retention of rights**

We have created, acquired or otherwise obtained rights in our technology and intellectual property and despite anything contained in the agreement, we will own all right, title, and interest in our technology and intellectual property.

### **15.2. Use of your technology**

If we use any of your technology or intellectual property in connection with our performance under an order, your technology and intellectual property will remain your property and we will not acquire any right or interest in it.

### **15.3. Use of our technology**

If we use any of our technology or intellectual property in connection with our performance under an order, our technology and intellectual property will remain our property and you will not acquire any right or interest in it. If required we may grant you a non-transferable, non-exclusive licence in writing to use our technology or intellectual property in connection with the deliverable as agreed in the relevant order.

### **15.4. Deliverables created during the agreement.**

We own all rights to all deliverables we develop for you in the course of providing the services under this agreement and any orders.

### **15.5. Other rights**

Neither party will obtain any rights in the existing material or intellectual property of the other party that was not created in performing the agreement or existed before the commencement of the agreement unless a licence is granted.

### **15.6. Trademarks**

Our logo and sub-logos, marks, and trade names are our trademarks and no person may use them without permission. Any other trademark or trade name that may appear on our marketing material is the property of its respective owner.

### **15.7. License to use trademarks**

You grant us a royalty-free license to use any logo, sub-logos, marks, trade names or domain name for purposes of fulfilling our obligations in relation to an order.

### **15.8. Restrictions**

Except as expressly permitted under the agreement, the services may not be:

- modified, distributed, or used to make derivative works;
- rented, leased, loaned, sold or assigned;
- decompiled, reverse engineered, or copied; or
- reproduced, transferred, or distributed.

### **15.9. Residual knowledge**

Nothing contained in the agreement will restrict us from the use of any generic ideas, concepts, know-how, or techniques developed by us or learned in the course of providing the goods or services.

### **15.10. Prosecution**

All violations of proprietary rights or the agreement will be prosecuted to the fullest extent permissible under applicable law.

### **15.11. Exclusion**

We will not be liable for any intellectual property claim that arises out of goods or services you select and acquire from third parties.

## **16. Confidential information**

### **16.1. Responsibility to keep information confidential**

Each party must keep confidential any information it receives from the other party or under this agreement, including existing material and your data. Each party will take all reasonable steps to ensure their employees or contractors abide by this clause.

### **16.2. The receiving party's responsibilities**

The party that receives confidential information agrees to protect the interests of the party it is receiving from, and will:

- only use it to comply with its responsibilities under this agreement;
- only give the information to any of its employees or agents that need it, and only give as much of it as they need;
- use reasonable security procedures to make sure employees or agents keep the information confidential;
- get promises of confidentiality from those employees or agents who need access to the information;
- not reveal the information to anyone else; and
- not use it for any purpose other than this agreement.

### **16.3. End of this agreement**

At the end of this agreement, or on written request, the parties will give back to the other all originals and copies of confidential information of the other that they have. If the other agrees, they may destroy the confidential information they have.

### **16.4. Exceptions**

These responsibilities will not apply to any information that:

- is lawfully in the public domain (available to the general public) when a party received it;
- lawfully becomes part of the public domain afterwards;
- is given to the receiving party afterwards by a different person who is allowed to reveal the confidential information; or
- is given to comply with a court order or other legal duty.

### **16.5. Privacy notice**

The terms and conditions of the privacy notice are also applicable to this agreement.

### **16.6. Survival**

This clause about confidential information is separate from the rest of this agreement and remains valid in perpetuity.

## **17. Your data and data protection compliance**

### **17.1. Your data**

We are not responsible for any of your data stored on our systems.

### **17.2. Legal obligations**

We are responsible for complying with our obligations and you are responsible for complying with your obligations under applicable laws governing your data. The parties both acknowledge that they are not investigating the steps the other is taking to comply with any applicable privacy and data protection laws.

### **17.3. Responsible party**

You remain the responsible party for determining the purpose and means of our processing of your data, including that processing will not place us in breach of any laws.

**17.4. Trans-border flows of your data**

You consent to us transferring your data across any country border to enable us to comply with our obligations under the agreement. You are solely responsible for determining that any transfer of your data across a country border complies with the applicable laws.

**17.5. Indemnity**

You agree to indemnify, defend, and hold us harmless (and those related to us and our personnel, co-branders or other partners) from and against any claim, demand, loss, damage, cost, or liability (including legal costs) arising out of or relating to you failing to comply with your obligations under this clause. If permissible under applicable law, legal costs will be on an attorney and own client basis.

**17.6. Access**

On a party's reasonable written request, the other party will provide the requesting party with the information that it has regarding your data and its processing that is necessary to enable the requesting party to comply with its obligations under this clause and the applicable laws. The requesting party will reimburse the other party for its reasonable charges for its assistance.

**17.7. Preservation of integrity of your data**

Both of the parties will take reasonable precautions (having regard to the nature of each of their obligations under the agreement), to preserve the integrity of your data and prevent any unauthorised access, corruption or loss of your data.

**17.8. Records**

You agree that our records are provisional (prima facie) evidence of the goods supplied or services provided to you.

**17.9. Return of data**

On termination of any order, each party will return to the other party in the form in which it was received all of the other party's data or information provided to the party for the purpose of performing the relevant order.

**18. Our warranties**

**18.1. Service warranties.**

We warrant in relation to the services that:

- we and our personnel will possess and have the right to use knowledge and expertise sufficient to enable us to provide the services;
- we will employ a sufficient number of suitably trained personnel to provide the services and to achieve the service levels; and
- we will provide the services according to all applicable laws, enactments, and

General warranties. We warrant further that:

- we have the legal right and full power and authority to execute and deliver, and to exercise our rights and perform our obligations under the agreement; and
- we and our personnel will not knowingly introduce any malicious software into your material or your system.

**18.2. Specific warranties.**

We may provide further specific warranties in an order.

**19. Disclaimer of warranties**

**19.1. Disclaimer.**

You use our services at your sole responsibility and risk. We provide the goods and services on an 'as is' and 'as available' basis. Except for the warranties given in this agreement and to the extent allowed by

law, we expressly disclaim all representations, warranties, or conditions of any kind, whether express or implied, including:

- any implied warranties or conditions of satisfactory quality, no latent defects, merchantability, fitness for a particular purpose, accuracy, system integration, quiet enjoyment, title, and non-infringement;
- any warranties regarding third party software; and
- that the services will meet your requirements or be uninterrupted, legally effective or complete, timely, secure, error-free or free from infection by malicious software.

#### **19.2. Exclusion of liability**

Despite any warranty we give, we will not be liable with regard to any defect arising from your negligence, failure to follow instructions (whether oral or in writing) or misuse.

#### **19.3. Security software**

You should keep up-to-date security software on any systems used to access the goods or services.

### **20. Limitation of liability**

#### **20.1. Direct damages limited**

Despite anything else in this agreement including any order, our maximum liability to you for any claim for direct damages is the total amount of fees you have paid us in the preceding 3 months for the services related to the claim. Our total aggregate liability for all claims under this agreement will never be greater than the maximum liability. This limitation applies to the extent allowed by any law that applies, and regardless of the basis of the claim (whether in contract, delict, tort or any other legal basis).

#### **20.2. Indirect damages excluded**

Despite anything else in agreement including any order, we and our personnel will never be liable for any indirect, incidental, special or consequential damages or losses of any kind arising from the agreement. These include foreseeable or unforeseeable loss of profits, loss of goodwill, pure economic loss, damages relating to lost or damaged data or software, loss of use and damages relating to downtime or costs of substitute products.

#### **20.3. This limitation of liability clause prevails**

To avoid all doubt, and despite the conflict provisions of these terms, no order can ever supersede the limitation of our liability and the exclusion of indirect damages in this clause.

#### **20.4. We are not liable for your default**

We will not be liable for any loss or damage suffered by you arising out of or in connection with any breach of the agreement by you or any act, misrepresentation, error or omission made by or on behalf of you or your personnel.

#### **20.5. Other services**

We are not liable for any other deliverable, including website, goods, or service provided by any third party, nor are we liable for any claims arising due to third party software.

#### **20.6. Severability**

This clause is separate and divisible from the rest of this agreement and remains effective even if this agreement ends or is invalid.

### **21. Your warranties and indemnities**

You warrant that:

- you have not been induced to enter into the agreement by any prior representations, warranties or guarantees (whether oral or in writing), except as expressly contained in the agreement;
- you have obtained, where applicable, all necessary user licences in advance; and

- by entering into an order, you are not acting in breach of any agreement to which you are a party.
- 21.1. Where applicable, you must promptly obtain and provide all consents necessary for us to access, use or modify (including creating derivative works) you're or a third party's software, hardware, firmware, social media platforms and other products used by you without infringing the ownership, licence or intellectual property rights of the providers or owners of such products. We will be relieved of performing any obligations affected by your failure to promptly provide any necessary consents to us.
- 21.2. You agree to allow us to disclose information relating to your social media platforms to appropriate third parties necessary to supply you with the requested services. For example, Facebook and LinkedIn.
- 21.3. **You agree that, where necessary, we may share your social media login details with our employees who are working on your campaign.**
- 21.4. **You agree that if you do not supply us with the required details to your social media accounts relevant to the service that we are delivering to you then we cannot guarantee delivery.** You agree to indemnify, defend, and hold harmless us (and those related to us and our personnel, co-branders or other partners) from and against any claim for damages by any third party as a result of the breach of these warranties, including all legal costs. If permissible under applicable law, legal costs will be on an attorney and own client basis

## 22. Termination

### 22.1. Termination on notice

Both parties have the right to terminate this agreement by giving 30 business days' written notice to the other party.

### 22.2. General cancellation of an order

22.3. **You may cancel an order, without penalty, if you give us notice 30 business days before the campaign start date stipulated in the order. However, you are liable in full if you cancel after you have signed an order and reserved a period to deliver the ads. If you cancel during the 30 business days before the campaign is due to start then you will be liable for the cost of the ads scheduled for the period following the notice of cancellation. For example, if you cancel the order 15 business days prior to the serving of the first impression, you will be liable for the first 15 business days of the order.**

### 22.4. Immediate cancellation

If you waive the cancellation notice period and cancel with immediate effect you will be liable to pay the entire value of the order.

### 22.5. Non-standard CPM advertising placement

You may cancel non-standard CPM advertising placement orders, including but not limited to sponsorships, newsletters, promo-mailers and packaged offers, at any time. However, you will still be liable for full cost of the placement for its entire duration as stipulated in the order.

### 22.6. Termination for breach

If a party does not fix any breach of this agreement (failure to comply with it) or an order within 14 days of receiving written notice from the other party to do so, the other party may, without prejudice to any of its rights:

- claim specific performance of this agreement (make the party comply with this agreement); or
- immediately cancel this agreement in writing; and
- claim damages from the other party, including any claim for any fees already due.

Immediate termination in other circumstances. Either party may immediately end this agreement at any time by giving the other notice in writing if:

- the other is insolvent (bankrupt), or has some legal disability, for example, if they are placed under administration;
- the other takes steps to deregister itself (close down) or is deregistered;
- the other makes any settlement or arrangement with its creditors;
- the other fails to pay a court order against it (does not satisfy a writ of execution) for more than one million rand (or equivalent), within 21 days;
- anything analogous to the foregoing occurs in any applicable jurisdiction, which is not dismissed in 21 days;
- termination is necessary to comply with any applicable law or government instruction; or
- the parties agree.

#### **22.7. Severability**

This clause is separate and divisible from the rest of this agreement and remains effective even if this agreement ends or is invalid.

### **23. Effect of termination**

#### **23.1. Amounts due to us become due and payable**

On termination, cancellation, or expiry this agreement, all amounts due to us for services rendered or goods received before termination will become due and payable even if we have not yet invoiced them. You may not withhold the amounts for any reason unless an arbitrator directs otherwise.

#### **23.2. Post termination assistance**

Following termination, you may take advantage of any post-termination assistance that we may generally make available (such as data retrieval arrangements). We may provide you with post-termination assistance, but we will not be under an obligation to do so. Your right to take advantage of any post-termination assistance will depend on your acceptance of and compliance with any additional fees, conditions or terms that we may impose for such assistance.

#### **23.3. No expectation**

We acknowledge and confirm that no expectation has been created by anyone, by the agreement or any other agreement, entitling us or you to expect the renewal or extension of the term of any agreement.

#### **23.4. Severability**

This clause is separate and divisible from the rest of this agreement and remains effective even if this agreement ends or is invalid.

### **24. Resolving disputes**

#### **24.1. Definitions.** For the purposes of this clause:

AFSA means the Arbitration Foundation of Southern Africa (or its successor or body nominated in writing by it in its place);

#### **24.2. Notifying each other**

There will be a dispute about or from this agreement if a party writes to the other about it and asks for it to be resolved under this clause. The parties must refer any dispute to be resolved by:

- negotiation (direct talks to try and agree how to end the dispute); failing which
- mediation (talks in which a neutral third party tries to help the parties agree how to end the dispute); failing which
- arbitration (a hearing after which a neutral third party makes a binding decision about the dispute).

### **24.3. Negotiation**

Each party must make sure that their chosen representatives meet within 10 days of notification, to negotiate and try to end the dispute by written agreement within 15 more days.

### **24.4. Mediation**

If negotiation fails with any entity of ours located in South Africa, the parties must refer the dispute to mediation under AFSA's rules.

### **24.5. Arbitration**

If mediation fails with any entity of ours located in South Africa, the parties must refer the dispute within 15 days to arbitration (including any appeal against the arbitrator's decision) under AFSA's latest rules for expedited arbitrations. The arbitration will be held in English in Cape Town. The parties will agree and appoint one arbitrator. If the parties cannot agree on the arbitrator within 10 days after the referral, the secretariat of AFSA will appoint the arbitrator.

### **24.6. Legal costs**

Any legal costs (attorneys and advocates fees and the costs of experts and witnesses) incurred by the parties in the arbitration will be recoverable on the attorney and own-client scale.

### **24.7. Costs of arbitration**

The costs of the arbitration proceedings, including the fees of the arbitrator/arbitrators, will be borne equally between the parties, unless the arbitrator's award provides otherwise.

### **24.8. Periods**

The parties may agree in writing to change the periods for negotiation or mediation.

### **24.9. Urgent interim relief**

This clause will not stop a party from applying to court for urgent interim relief (temporary help) while the dispute resolution process is being finalised. An example might be an interdict (type of court order).

### **24.10. Severability**

This clause is separate and divisible from the rest of this agreement and remains effective even if this agreement ends or is invalid

## **25. Notices and domicile**

### **25.1. Notices**

The parties will send all notices, authorisations, disclosures, acknowledgements, or requests by hand delivery, prepaid registered post, fax, or email to an address or number given in the specific order.

### **25.2. Service (delivery) address for legal documents**

Each party chooses its street addresses and numbers as its domicile citadel et executant (its address for the service of any document used in legal action) for this agreement.

### **25.3. Change of addresses or numbers**

Each party may change the addresses or numbers in the specific order to any other addresses or numbers in the same country by writing to the other party 14 days before the change.

### **25.4. Deemed delivery**

Notice will be considered to be delivered on the date shown on any hand-delivered, prepaid registered post, courier, fax or email confirmation of delivery.

### **25.5. Notice actually received**

If a party actually receives any notice or other communication, this will be good enough.



## **26. Force majeure**

### **26.1. Parties not liable**

No party is responsible for any breach of this agreement caused by circumstances beyond its control, including flood, fire, earthquake, war, tempest, hurricane, industrial action, government restrictions or 'acts of God'.

### **26.2. Party affected to notify other party**

If there is an event of force majeure, the party affected will tell the other immediately of:

- the cause, nature and extent of the circumstances;
- the expected duration of the circumstances; and
- the extent to which its performance will be affected;

and they will meet within seven days to negotiate other ways to carry out any affected responsibilities under this agreement. The parties will continue to comply with the responsibilities that are not affected by the circumstances.

### **26.3. Right to cancel**

If a party cannot fulfil a material (significant) part of its responsibilities under this agreement for more than 30 days because of force majeure, the other party may cancel this agreement, without liability to the affected party, on seven days' written notice.

## **27. General**

### **27.1. Entire agreement**

The agreement is the entire agreement between the parties on the subject.

### **27.2. Signed in part**

The agreement and orders may be signed in two or more counterparts, and the signed counterparts, taken together, will constitute a binding agreement between the parties

### **27.3. Changes to the terms**

We may change the terms at any time and where this affects your rights and obligations, we will notify you of any changes by email. If you do not agree with the change you must stop using the services and any goods that have not been fully paid for. If you continue to use the services or goods that have not been fully paid for following notification of a change to the terms, the changed terms will apply to you and you will be deemed to have accepted such terms.

### **27.4. Changes to any third party software licence agreement**

If applicable, we will notify you of any changes to any third party software licence or partner terms by placing a notice in a prominent place on our website or notifying you by email. The updated third party software licence or partner terms will be effective immediately and you will be deemed to have accepted them upon notification.

### **27.5. Waiver (giving up of rights)**

Any waiver we may allow you will not affect or substitute any of our rights against you.

### **27.6. Severability**

If any term is void (invalid), unenforceable, or illegal, the term may be severed (removed) from and will not affect the rest of this agreement if it does not change its purpose.

### **27.7. Governing law**

The agreement will be governed by and construed in accordance with the laws of South Africa;

### **27.8. Jurisdiction**

You consent to the jurisdiction of the Magistrate's Court in respect of any action or proceedings that we may bring against you in connection with this agreement, even if the action or proceedings would

otherwise be beyond its jurisdiction without prejudice to our right to institute any action in any other court having jurisdiction.

**27.9. Non-exclusivity**

We may provide any goods or services to any other person or entity. We may exploit our intellectual property subject to our confidentiality obligations.

**27.10. Costs**

Each party is responsible for its own costs of drafting and negotiating this agreement.

**27.11. No right to reference**

Neither party may reference the other in any communications with third Publicity. A party will not make any announcement or statement to the press about this agreement, without first getting written permission from the other party.

**27.12. Acceptance of privacy notice**

By signing this agreement, you confirm that you have read, understood and agree to be bound by the terms of our privacy notice.

**27.13. Survival**

The termination, cancellation, or expiry of this agreement will not affect the enforceability of the terms that are intended to operate after expiry or termination.

**28. Our details**

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Cape Town  
7450  
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