

DStv MEDIA SALES (PTY) LTD



TERMS AND CONDITIONS

1. DEFINITIONS

1.1 In these Terms and Conditions, unless the context otherwise indicates, the following words shall bear the meaning assigned to them:

1.1.1 "**The Advertiser**" means any person, including an association of persons, a partnership, a firm, a company and a close corporation or any other legal entity, making a booking for the selection and purchase of advertising space or time for the televised transmission of an advertisement other than through or by means of an Advertising Agent or Agency and includes its successors in titles and assigns.

1.1.2 "**Advertising Agent**" or "**Agency**" means any person, including an association of persons, a partnership, a firm, a company or close corporation or any other legal entity carrying on the business of making a booking for the selection and purchase of advertising space or time for the televised transmission of an advertisement on behalf of persons intending to advertise.

1.1.3 "**Advertisement Copy**" means any advertising and/or sponsorship material supplied by the Advertiser intended for transmission by the Broadcaster.

1.1.4 "**Affiliates**" means, in relation to a Party, all other parties which directly or indirectly (whether through one or more intermediaries or otherwise) Control or are Controlled by, or are under common Control with, that party or its successors from time to time.

1.1.5 "**Broadcast**" means to transmit, or the transmission of, video content by whatever means whether wire or wireless, including without limitation, the internet and other technology whether by way of satellite, analogue terrestrial, digital terrestrial or cable transmission and specifically includes all forms of transmission by means of a point to point distribution system of video content chosen by a viewer for which reception the viewer may be required to pay an additional fee, where the time of viewing is wholly at the viewer's discretion, also referred to as "on-demand services".

- 1.1.6 "**Broadcaster**" means those entities duly licensed to operate a broadcasting service in the Republic of South Africa.
- 1.1.7 "**Broadcast channels**" means the television channels for which the Company is the agent in procuring sales of airtime.
- 1.1.8 "**The Company**" means DStv Media Sales (Proprietary) Limited (registration number: 95/01791/07), a company with limited liability duly registered and incorporated in terms of the Company Laws of the Republic of South Africa with its principal place of business and registered address at 271 Oak Avenue, Randburg. The Company is the agent of Multichoice, SuperSport, M-Net and the Third Party Channels in procuring sales of airtime on their channels referred to in 1.1.12, 1.1.14 and 1.1.15, respectively for televised advertisement transmission purposes.
- 1.1.9 "**Control**" means in relation to any party, means (i) the holding or beneficial ownership of 50% or more of the ordinary shares (or other like instruments) in that party's issued share capital (or like ownership structure), or the holding of a participation interest of 50% or more in that party where it is unincorporated; or (ii) the right or ability to direct or otherwise control or exercise 50% or more of the voting rights attaching to that party's issued ordinary shares (or other like instruments), or the right or ability to direct or otherwise control or exercise the voting rights attaching to a participation interest of 50% or more in that party; or (iii) the right or ability to appoint or remove 50% or more of the board of directors of that party (or such other body legally representing such party) or to appoint or remove individuals able to exercise 50% or more of the votes exercisable at the meetings of board of directors or such party; or (iv) the right or ability to direct or generally manage, or to cause the direction or general management of, affairs of such party, and the terms "**Controls**" and "**Controlled**" shall have a corresponding meaning; "**DStv Service**" means the subscription broadcast service offered by Multichoice and/or its Affiliates which comprises television channels packaged into a variety of programming packages or bouquets distributed by Multichoice and/or its affiliates and on-demand services, which programming packages and services are branded DStv or such other brand as Multichoice may determine from time to time,

- 1.1.10 **"Event of Force Majeure"** means any circumstance not foreseeable at the date of this Agreement and not within the reasonable control of the party in question, including but not limited to any strike, lock-out or other industrial action (not due to the acts of any party to this Agreement); any destruction (temporary or permanent), breakdown, malfunction, alteration or damage of or to any premises, plant, equipment (including satellite equipment, computer hardware or software) or materials; any civil commotion or disorder, riot, invasion, war or terrorist activity or threat of war or terrorist activity; any action taken by a governmental or public authority of any kind (including not granting a consent, exemption, approval or clearance); and any fire, explosion, storm, flood, earthquake, subsidence, epidemic or other natural physical disaster.
- 1.1.11 **"Matrix"** means the Advertisement Distribution by Territory Matrix, which, inter alia, identifies (i) the regions in which the channel will be received due to a shared feed, and (ii) the satellite by which the signal will be distributed to these regions. The matrix is available on request and may be amended by the Company from time to time.
- 1.1.12 **"M-Net"** means Electronic Media Network (Proprietary) Limited (registration number: 85/02853/06) trading as M-Net, a company with limited liability duly registered and incorporated in terms of the Company Laws of the Republic of South Africa with its principal place of business and registered address at 137 Braam Fischer Drive, Randburg. M-Net is duly licensed as subscription broadcasting service in the Republic of South Africa. M-Net also creates and packages certain proprietary television channels.
- 1.1.13 **"Multichoice"** means Multichoice South Africa (Proprietary) Limited (registration number: 94/09083/07), a company with limited liability duly registered and incorporated in terms of the Company Laws of the Republic of South Africa with its principal place of business and registered address at 251 Oak Avenue, Randburg. Multichoice is duly licensed as a subscription broadcasting service in the Republic of South Africa .
- 1.1.14 **"SuperSport"** means Supersport Pty Ltd (registration number: 1997/04108/07) trading as Supersport, a company with limited liability duly registered and incorporated in terms of the Company Laws of the Republic of South Africa with its principal place of business and registered address at

239 Oak Avenue, Randburg Supersport is the provider of certain proprietary television channels in the Republic of South Africa.

1.1.15 **"Third Party Channel"** means a television channel broadcast by Multichoice as part of the DStv Service which channel has been created and packaged by a party other than M-Net and SuperSport, and **"Third Party Channel Provider"** shall have the corresponding meaning.

1.1.16 **"Working Day"** means Monday to Friday inclusive in each week except Public Holidays in the Province of Gauteng.

1.2 In these Terms and Conditions, any reference to one gender shall include the other and words importing the singular shall include the plural and vice versa. Headings appearing in these Terms and Conditions are for reference purposes only and shall not affect, dictate, modify or limit the meaning or interpretation of these Terms and Conditions.

2. ADVERTISING PLACEMENT

2.1 PURPOSE:

2.1.1 In terms of this Agreement the Company undertakes to book and place advertisements provided by the Advertising Agency or the Advertiser as the case may be on the DStv Service in consideration for payment as set out in the applicable rate cards, incorporated herein by reference. Credit facilities may be granted to the Advertising Agency or Advertiser as the case may be to facilitate payment as envisioned in this Agreement.

2.1.2 An Advertising Agency shall at all times be deemed to contract as principal with the Company in all respects and as such an Advertising Agency that enters into this Agreement shall itself be personally, solely and exclusively liable and responsible for payment of any fees, charges, accounts and the like due to the Company in terms of this Agreement.

2.1.3 Should an Advertiser terminate, suspend or otherwise cancel the services of an Agency prior to the payment of all or any fees, charges and accounts due to the Company in terms of any bookings made by the Advertising Agent on behalf of the Advertiser, the Agency that made such booking shall remain liable for settlement of such fees, charges and accounts despite the termination, suspension or cancellation of any agreement between the

Agency and Advertiser and notwithstanding the appointment of a new Advertising Agent by such Advertiser. No dispute, litigation, claims or similar conflict or disagreement between an Advertising Agent and an Advertiser, on whose behalf any booking has been made, shall distract from the Advertising Agent's liability for payment of fees, charges and accounts due to the Company.

2.2 **DELIVERY:**

Delivery of the Advertisement Copy shall be deemed to have been made only when the Company's and/or the Broadcaster's technical requirements have been met and the relevant transmission instructions have been given.

2.3 **TECHNICAL REQUIREMENTS:**

2.3.1 The Advertisement Copy must be delivered to the Company not less than 5 (five) full working days before the date of the intended transmission in the following formats:

2.3.1.1 Transmission copy — SP Beta Dolby On, or via acceptable digital streaming methods; and

2.3.2 The Advertiser (or, where applicable, the Advertising Agent) shall ensure that the Advertiser or Advertising Agent has cleared and paid for all rights (and associated usage rights) in respect of any musical works and/or sound recordings contained in the Advertisement Copy or in relation to the recording, synchronisation, reproduction, production, broadcast, transmission and distribution of the Advertisement Copy and has delivered (together with the Advertisement Copy as provided for in 2.4.1) proof that it has complied with the requirements of all performing rights societies, including the SA Music Rights Organisation LTD (SAMRO), Britain's Performing Rights Society (PRS) and/or where applicable, any other regulatory body or bodies.

2.3.3 Notwithstanding anything to the contrary in this agreement, if the Company and/or the Broadcaster, in its/their sole and absolute discretion, decide/s that the Advertisement Copy is not technically satisfactory in any respect, the Company shall notify the Advertising Agency or the Advertiser as the case may be of same in which event the Advertising Agency or the Advertiser as

the case may be shall be obliged to supply an acceptable alternative copy as soon as possible and in any event not less than 3 (three) full working days prior to the date of the intended transmission. Should an alternative copy not be supplied or not be accepted by the Company and/or Broadcaster in its/their sole and absolute discretion, the Company shall be entitled to be paid by the Advertising Agency or the Advertiser as the case may be in full for the advertising time booked.

2.3.4 Notwithstanding the provisions of this clause, the Company, in its sole and absolute discretion, may make special arrangements for booking/s made at short notice.

2.4 **COMPLIANCE REQUIREMENTS:**

2.4.1 The Advertiser is responsible for ensuring that advertisements to be transmitted on the Broadcast Channels:

2.4.1.1 are correctly and accurately described at the time of booking;

2.4.1.2 are in full compliance with the code and procedures of the Advertising Standards Authority of South Africa's ("ASA") and those of any other relevant regulatory body;;

2.4.1.3 meet all the technical requirements of the Company and/or the Broadcaster and/or are accompanied by proper transmission instructions;

2.4.1.4 do not advertise more than one product;

2.4.1.5 comply with all legal and regulatory requirements applicable to the Broadcast Channels; and

2.4.1.6 do not contain any material which is unlawful, defamatory or obscene.

2.4.2 If in the Company's or Broadcaster's opinion an advertisement does not comply with the ASA's codes and procedures in any respect, and an Advertiser disputes such opinion, the Advertiser may refer the advertisement for pre-clearance, at the Advertiser's cost, to the Association for Communication and Advertising ("ACA"), for a decision on whether the advertisement conforms with the ASA Code. If the ACA gives an unqualified

finding that the advertisement complies with the ASA codes and procedures, and if the advertisement is otherwise in compliance with this agreement, the Company and/or the Broadcaster shall determine in its/their sole and absolute discretion whether to accept the advertisement. The Company and/or the Broadcaster reserve/s the right to restrict any repeat transmissions of the same advertisement.

2.5 ACCEPTANCE OF ADVERTISEMENTS AND DISCRETION OF THE COMPANY:

- 2.5.1 The decision to broadcast any Advertisement Copy on the DStv Service is at the sole discretion of the Company and the Broadcaster. Nothing contained in this agreement creates an obligation to broadcast Advertisement Copy which the Company and/or the Broadcaster may deem unsuitable for the DStv Service.
- 2.5.2 Notwithstanding full compliance by the Advertiser with all the requirements set out in this agreement, the Company or the Broadcaster may, in its sole and absolute discretion, decline to transmit an advertisement on the DStv Service if the Advertisement Copy, in the opinion of the Company or the Broadcaster contains any material which it considers to be unsuitable for the DStv Service, including (without limitation) material which may be offensive to some viewer, damaging to the reputation or brands of the Broadcaster or which is of a controversial nature for political, religious or other reasons. The Company will notify the Advertiser in writing of the decision to decline to transmit an advertisement, but will not be required to provide any reasons for the exercise of its discretion.
- 2.5.3 In respect of Advertisements which have been accepted for broadcast on the DStv Service, the Company and/or the Broadcaster may suspend or cancel any repeat transmissions of an advertisement upon receipt of a complaint concerning that advertisement, or if it otherwise comes to the attention of the Company and/or the Broadcaster that the advertisement is in breach of any provision of these terms and conditions, or is otherwise unacceptable.
- 2.5.4 If the Company and/or the Broadcaster receives a complaint that an advertisement contravenes the ASA Code, or it otherwise comes to the attention of the Company and/or the Broadcaster that the complaint does not

comply with the ASA Code, that Company or Broadcaster may suspend the broadcast of the advertisement and refer that advertisement and complaint(s) to the ASA for a decision. If the ASA issues an unqualified order that the advertisement is not in breach of the ASA Code, upon receipt of the decision from the ASA, the Company and/or the Broadcaster will lift the suspension on the transmission of the advertisement.

2.5.5 In the event that the Company and/or the Broadcaster decides to suspend, restrict or cancel any repeat transmission of an advertisement, for any reason, the Company shall notify the Advertising Agency or the Advertiser as the case may be of that decision in writing. The suspension, restriction or cancellation may occur with immediate effect.

2.5.6 The Company and/or the Broadcaster reserve/s the right, in its/their sole and absolute discretion and without incurring any liability, to decline to transmit any advertisement without giving any reason whatsoever in writing or otherwise for so doing.

2.5.7 In the event that any advertisement is suspended, restricted or not accepted for broadcast the Advertising Agency or the Advertiser as the case may be shall not be liable to pay for any booked advertisement not televised by the Company and/or the Broadcaster.

2.6 **NON-LIABILITY FOR DECISIONS BY THE ASA AND OTHER REGULATORY BODIES**

The Company and the Broadcaster shall not be held responsible for any additions to, changes in, or deletions from the Advertisement Copy as required by the ASA and/or any other regulatory body and/or its successor/s in title and/or for the withholding or withdrawal of approval of any advertisement by the ASA and/or any other regulatory body and/or its successor/s in title and/or for any costs or consequential loss/es resulting from any such action of the ASA and/or any other regulatory body and/or its successor/s in title.

2.7 **GRANTING OF CREDIT:**

An Advertising Agent or Advertiser, as the case may be, shall be entitled to credit facilities from the Company only if such Advertising Agency or Advertiser, within the sole and absolute discretion of the Company, meets the credit granting

requirements of the Company from time to time, including the receiving and putting into place of such securities as the Company may from time to time in its sole and absolute discretion require.

3. ADVERTISING TRANSMISSIONS

3.1 BOOKING APPLICATIONS & AMENDMENTS

3.1.1 Booking applications or amendments to booking applications must be received from the Advertiser or Advertising Agent by the Company in writing no later than 7 (seven) working days prior to the intended transmission date.

3.1.1.1 In the event that booking applications or amendments are received later than 7 (seven) working days prior to broadcast, the Company may (at its discretion) endeavour to transmit the relevant advertisements at the intended time, but accepts no responsibility or liability in the event of incorrect booking schedules, incorrect material being transmitted, material not being transmitted, or any other administrative errors whatsoever.

3.1.1.2 The Company does not guarantee that the times and/or dates of transmission will be adhered to. If an advertisement is not transmitted on the day and in the time booked according to the rate agreed, the Company will endeavour to offer a transmission at some other time and/or some other date instead which may be acceptable to the Advertising Agency or the Advertiser as the case may be. If any offer of such a transmission is not acceptable (or not made), the original booking shall be cancelled and the Advertising Agency or the Advertiser as the case may be shall have no claim against the Company and/or the Broadcaster in respect of non-transmission or for any expenses or damages whatsoever incurred as a result thereof. The Company shall make no charge to the Advertising Agency or the Advertiser as the case may be for such booking but the Company shall be entitled to be paid by the Advertising Agency or the Advertiser as the case may be any fees and/or expenses the Company has incurred in respect of any facilities arranged or provided in terms of this booking.

3.1.2 In the event of any significant alteration(s) to the programme schedule, the Company reserves the right to re-establish the breaks affected. Where there

is a current booking in an affected break, the Company will consult with the Advertising Agency or the Advertiser as the case may be and endeavour to agree an alternative transmission time in any new break.

3.1.3 The Company and/or the Broadcaster shall not incur any liability for any failure to transmit all or any part of any advertisement for any reason, or for any error in the advertisement transmitted, except that if a total failure to transmit or an incorrect transmission is due to the fault of the Company and/or the Broadcaster, the Company shall consult with the Advertising Agency or the Advertiser (as the case may be) to book an acceptable alternative transmission slot.

3.1.4 Advertisements appearing within approximately 30 (thirty) minutes of the segment booked will be regarded as appearing within such segment and will accordingly not constitute a valid defence or cause by which the Advertising Agency or the Advertiser as the case may be may withhold payment due in terms of this Agreement.

3.1.5 The Company will use its reasonable endeavours to adhere to advertisement rotation instructions but shall not be liable for any failure to comply with those instructions

3.2 **CANCELLATIONS**

3.2.1 Cancellations to booking applications must be received from the Advertising Agent or Advertiser by the Company in writing no less than 28 (twenty eight) days prior to the intended transmission date, failing which the Advertiser shall pay 100% of the total airtime value of such bookings:

3.2.1.1 In the event of booking cancellations being received later than 7 (seven) working days prior to the intended transmission, the Company accepts no responsibility or liability for the transmission of any material incorrectly or erroneously.

3.3 Unless the advertisement transmission bookings are cancelled in accordance with the provisions of Clause 3.2.1 above, an Advertising Agency or the Advertiser as the case may be who fails to deliver any Advertisement Copy in accordance with 2.2 and 2.3 above, remains liable for payment in full whether or not any of its advertisements are transmitted during the advertisement slots booked.

4. **RISK**

4.1 All risk in the delivery of the physical storage devices and other materials shall vest with the Advertiser or Advertising Agency as the case may be and the Company shall not assume any liability on any basis whilst it is stored on its premises. The Company, however, commits to safeguard it with due care as if it is its own property.

4.2 All risk in the televised transmission of the Advertisement Copy and the content contained therein, shall vest with the Advertiser or Advertising Agency as the case may be and the Advertiser and/or Advertising Agency, each indemnify the Company, its licensees and assigns, and the directors, employees and agents of the foregoing in full from any and all claims liabilities, damages and costs (including outside legal fees and court costs) arising from third parties with respect thereto.

5. **MATERIALS AND PROPERTY LIABILITY**

5.1 While every reasonable care will be taken in respect of the Advertisement Copy, goods or equipment, the Company shall not accept liability and will not be held liable for the delay in delivery, loss or damage thereof, whether in the Company's and/or the Broadcaster's control or in transit and whether or not such Advertisement Copy, goods or equipment are supplied by the Company.

5.2 However, unless otherwise instructed, any delivered Advertisement Copy will be destroyed by the Company without reference to the respective Advertising Agency or the Advertiser as the case may be if not collected within 2 years after receipt thereof.

6. **COMPENSATION**

6.1 **RATES, CHARGES AND CHANGES:**

6.1.1 Subject to the provisions of 6.3 below, all advertisement transmission bookings are accepted on the understanding that they will be paid for at the rate actually in force at the date of transmission.

6.1.2 While as much notice as possible will be given of all changes, the Company reserves the right to change the advertisement rates and/or any of these Terms and Conditions by giving 1 (one) months or 30 (thirty) days' notice

(new rates as appear on the Company's Rate Cards shall be regarded as sufficient notice as envisaged herein), and in the event of such a change, the rates payable and the Terms and Conditions applicable shall be those in force at the time of the advertisement transmission. The Advertising Agent or the Advertiser as the case may be shall at all times ensure that it is in possession of the latest Rate Cards in force from time to time.

6.1.3 Scheduled programming may be subject to change and in instances where the change is deemed to be significant in either rating or audience profile, the Company reserves the right to renegotiate all slots and rates booked around such rescheduled programmes.

6.1.4 The rates quoted on programme schedules issued by the Company must be related and read subject to the Rate Cards issued by the Company from time to time having relevance thereto.

6.1.5 All rates quoted on the Rate Cards issued by the Company are VAT (value added tax) exclusive.

6.1.6 The rates as quoted on the Rate Cards issued by the Company are solely for the information of the Advertising Agent or the Advertiser, as the case may be, and do not constitute an offer by the Company.

6.2 **OVERDUE PAYMENTS**

6.2.1 Notwithstanding anything to the contrary herein contained, all accounts shall be paid not later than 45 (forty five) days from the date of statement and if the Advertising Agency or the Advertiser as the case may be is in default of payment, the Company shall be entitled, without prejudice to its other rights and remedies for breach of Agreement, to refuse further transmissions of the advertisement and/or to deny the Advertising Agency or the Advertiser as the case may be the use or benefit of any other facilities and/or services procured in terms of this Agreement, and/or to cancel this Agreement and to recover any outstanding amounts which shall become immediately due, owing and payable. In such an event, the Advertising Agency or the Advertiser as the case may be shall pay all costs of the Company on the Attorney and own Client scale incurred in the recovery of such amounts, interest at the rate prescribed in these Terms and Conditions for overdue accounts as well as collection commission. It is further recorded that nothing contained in these

Terms and Conditions shall prevent the Company from ceding any and/or all of its claims against the Advertising Agency or the Advertiser as the case may be to a third party.

- 6.2.2 Any account not paid on due date in accordance with the date of payment as prescribed in 6.2.1 above shall be subject to interest being levied thereupon at the rate 1.5% (one and a half per cent) above the prevailing prime lending interest rate as quoted and published from time to time by ABSA Bank Limited in South Africa.
- 6.2.3 In the event of Advertising Agency or the Advertiser, as the case may be, not paying any account on due date in accordance with the terms as prescribed in 6.2.1 above, the Company reserves the right, without prejudice to all and/or any of its other rights, not to accept further bookings from the Advertising Agency or the Advertiser as the case may be.
- 6.2.4 Failure by the Company to render or dispatch Statements will not affect the obligation of the Advertising Agent or the Advertiser as the case may be to make payment as required in accordance with these Terms and Conditions.
- 6.2.5 The existence of a query of any individual item in an account will only affect the due date of payment of that individual item. The Advertising Agency or the Advertiser as the case may be shall notify the Company of any query in writing within 7 (seven) working days of receipt of the account. This notification must include the reason for the query and should be addressed to the CFO. The Advertising Agency or the Advertiser as the case may be may not bring any item into query after this time. In the event that a credit note and re-invoice is required, then the balance will be paid within 7 (seven) working days of the new Statement date. In the event of a query being resolved in favour of the Company, the amount in query will be subject to the full rate of any interest payable by virtue of 6.2.2.

7. WARRANTIES AND INDEMNITY

- 7.1 The Advertising Agency or the Advertiser as the case may be represents, warrants and undertakes that:
- 7.1.1 It will be responsible for obtaining and paying for, and has obtained and paid for, all necessary licenses, consents and clearances for the use and

transmission of the Advertisement Copy, including but not limited to any lyrics and/or musical works and/or sound recordings synchronised thereto and/or recorded and/or appearing therein, any copyright material owned by any third party appearing therein and/or the appearance of any person and/or property owned by a third party contained therein; and

7.1.2 No Advertisement Copy will breach the trademark copyright, personality rights, rights of association or any other rights of another, nor shall it be defamatory towards any person and/or entity whomsoever; and

7.1.3 The Advertisement Copy or advertisement broadcast on behalf of the Advertiser will not be illegal or actionable for any reason and will comply with all legal and regulatory requirements applicable thereto. It indemnifies and keeps the Company and/or the Broadcaster and/or its/their licensees and assigns and the directors, officers, employees and agents of the foregoing indemnified in full against all actions, proceedings, costs (including outside legal fees and court costs, damages, expenses, penalties, claims, demands and liabilities of any kind (including those arising from any third party) arising from any breach of the above warranties and/or arising from the use, recording, broadcasting or transmission of any Advertisement Copy supplied by or transmitted on behalf of the Advertising Agent or the Advertiser as the case may be.

7.1.4 It hereby indemnifies and holds the Company and/or the Broadcaster and/or its/their licensees, and assigns and the directors, officers, employees and agents for the foregoing harmless against any claims for damages to property or personal injuries, infringement of copyright, defamation, losses, legal costs or claims of any kind howsoever arising out of, in respect of or as a result of the use, recording and/or broadcasting and/or transmission of advertisements or the use and/or access by the Advertising Agent or the Advertiser as the case may be of and/or facilities provided by the Company and/or the Broadcaster.

7.2 Notwithstanding anything to the contrary herein contained, the Advertising Agent or the Advertiser as the case may be agrees, confirms and warrants that all its employees from time to time shall have all the necessary and relevant authority to act and liaise with the Company on behalf of the Advertising Agent or the Advertiser

as the case may be and to bind the Advertising Agent or the Advertiser as the case may be to the in terms hereof.

- 7.3 The Advertising Agent or the Advertiser as the case may be indemnifies and holds the Company and/or the Broadcaster and/or its/their employees harmless against any claims for damages and/or costs whatsoever and howsoever arising out of any changes to the Broadcaster's programmes and/or times as advertised.
- 7.4 Should any such claim be made against the Company and/or the Broadcaster, it shall be entirely in the Company's and/or the Broadcaster's discretion as to whether it/they admit/s or deny/ies any such claim and the Company and/or the Broadcaster reserve/s the right to defend any such claim brought against it/them and to proceed to the final end and determination thereof and to lodge any appeal or appeals to any Court or Courts, to which it/they have/has the right to do so and in addition shall have the right to compromise, abandon or settle any claim against it/them and to nominate legal representatives and to brief Counsel in connection therewith, and the Advertising Agent or the Advertiser as the case may be shall be liable for and shall pay all costs, charges and expenses incurred by the Company and/or the Broadcaster in connection therewith or otherwise in addition to all sums of money whether for damages, costs, charges, expenses or otherwise howsoever which the Company and/or the Broadcaster may be ordered to pay to the said Plaintiff in the said action or agree to pay in regard to the said actions on the advice of its/their legal representative/s and/or Counsel/s.
- 7.5 In the event of the Company having incurred any disbursements of whatsoever nature, including that in respect of legal opinions/advices, etc., in the exercise of its sole and absolute discretion as to whether to refuse or allow the transmission of any advertisement in terms of these Terms and Conditions, such disbursements shall be for the sole and absolute account of the Advertising Agent or the Advertiser as the case may be.
- 7.6 Neither the Company nor the Broadcaster make any representations nor gives any warranties or guarantees of any nature whatsoever in respect of the services provided in terms of this Agreement and all warranties, which are implied or residual at common law, are hereby expressly excluded. In particular, the Advertising Agency or the Advertiser specifically acknowledges and agrees that spillover of transmission is an inevitable potential consequence of digital satellite television distribution. As such, neither the Company nor the Broadcaster can and

shall be liable for the consequences of any intended or unintended spillover of transmission into countries, territories or regions outside of those expressly elected for distribution, broadcast and/or transmission by the Advertiser or Advertising Agency.

- 7.7 Where the Advertising Agency or the Advertiser, as the case may be, selects a channel in terms of the Matrix, which channel is distributed by way of a shared feed, it is the responsibility of the Advertising Agency or the Advertiser to obtain all necessary clearances and consents, as set out in clause 7.1.1 above, for those distribution territories.

8. FURTHER RIGHTS AND OBLIGATIONS

- 8.1 The Company shall have the right, in the event of the Advertising Agency committing any act of insolvency in terms of the Insolvency Act as amended, to summarily or in any act by Advertising Agency constituting a breach as regulated by clause 10, to cancel this Agreement and in such instance to revert to the Advertiser and collect any outstanding payments from the Advertiser, without prejudice to any of Company's rights and remedies against the Advertising Agency.
- 8.2 The Company hereby establishes and confirms that an implicit hypothec is placed on all products delivered by the Advertising Agency or Advertiser as the case may be to Company as security for non-payment by any of the aforementioned.
- 8.3 The Advertising Agency or Advertiser as the case may be, may not offset any double payment or incorrect payment made by it to any other party that was due to the Company, by withholding any monies due to the Company for whatever reason on any other accounts. The Advertising Agency or Advertiser as the case may be shall always be personally liable for payment of any advertising bookings made with Company.
- 8.4 No Advertising Agency or Advertiser as the case may be shall, without the prior written consent of the Company first having been had and obtained, publish any information in connection with any advertisement which has been transmitted or is scheduled for transmission by the Broadcaster. The Advertising Agent or the Advertiser as the case may be shall under no circumstances whatsoever use any intellectual property/material belonging to the Company and/or the Broadcaster without its/their written consent first having been had and obtained.

8.5 Unless the Company advises the Advertising Agent or the Advertiser as the case may be to the contrary by giving 1 (one) months written notice in that regard, no additional levy will be payable by the Advertising Agent or the Advertiser as the case may be in respect of the Levy Collection Committee ("**LCC**"). The Company will contribute the ruling percentage to the LCC from its nett income after deduction of any client settlement discounts applicable in terms of these Terms and Conditions.

8.6 The Advertising Agency or Advertiser shall not be entitled to cede or assign any rights and/or obligations, which it may have in terms of this Agreement without the prior written consent of the Company.

9. **FORCE MAJEURE**

9.1 The Company shall not be deemed to be in breach of this Agreement or otherwise liable to the Advertiser or Advertising Agent (as the case may be) as a result of any delay or failure in the performance of its obligations under this Agreement if and to the extent that such delay or failure is caused by an Event of Force Majeure and the time for performance of the relevant obligation(s) shall be extended for the period of such Event of Force Majeure.

9.2 In the event of the Company's activities and/or the Broadcaster's transmission activities or those of its Affiliates being affected, restricted, curtailed or prevented by an Event of Force Majeure, the Company may at any time, notwithstanding anything to the contrary herein contained, forthwith terminate this Agreement without prejudice to the Company's right to be paid by the Advertising Agency or the Advertiser as the case may be in terms of these Terms and Conditions at the time of such termination for services delivered up to the point of termination.

10. **BREACH**

In the event of the material breach of any of the terms and conditions of this Agreement by either party hereto and failure of such party to remedy such breach within 14 (fourteen) days after receipt of a written demand by the aggrieved party to effect such remedy, the aggrieved party shall be entitled to terminate this agreement forthwith without notice to such other party, and such termination shall be without prejudice to any right of the aggrieved party to recover, inter alia, any costs, damages or expense arising from or consequent upon such breach, provided that any breach arising out of an Event of Force Majeure shall exempt the Company from any liability for specific performance or

damages arising out of such breach during the continued existence of such Event of Force Majeure. The entire liability of Company and the Advertising Agency or Advertiser's exclusive remedy for damages from any cause related to or arising out of this Agreement, regardless of the form of action, whether in contract or in delict, will not exceed the aggregate of the fees and charges paid by the Advertising Agency or Advertiser to Company under this Agreement for the placement of the advertisement from which the damage arose.

11. ARBITRATION

11.1 *Separate, divisible agreement*

This clause is a separate, divisible agreement from the rest of the agreement and shall:

11.1.1 Not be or become void, voidable or unenforceable by reason only of any alleged misrepresentation, mistake, duress, undue influence, impossibility (initial or supervening), illegality, immorality, absence of consensus, lack of authority or other cause relating in substance to the rest of the agreement and not to this clause. The parties intend that any such issue shall be subject to arbitration in terms of this clause;

11.1.2 Remain in effect even if the agreement terminates or is cancelled.

11.2 *Disputes subject to arbitration*

Any dispute arising out of or in connection with this agreement or the subject matter of this agreement, including, without limitation, any dispute concerning –

11.2.1 the existence of the agreement apart from this clause;

11.2.2 the interpretation and effect of the agreement;

11.2.3 the parties' respective rights or obligations under the agreement;

11.2.4 the rectification of the agreement;

11.2.5 the breach, termination or cancellation of the agreement or any matter arising out of the breach, termination or cancellation;

11.2.6 damages in delict, compensation for unjust enrichment or any other claim, whether or not the rest of the agreement apart from this clause is valid and enforceable;

shall be decided by arbitration as set out in this clause 11.

11.3 *Appointment of arbitrator*

Such arbitration shall be by a single arbitrator who shall be:

11.3.1 selected by agreement between the parties within 5 days of either party calling for agreement, failing such agreement;

11.3.2 nominated on the application of either party by the chairman for the time being of the Arbitration Foundation of Southern Africa.

11.4 *Award binding*

The award of the arbitrator shall be final and binding on the parties.

11.5 *Confidentiality of arbitration proceedings*

11.5.1 The parties, any arbitrator, and their agents or representatives, shall keep confidential and not disclose to any non-party the existence of the arbitration, non-public materials and information provided in the arbitration by another party, and order or awards made in the arbitration, except to the extent necessary to enforce the order or award.

11.5.2 This confidentiality provision survives the termination of the agreement and of any arbitration brought pursuant to the agreement. This confidentiality provision may be enforced by an arbitral tribunal or any court of competent jurisdiction, and an application to court to enforce this provision shall not waive or in any way derogate from the agreement to arbitrate.

12. **GENERAL**

12.1 This Agreement shall constitute the entire agreement between the parties with respect to the subject matter hereof, and shall supersede any and all prior agreements, representations or understanding between the parties, whether written or oral. No terms and/or conditions other than those set forth herein shall be binding upon the Company unless it is reduced to writing and signed by the

Company and the Advertising Agency or the Advertiser as the case may be or their duly authorized representatives.

- 12.2 Neither party shall be bound by any express or implied term, representation, warranty, promise or the like not recorded herein, whether it induced the Agreement between the parties or not.
- 12.3 No extension of time or waiver or relaxation of any of the provisions or terms of this Agreement, bill of exchange or other document issued or executed pursuant to or in terms of this Agreement, shall operate as an estoppel against either party hereto in respect of its rights under this Agreement, nor shall it operate so as to preclude either of the parties thereafter from exercising its rights strictly in accordance with this Agreement.
- 12.4 Should any of the terms and conditions of this Agreement be held to be invalid, unlawful or unenforceable, such terms and conditions will be severable from the remaining terms and conditions which will continue to be valid and enforceable.
- 12.5 This Agreement shall be interpreted, construed and executed in terms of the laws of the Republic of South Africa and shall, subject to Clause 11 above, be subject to the jurisdiction of any competent court in South Africa.
- 12.6 Nothing in this Agreement shall be deemed to constitute a joint venture, partnership or relationship of agency or employment between the parties.