



## STANDARD TERMS OF BUSINESS

- 1 **Definitions.** In these terms the following expressions bear the meanings assigned to them and cognate expressions bear corresponding meanings:
- 1.1 **"Affiliate"** means in respect of the Client, its wholly owned subsidiaries and any company of which it is a wholly owned subsidiary, as well as any wholly-owned subsidiary of such holding company;
- 1.2 **"Agreement"** means the Agreement between Alphabet Soup and the Client comprising these Standard Terms of Business, together with any Approved Reference Documents;
- 1.3 **"Alphabet Soup's Commission"** means the commission due by the Client to Alphabet Soup for the provision of the Services, expressed as a percentage of the Monthly Ad Spend which shall be 16,5% (sixteen comma five percent) or such other amount as may be stipulated in an Approved Reference Document;
- 1.4 **"Appointment Schedule"** means a confirmation of appointment schedule signed by the Client which contains certain variable information applicable to these Standard Terms of Business;
- 1.5 **"Approved Reference Documents"** means any Appointment Schedule, strategy, media concept or other proposal, implementation plan, media plan or schedule, implementation plan or schedule or similar document prepared by Alphabet Soup and signed off by an Authorised Representative on the basis contemplated in clause 9;
- 1.6 **"Authorised Representatives"** means the representatives of the Client authorised to approve Alphabet Soup's work and Material, being any director/member, marketing manager or brand manager of the Client, as the case may be (or the Client himself in the case of an individual) or such other person as may be authorised by the Client in the Approved Reference Documents or on written notice to Alphabet Soup, , as same may be changed by the Client on no less than 7 (seven) days written notice to Alphabet Soup;
- 1.7 **"Commencement Date"** means the date on which Alphabet Soup actually commences providing the Services, or such other date as may be specified in the Approved Reference Documents;
- 1.8 **"Committed Budget"** means the committed advertising budget which the Client intends spending during the Committed Budget Period, as specified in the Approved Reference Documents;
- 1.9 **"Committed Budget Period"** means the Client's Financial Year, or such other period as may be stipulated as such in the Approved Reference Documents;
- 1.10 **"Financial Year"** means the financial year, or part thereof, of the Client;
- 1.11 **"Hourly Rates"** means Alphabet Soup's standard hourly rates from time to time, provided that such rates are subject to escalation in January each year during the currency of this Agreement and shall be subject to annual escalation, as notified by Alphabet Soup to the Client from time to time in writing;
- 1.12 **"Initial Period"** means a period of 12 (twelve) months, or such other period as may be stipulated in the Approved Reference Documents;
- 1.13 **"Material"** means any artwork, copy, storyboard ,designs, concepts, drawings, plans, proposals, photographs, reference material, templates, ideas, layouts and similar material;
- 1.14 **"MBA Commission"** means the commission due by the Client to the Media Buying Agency for its role in the placement of advertising pursuant to this Agreement, expressed as a percentage of the Monthly Ad Spend, which shall stipulated in the Approved Reference Documents;
- 1.15 **"Media Buying Agency"** means the entity specified as such in the Approved Reference Documents;
- 1.16 **"Minimum Monthly Payment"** means the amount specified as such in the Approved Reference Documents;
- 1.17 **"Monthly Ad Spend"** means the gross amount actually expended by the Client in any calendar month in respect of its advertising placed pursuant to this Agreement;
- 1.18 **"Services"** means the media consulting and other services to be provided by Alphabet Soup to the Client, as more fully described in the Approved Reference Documents. For the purposes of clarity, it is recorded that any services not listed in the Approved Reference Documents shall be deemed out of scope and Alphabet Soup may charge additional amounts for such services;

- 1.19 "Staff" means any director, employee, agent, consultant, contractor or other representative of a party; and
- 2 **Appointment.** The Client hereby appoints Alphabet Soup, who hereby accepts such appointment, to be the exclusive provider of the Services on the terms and subject to the conditions of this Agreement.
- 3 **Duration.** This Media Services Agreement shall commence on the Commencement Date and shall continue thereafter and shall continue thereafter for the Initial Period, whereafter it shall automatically renew for further periods of 12 (twelve) months, subject to the right of either party to terminate this Agreement at the end of the Initial Period, or any subsequent 12 (twelve) month period, provided that written notice of termination is given no less than 90 (ninety) days prior to the end of any such period.
- 4 **Services.** Alphabet Soup shall provide the Services to the Client on the basis set out in this Agreement. Should the Client wish to appoint Alphabet Soup to provide services in addition to the services, the parties shall agree in writing as to the scope of such services and the fees payable by the Client in respect thereof. Subject to the agreement aforesaid, all such additional services shall be provided in accordance with the provisions of this Agreement.
- 5 **Appointment of Media Buying Agency.** The parties hereby appoint the Media Buying Agency as their appointed media buying agency for the purposes of this Agreement. Such appointment may only be changed with the written agreement of the parties.
- 6 **Committed Budget.**
- 6.1 The Client acknowledges that Alphabet Soup's Commission, and the amount of time spent by Alphabet Soup in providing the Services is directly based on the Client's Committed Budget. Accordingly, should the Client fail to spend its Committed Budget during any Financial Year, the Client shall be obliged to top up Alphabet Soup's Commission so that it is equal to the amount Alphabet Soup would have earned if the Client had spent its committed budget.
- 6.2 By no later than the end of January each year, the Client shall notify Alphabet Soup of its proposed Committed Budget for the ensuing 12 (twelve) month period of this Agreement. Should such Committed Budget be less than 10% more than the preceding year, Alphabet Soup shall, unless agreed otherwise by the parties in writing, be entitled to adjust the Alphabet Soup Commission such that its income increases by no less than 10% (ten percent) year on year.
- 7 **Invoicing and Payment.** In this regard the Client acknowledges that:
- 7.1 the Media Buying Agency will invoice the Client on a monthly basis for all amounts payable by the Client in respect of its Monthly Ad Spend and all such amounts shall be due and payable within 30 (thirty) days of the date of the Media Buying Agency's invoice;
- 7.2 the amount contemplated in clause 7.1 shall include the gross amount payable for the Client's advertising, comprising the net amount payable to the media owners with whom the advertising is placed, and:
- 7.2.1 the Alphabet Soup Commission; and
- 7.2.2 the MBA Commission.
- 7.3 it shall pay all amounts due in respect of the Monthly Ad Spend to the Media Buying Agency and accordingly, due and proper payment by the Client to the Media Buying Agency in terms of this clause shall discharge in full the Client's payment obligation to Alphabet Soup in respect of Alphabet Soup's Commission, irrespective of whether Alphabet Soup actually receives such payment from the Media Buying Agency.
- 8 **Consulting fees, Minimum Monthly Payments and disbursements.**
- 8.1 In addition to Alphabet Soup's Commission, it is recorded that Alphabet Soup may from time to time:
- 8.1.1 provide services on a time and materials basis, in which event Alphabet Soup shall notify the Client that an additional fee is payable and such services shall be subject to the prior written approval of the Client. Such additional services shall be provided at Alphabet Soup's Hourly Rates;
- 8.1.2 acquire goods and/or services or incur disbursements on the Client's behalf. The Client shall reimburse all reasonable expenses and disbursements as are properly incurred by Alphabet Soup in providing the Services. Such expenses include but are not limited to goods and services purchased on the Client's behalf, travel, communications, stationery, printing, storage media, presentation material and the like. Notwithstanding the foregoing, unless otherwise specifically agreed with the Client in writing, Alphabet Soup is not obliged to make payments on the Client's behalf to Alphabet Soup's suppliers and Alphabet Soup reserves the right to request payment of any such amounts in advance. Where Alphabet Soup has paid monies to a supplier on the Client's behalf and for which Alphabet Soup has not been reimbursed by the Client, such amounts shall bear interest at the rate contemplated in clause 8.4; and
- 8.1.3 be entitled to Minimum Monthly Payments over and above any Commissions which may be payable.

- 8.2 All amounts contemplated in clause 8.1 shall be invoiced by Alphabet Soup monthly in arrears and shall be payable by the Client, within 7 (seven) days of receipt by the Client of such invoice. Should Client fail to raise any query on Alphabet Soup's invoice within 7 (seven) days of receipt thereof, it shall be obliged to pay such invoice prior to having such query resolved.
- 8.3 To the extent that any supplier contracted by Alphabet Soup on the Client's behalf requires payment in advance or at various stages of production, the Client or its Media Buying Agency shall be responsible for making such payment to such supplier directly.
- 8.4 All outstanding amounts (whether due in terms of clauses 7.3 or this clause 8) shall bear interest at the prime rate (percent, per annum) from time to time publicly quoted by Nedbank Limited, as certified by any manager of such bank, whose appointment and authority it shall not be necessary to prove, calculated daily and compounded monthly in arrears, from the due date of such payment to the date of actual payment, both days inclusive.
- 9 **Approvals and authorities**
- 9.1 Any reference in this Agreement to the Client's "Written Approval" shall mean written approval by Authorised Representatives of the Client. Any change to the Authorised Representatives will be notified by the Client to Alphabet Soup in writing.
- 9.2 For the purposes of this Agreement "**Written Approval**" shall include approval signified by:
- 9.2.1 a fax on the Client's letterhead bearing the signature of an Authorised Person;
- 9.2.2 a scanned, signed document; and
- 9.2.3 an e-mail emanating from the business e-mail address of an Authorised Person;
- 9.3 Alphabet Soup shall, after obtaining the Client's general Written Approval of its campaign plans, submit to the Client for its specific Written Approval:
- 9.3.1 copy, layouts, artwork, storyboards and/or scripts;
- 9.3.2 media owner contracts;
- 9.3.3 media schedules from Alphabet Soup; and
- 9.3.4 estimates or quotations of the cost of the various items of advertising and other services covered by this Agreement.
- 9.4 The Client's written approval of copy, layouts or artwork will be Alphabet Soup's authority to purchase production materials and prepare proofs. The Client's written approval of proofs will be Alphabet Soup's authority to arrange for publication of the relevant material.
- 9.5 The Client's written approval of television, cinema and radio scripts and/or storyboards with estimates or quotations of the production cost will constitute an authority to Alphabet Soup's to enter into production contracts (and engage producers, directors, artists and suitable qualified technical assistance) on behalf of the Client. The Client's written approval of films and recordings will be Alphabet Soup's authority to arrange for transmission/broadcast thereof.
- 9.6 The Client's written approval of media schedules and estimates will constitute an authority to Alphabet Soup to make reservations and contracts on behalf of the Client for space, time and other facilities under the terms and conditions required by the media owners or suppliers.
- 9.7 Alphabet Soup will advise the Client immediately of any changes in the estimated cost of items of advertising or any changes in plans, schedules or work in progress previously approved in writing by the Client, provided that if the changes are not acceptable to the Client, in its reasonable discretion, the Client may, subject to any third party termination provisions relative to such items, withdraw its approval of the affected plans, schedules or work in progress, without prejudice or further liability on the part of the Client.
- 9.8 In principle, the Client will enter into all contracts with third parties in its own name and as principal. Notwithstanding this, the Client may, on a case by case basis, specifically authorise Alphabet Soup in writing (which in this case shall include the use of e-mail), to enter specific contracts for and on behalf of the Client, as the Client's agent and the Client hereby indemnifies Alphabet Soup against all costs and expenses which it will incur in terms of such contracts with third parties, provided that Alphabet Soup has adhered to its mandate. For the purposes of clarity it is recorded that:-
- 9.8.1 any all payments due in terms of such agreements will be made by the Client or its Media Buying Agency, as the case may be; and
- 9.8.2 each authority shall only apply to the contract specified and shall not act as a general authority in favour of Alphabet Soup.
- 10 **Amendments to work in progress.** The Client may request Alphabet Soup to change, reject, cancel or stop any and all plans, schedules or work in progress and Alphabet Soup will take all reasonable steps to comply with any such request provided that Alphabet Soup is able to do so on the basis of its or the Client's contractual obligations to media owners and

suppliers. Without derogating from the foregoing, if a Client campaign, media strategy or project is cancelled, the circumstances of which are outside Alphabet Soup's control, then Alphabet Soup shall still be entitled to:

- 10.1.1 charge a fee for the work completed up to the date of cancellation, based on Alphabet Soup's Hourly Rates; or
- 10.1.2 bill the Client up to 80% of what the total campaign commissions would have been but for the cancellation by the Client;

and the Client will further reimburse Alphabet Soup for all outside costs payable to third parties, including any damages or charges arising from the early cancellation of a contract with a third party.

11 **Media owners and suppliers: business terms.** All arrangements made by Alphabet Soup with media owners and suppliers for the Client's advertising will be made in accordance with, and evaluated against, media rate cards or other standard or individual conditions and contracts. The rights and obligations between the Client and Alphabet Soup shall correspond to those between Alphabet Soup and the various media owners and other suppliers under such conditions. The Client acknowledges that it is familiar with the relevant terms of the media owners and has understood the import and effect of same. The Client therefore acknowledges that the terms and rates negotiated by Alphabet Soup with the media owners and suppliers are subject to revision in accordance with the agreements made by the various bodies concerned and that the bookings required by the Client can only be made in accordance with the provisions relating to amendment, cancellation and omissions as indicated in media rate cards and other standard conditions

12 **Evaluation.** The parties will conduct a full two-way evaluation and review of their relationship every 6 (six) months during the currency of this Agreement. Any resulting changes agreed to the services, the remuneration or any other aspect of the Agreement shall be agreed in writing, failing which the existing provisions of this Agreement will prevail.

### 13 **Copyright**

13.1 The copyright for all purposes in all Material created by Alphabet Soup for the Client pursuant to this Agreement, whether used by the Client or not and regardless of whether or not the physical embodiment of the Material (whether in the form of copy, artwork, plates, recordings, film, videotape, or the like) is in the Client's possession will vest in Alphabet Soup unless expressly agreed to the contrary in writing.

13.2 The Client undertakes not to (and shall procure that none of its Affiliates) make any use of any Material produced by Alphabet Soup, whether within or outside of the Republic of South Africa, except with the prior written consent of Alphabet Soup and subject at all times to the payment by the Client for such use under such circumstances a fee of 16.5% of the gross media costs, excluding VAT, incurred by the Client (or its Affiliates) in respect of any related advertising. The Client will notify Alphabet Soup if it, or any of its Affiliates, uses any of Alphabet Soup's Material. These fees are payable within 30 days of the placement date of any such advertising. Without derogating from the generality of the foregoing, the Client acknowledges that these provisions apply to any novel concepts or campaigns devised by Alphabet Soup in the course of providing the Services and in this regard the Client shall not utilise such concepts or campaigns without payment of the commission contemplated in this clause.

13.3 Each party ("**the Indemnifying Party**") warrants that it has the right to use all Material and trademarks provided by it to the other party ("**the Indemnified Party**") for use directly and indirectly in the Services and accordingly the Indemnifying Party hereby:-

13.3.1 grants the Indemnified Party a right to use such material for the purposes of providing the Services; and

13.3.2 indemnifies and holds the Indemnified Party harmless against any claims by third parties including, but not limited to claims for damages arising out of the infringement of copyright, design, original concept or plagiarism in respect of such material.

14 **Custody.** Alphabet Soup will keep in its care advertising materials entrusted to it as the Client's property for a maximum period of 12 (twelve) months but will not be required to recover typesetting, colour separations, printing plates and the like from media and suppliers once they have left the custody of Alphabet Soup.

15 **Risk.** Irrespective of whether such articles are in the possession of Alphabet Soup, the Client shall at all times bear the risk in all the Client's articles, negatives, film, photography and similar articles and shall be responsible for insuring same on an all risks basis.

16 **Advertising standards.** Both parties shall comply with the rules of the Advertising Standards Authority and other relevant codes of advertising laid down whether on a statutory or a self-regulatory basis. Both parties shall abide by the rulings of the Advertising Standards Authority. In order to satisfy the requirements of these codes or any statutory requirements the Client and Alphabet Soup will co-operate with each other in ensuring that suitable objective factual product and other information is available as required. The Client shall inform Alphabet Soup without delay if the Client considers that any Material submitted to the Client by Alphabet Soup for approval is false or misleading in relation to the Client's product or service or in any way contrary to law or to any applicable code.

- 17 **Non-Solicitation.** Each party hereby agrees not, either during the currency of this Agreement or for a period of 12 (twelve) months thereafter, to approach or employ, whether directly or indirectly, any staff member of the other party ("**Affected Party**") who was directly involved in the provision or acquisition of Services pursuant to this Agreement, unless the Affected Party agrees otherwise in writing, in which event the employing party shall pay the Affected Party a placement commission of 25% (twenty five percent) of the relevant staff member's annual cost to company (including any quantifiable bonuses) ("**Gross Pay**") with the employing party. Each party agrees that should it breach this clause, it will pay the Affected Party an amount equal to the Gross Pay of such member of staff, which amount the parties agree to be a reasonable pre-estimation of the loss suffered by the Affected Party as a result of such breach.
- 18 **Force Majeure.** Neither party shall be liable for any failure to fulfil its obligations under this Agreement if and to the extent such failure is caused by any circumstances beyond its reasonable control, including but not limited to flood, fire, earthquake, war, tempest, hurricane, industrial action, government restrictions or acts of God. Should either party be unable to fulfil a material part of its obligations under this Agreement for a period in excess of 60 (sixty) days due to circumstances of force majeure, the other party may, in its sole discretion, cancel this Agreement forthwith by written notice to the other party.
- 19 **Confidentiality.** Each Party shall treat and hold as confidential all information which it may receive from the other party or which becomes known to it concerning the other party during the currency of this Agreement which is marked as confidential or has the necessary quality of confidentiality about it.
- 20 **Limitation of liability.** Notwithstanding the form (whether in contract, delict, or otherwise) in which any legal action may be brought, and subject to the remainder of this clause, Alphabet Soup's maximum liability for general and/or direct damages for any breach of this Agreement or any wilful or negligent misconduct or omission arising during the course and scope of fulfilling its obligations in terms of this Agreement, shall be limited to an aggregate amount of all the Fees paid by the Client to Alphabet Soup during the 12 (twelve) month period in which the relevant cause of action first arose. Such maximum amount shall be an aggregate amount for all claims thus arising. In addition neither Party shall be liable for any, loss of profits, goodwill, business, clients, contracts, revenue, the use of money, anticipated savings or data; or any special, indirect or consequential loss and such liability is excluded whether it is foreseen, foreseeable, known or otherwise. For the purposes of clarity it is recorded that the provisions of this clause 20 apply whether such loss is direct, indirect, consequential or otherwise, but shall not apply to any claim by Alphabet Soup in respect of Alphabet Soup's Commission or any amounts payable pursuant to clauses 13.2 or 6.1.
- 21 **Non-exclusivity.** Nothing in this Agreement shall be construed as precluding or limiting in any way the right of Alphabet Soup to provide media consulting or other services of any kind or nature whatsoever to any person or entity as Alphabet Soup in its sole discretion deems appropriate. In addition, and notwithstanding anything in this Agreement to the contrary, the parties acknowledge and agree that Alphabet Soup may employ, modify, disclose, and otherwise exploit the Alphabet Soup Material (including, without limitation, providing services or creating materials of a similar nature for other clients).
- 22 **Disclaimer.** Alphabet Soup hereby excludes and disclaims all warranties, whether implied, statutory or otherwise, except those warranties expressly made in this Agreement.
- 23 **Breach.** Should either party ("**the Defaulting Party**"):-
- 23.1 commit a material breach of this Agreement, and fail to remedy such breach within 14 (fourteen) days of having been called upon in writing by the other party ("**Aggrieved Party**") to do so; or
- 23.2 effect or attempt to effect a compromise or scheme of arrangement with its creditors; or
- 23.3 be provisionally or finally liquidated or be placed in judicial management, whether provisionally or finally; or
- 23.4 cease or threaten to cease to carry on its normal line of business in the Republic of South Africa or default or threaten to default in the payment of its liabilities generally, or commit any act or omission which would, in the case of an individual, be an act of insolvency in terms of the Insolvency Act, 1936 (as amended);
- then the Aggrieved Party may, in its discretion, terminate this Agreement on written notice to the Defaulting Party, in which event such termination shall be without prejudice to any claims which the Aggrieved Party may have for damages against the Defaulting Party occasioned by the termination of this Agreement in terms of this clause.
- 24 **Effect of Termination.** Alphabet Soup's rights, duties and obligations will continue in full force during the agreed period of notice – including the ordering and invoicing of advertising in media which will be published during such period. To the extent that the Client wishes to use the services of another service provider during any period of notice, the Client will nonetheless pay Alphabet Soup a monthly retainer equal to the Minimum Monthly Payment.
- 25 **Disputes.** Any dispute which may arise between the parties shall in the first instance be referred to a joint dispute resolution committee of a director of Alphabet Soup and a director (or equivalent officer) of the Client ("**DRC**"), or alternates appointed by them, which DRC will use its best endeavours to resolve the dispute within 14 (fourteen) days of the dispute having been referred to it. If the dispute is not resolved in accordance with the foregoing shall be finally resolved in

accordance with the rules of the Arbitration Foundation of Southern Africa by an arbitrator or arbitrators appointed by the Foundation.

- 26 **Notices and Domicilium.** The Parties select as their respective *domicilia citandi et executandi* the physical addresses set out beneath their signatures on the Cover Sheet, provided that either party may change its address details on written notice to the other, provided that in respect of its physical address, such change shall take effect 14 (fourteen) days after delivery of such written notice. The Parties record that whilst they may correspond via email during the currency of this Agreement for operational reasons, no formal notice required in terms of this Agreement, nor any amendment or variation to this Agreement may, unless expressly provided to the contrary herein, be given or concluded via email.
- 27 **No Assignment.** Neither Party shall be entitled to cede, assign, delegate or otherwise transfer the benefit or burden of all or any part of this Agreement without the prior written consent of the other party, which consent shall not be unreasonably withheld or delayed.
- 28 **General**
- 28.1 The Parties shall at all times owe each other a duty of good faith.
- 28.2 Nothing in this Agreement shall be construed as constituting a temporary employment service as contemplated in section 198 of the Labour Relations Act, 1995.
- 28.3 Nothing in this Agreement shall be construed as creating a partnership between the parties and neither party shall have any authority to incur any liability on behalf of the other or to pledge the credit of the other party.
- 28.4 This Agreement constitutes the entire agreement between the Parties in respect of the subject matter hereof and replaces all prior agreements or arrangements between the Parties in regard to the subject matter of this Agreement. In addition, no terms contained in any Client Order or invoice shall be binding on Alphabet Soup unless same specifically refer to this Agreement and are signed by a director of Alphabet Soup.
- 28.5 No amendment or modification to this Agreement shall be effective unless in writing and signed by authorised signatories of the Parties.
- 28.6 No granting of time or forbearance shall be or be deemed to be a waiver of any term or condition of this Agreement and no waiver of any breach shall operate a waiver of any continuing or subsequent breach.
- 28.7 Each party shall be responsible for its own legal and other costs relating to the negotiation of this Agreement.
- 28.8 Headings and sub-headings are inserted for information purposes only and shall not be used in the interpretation of this Agreement.
- 28.9 References to:-
- 28.9.1 persons shall include companies, corporations and partnerships;
- 28.9.2 any party shall, where relevant, be deemed to be references to, or to include, as appropriate, their respective successors or permitted assigns;
- 28.9.3 the singular shall include the plural and vice versa;
- 28.9.4 any one gender shall include a reference to all other genders.
- 28.9.5 any enactment shall be deemed to include references to such enactment as re-enacted, amended or extended from time to time.
- 28.10 The expiration or termination of this Agreement shall not affect such of the provisions of this Agreement as expressly provide that they will operate after any such expiration or termination or which of necessity must continue to have effect after such expiration or termination, notwithstanding that the clauses themselves do not expressly provide for this.
- 28.11 When any number of days is prescribed in this Agreement, same shall be reckoned exclusively of the first and inclusively of the last day, unless the last day falls on a day which is not a business day, in which case the last day shall be the next business day.
- 28.12 The rule of construction that an agreement shall be interpreted against the party responsible for the drafting or preparation of the agreement, shall not apply.