

## STANDARD TERMS AND CONDITIONS FOR INTERNET ADVERTISING

*Based on the Digital Media & Marketing Association's guidelines*

These Standard Terms and Conditions ("**these Terms**") govern the legal relationship between the party described on the insertion order ("**IO**") to which this document relates (including if such party is acting as agent for a third party) ("**the Advertiser**") and Creamer Media (Registration No. 2001/01259507) ("**Creamer Media**") in respect of rendering by Creamer Media of advertisements (constituted of such text, graphics, image, content or any other marketing or promotional material provided by the Advertiser to Creamer Media from time to time pursuant to an IO) ("**the Ads**") on the Creamer Media web sites (being the web sites owned and/or operated by Creamer Media and/or by any Affiliate (any third party with whom Creamer Media has entered into an agreement relating in any manner to the web site(s) owned and/or operated by such third party (including where such agreements are for the provision of search technology and/or otherwise for the placement of Advertisements thereon) ("**the Site**")).

These Terms shall be read with the IO to which they relate and in the event of a conflict between these Terms and the IO, the IO will take precedence but solely to the extent of such conflict.

In the interpretation of these Terms, unless the context clearly otherwise indicates:

- a. Words importing the singular shall include the plural and vice versa, words importing any gender shall include the other genders and words importing persons shall include partnerships and bodies corporate.
- b. The head notes to the paragraphs to these Terms are inserted for reference purposes only and shall not affect the interpretation of any of the provisions to which they relate.
- c. If any provision in the abovementioned definitions and/or the preamble hereto is a substantive provision conferring rights or imposing obligations on any party, notwithstanding that such provision is only contained in this clause effect shall be given thereto as if such provision were a substantive provision in the body of the agreement.
- d. Where a period consisting of a number of days is prescribed, it shall be determined by excluding the first and including the last day.

Where the day upon or by which any act is required to be performed is not a business day (being any day other than a Saturday, Sunday or officially recognized public holiday in the Republic of South Africa), the parties shall be deemed to have intended such act to be performed upon or by the first day thereafter which is a business day.

- e. If figures are referred to in numerals and words, the words shall prevail in the event of any conflict between the two.
- f. Words and/or expressions defined in any particular clause in the body of these Terms shall, unless the application of such word and/or expression is specifically limited to that clause, bear the meaning so assigned to it throughout these Terms.
- g. The *contra proferentem* rule shall not apply and accordingly none of the provisions hereof shall be construed against or interpreted to the disadvantage of the party/ies responsible for the drafting or preparation of such provision.
- h. The *eiusdem generis* rule shall not apply and whenever a provision is followed by the word "including" and specific examples, such examples shall not be construed so as to limit the ambit of the provision concerned.

- i. A reference to any statutory enactment shall be construed as a reference to that enactment as at the signature date and as amended or re-enacted from time to time thereafter.

## **1. INSERTION ORDERS AND INVENTORY AVAILABILITY**

- 1.1. From time to time, the parties may negotiate insertion orders ("IO"s) pursuant to which Creamer Media will render the Ads on the Sites for the benefit of an Advertiser. At Advertiser's discretion, an IO may either be submitted by Advertiser to Creamer Media or be submitted by Creamer Media, signed by Advertiser and returned to Creamer Media. In either case, an IO will be binding only if accepted as provided in Clause 1.2 below. Each IO shall specify: (a) the type(s) and amount(s) of inventory to be delivered (e.g., impressions, clicks or other desired actions) ("**the Deliverables**"); (b) the price(s) for such Deliverables; (c) the maximum amount of money to be spent pursuant to the IO (if applicable), (d) the start and end dates of the campaign, and (e) the identity of and contact information for any third party ad server ("**3rd Party Ad Server**"), if applicable. Other items that may be stipulated on the IO are, but are not limited to: reporting requirements such as impressions or other performance criteria; any special Ad delivery scheduling and/or Ad placement requirements; and specifications concerning ownership of data collected.
- 1.2. Creamer Media will make commercially reasonable efforts to notify Advertiser within 2 business days of receipt of an IO signed by Advertiser if Creamer Media is in a position to comply with the Deliverables. Acceptance of the IO and these Terms will be made upon the earlier of (a) written (which, unless otherwise specified, for purposes of these Terms shall include paper, fax, or e-mail communication) approval of the IO by Creamer Media and Advertiser; or (b) the display of the first Ad impression by Creamer Media pursuant to the IO, unless the means of acceptance of the IO is otherwise stipulated in the IO. Notwithstanding the foregoing, modifications to the originally submitted IO will not be binding unless signed by both parties.
- 1.3. Revisions to accepted IO's shall be made in writing and acknowledged by the other party in writing for such IO to take effect and be binding to both parties.

## **2. AD PLACEMENT AND POSITIONING**

- 2.1. Creamer Media shall comply with the IO in all material respects, including all Ad placement restrictions, requirements to create a reasonably balanced delivery schedule, and provide within the scope of the IO, an Ad to the Site specified on the IO when such Site is called up by an Internet user. Where Creamer Media deviates from the IO, it shall do so only with the prior written approval of the Advertiser, provided that where Creamer Media is unable to obtain the approval of the Advertiser to any IO (having used its reasonable commercial endeavours to do so), Creamer Media may deviate from the IO in such a manner and to such an extent as Creamer Media, acting reasonably, considers to be in the interests of the Advertiser. The publisher must try to obtain approval from the advertiser by phoning or emailing. If the publisher cannot get hold of the advertiser and proceeds without approval, the deviation must be the minimum deviation necessary in the circumstances.
- 2.2. Creamer Media will use commercially reasonable efforts to provide Advertiser at least 10 business days prior notification of any material changes to the Site of which Creamer Media becomes aware that would potentially materially change the target audience or significantly affect the size or placement of the Ad specified in the affected IO. Should such a modification occur (with Creamer Media having given notice to the Advertiser in respect thereof as aforesaid), as Advertiser's sole remedy for change or notice, Advertiser may cancel the remainder of the IO without penalty provided that it provides Creamer Media with written notice to such effect within 10 days of receipt of the aforesaid notice by Advertiser. If Creamer Media has failed to provide notice in respect of such a modification,

Advertiser (as Advertiser's sole remedy) may cancel the remainder of the IO immediately and in such case shall not be charged for any affected Ads delivered after the giving of such notice by Advertiser. If the termination is deemed unfair, an impartial third party can be contracted to establish whether the Advertiser was justified in doing so. If they find that the Advertiser was not justified in cancelling the IO, the publisher is entitled to recover payment for the campaign.

- 2.3. Creamer Media will submit or otherwise make electronically accessible to Advertiser within two business days of acceptance of an IO final technical specifications, as determined by Creamer Media. Changes to the specifications of the already purchased Ads after that two business day period will allow Advertiser to suspend (without impacting the end date unless otherwise agreed by the parties) delivery of the affected Ad for a reasonable time in order to either (i) send revised artwork, copy, or active URLs ("Advertising Materials"); (ii) request that Creamer Media resize the Ad at Creamer Media's cost, and with final creative approval of Advertiser, within a reasonable time period to fulfill the guaranteed levels of the IO; (iii) accept a comparable replacement; or (iv) if the parties are unable to negotiate an alternate or comparable replacement in good faith within 5 business days, immediately cancel the remainder of the IO for the affected Ad without penalty.

### **3. PAYMENT AND PAYMENT LIABILITY**

#### **3.1. Invoices/Credit notes**

Advertiser shall pay to Creamer Media such amount as Creamer Media may stipulate from time to time in respect of the Deliverables, together with value added tax thereon in respect of any vatable supply. Creamer Media shall issue invoices at such intervals as Creamer Media may determine. Invoices shall be sent to: Advertiser's billing address as set forth in the IO and shall include such information as Advertiser may reasonably require.

#### **3.2. Payment Date**

Advertiser will make payment on 30 days from the date of invoice, unless they are an accredited media agency in which case it will be 45 days from of the date stipulated in the invoice. Should Advertiser fail to pay any amount to Creamer Media by due date, Creamer Media shall be entitled, in its discretion and without prejudice to any other rights which it may have in law, forthwith cancel these Terms or suspend performance of its obligations without notice. Creamer Media shall also be entitled to charge interest at the prime interest rate charged by ABSA Bank Limited on all overdue amounts from the due date until date of payment.

#### **3.3. Payment Liability**

Where Advertiser is represented by an agent ("**Advertising Agent**"), Advertiser will make available to Creamer Media upon request written confirmation of the relationship between Advertising Agency and Advertiser and the authority of such agent. This confirmation should include, for example, Advertiser's acknowledgement that Advertising Agency is its appointed agent and is authorized to act on its behalf in connection with the IO and these Terms. In addition, upon the request of Creamer Media, Advertising Agent will confirm whether Advertiser has paid to Advertising Agency in advance funds sufficient to make payments pursuant to the IO.

If Creamer Media, acting in its sole discretion, considers Advertiser or Advertising Agency's creditworthiness to be impaired, Creamer Media may require payment in advance.

Advertising Agent represents and warrants that it has the authority as agent to Advertiser to bind Advertiser to these Terms and each IO. Advertising Agent agrees to defend, indemnify and hold harmless Creamer Media it's Affiliates and their respective directors, officers, employees and agents from any and all Losses incurred as a result of Advertiser's alleged breach of the foregoing sentence.

All off-shore (outside the borders of the Republic of South Africa) based Advertisers and

Advertising Agencies are required to settle the value of the first 30-days of the agreed upon IO at least 5 working days prior to the commencement of the booked campaign (unless otherwise agreed and indicated on the IO), failure to make such upfront payment will lead to the campaign commencement being postponed until proof of such payment has been received by Creamer Media with no liability to Creamer Media in terms of the IO.

#### **4. REPORTING**

Creamer Media shall provide Advertiser with such reports as Advertiser may reasonably require from time to time.

#### **5. CANCELLATION AND TERMINATION**

- 5.1. At any time prior to the serving of the first impression of the IO, Advertiser may cancel the IO with 30 days prior written notice, without penalty. For clarity and by way of example, if

Advertiser cancels the IO 15 days prior to the serving of the first impression, Advertiser will only be responsible for the first 15 days of the IO.

Excluded from this will be newsletter and promotional mailer inserts booked which carry a compulsory 30 days written cancellation notice, should any of these placements be cancelled within 30-days of the booked insert date, Advertiser will be responsible for the full cost of the inserts affected by the less than 30 days cancellation notice.

- 5.2. Upon the serving of the first impression of the IO, Advertiser may cancel the IO for any reason, without penalty, by providing Creamer Media written notice of cancellation which will be effective after the later of: (i) 30 days after serving the first impression of the IO; or (ii) 14 days after providing Creamer Media with such written notice.

- 5.3. Either party may terminate an IO at any time if the other party is in material breach of its obligations hereunder or of its obligations in terms of any Policy (as contemplated below) that is not cured within 2 working days after written notice thereof from the non breaching party, except as otherwise stated in these Terms with regard to specific breaches.

Additionally, if Advertiser commits a violation of the same Policy (as defined below), where such Policy had been provided by Creamer Media to Advertiser, on three separate occasions after having received timely notice of each such breach, even if such breach has been cured by Advertiser, then Creamer Media may terminate the IO associated with such breach upon written notice

#### **6. MAKEGOODS**

- 6.1. Creamer Media shall monitor delivery of the Ads, and shall notify Advertiser either electronically or in writing as soon as reasonably possible if Creamer Media believes that an under-delivery is likely.
- 6.2. In the event that actual Deliverables for any campaign fall below guaranteed levels, as set forth in the IO, and/or if there is an omission of any Ad (placement or creative unit), Advertiser and Creamer Media will make reasonable efforts to agree upon the conditions of a makegood flight either in the IO or at the time of the shortfall. If no makegood can be agreed upon, Creamer Media shall, as Advertiser's sole remedy, provide Advertiser with a credit equal to the value of the under-delivered portion of the IO.

#### **7. FORCE MAJEURE**

- 7.1. Excluding payment obligations, neither party will be liable for delay or default in the performance of its obligations under these Terms if such delay or default is caused by

conditions beyond its reasonable control, including but not limited to, fire, flood, accident, earthquakes, telecommunications line failures, electrical outages, network failures, acts of God, or labor disputes. In the event that Creamer Media suffers such a delay or default, Creamer Media shall make reasonable efforts within five business days to recommend a substitute transmission for the Ad or time period for the transmission. If no such substitute time period or makegood is reasonably acceptable to Advertiser, Creamer Media shall allow Advertiser a pro rata reduction in the space, time and/or program charges hereunder in the amount of money assigned to the space, time and/or program charges at time of purchase. In addition, Advertiser shall have the benefit of the same discounts that would have been earned had there been no default or delay.

- 7.2. Advertiser shall not be excused from its payment obligations pursuant to this clause 8.
- 7.3. To the extent that a force majeure has continued for 5 business days, the party entitled to receive the performance affected by such force majeure shall be entitled to cancel the remainder of the IO without penalty.

## **8. INDEMNIFICATION**

- 8.1. Creamer Media agrees to defend, indemnify and hold harmless Advertiser, their Affiliates (as defined below) and their respective directors, officers, employees and agents from any and all damages, liabilities, costs and expenses (including reasonable attorneys' fees) (collectively "Losses") incurred as a result of a Third Party (as defined below) claim, judgment or proceeding relating to or arising out of Creamer Media's breach of Clause 12, Creamer Media's display or delivery of any Ad in breach of these Terms as read with the relevant IO, or that materials provided by Creamer Media (and not by Advertiser) for an Ad violate the right of a Third Party, are defamatory or obscene, or violate any law, regulations or other judicial or administrative action, except to the extent (1) that such claim, judgment or proceeding resulted from such materials fulfilling Advertiser's unique specifications provided that Creamer Media did not know or should not have reasonably known that such specifications would give rise to the Loss or (2) that such materials are provided to Advertiser for review and the Advertiser knew or should have reasonably known from the visual or sonic expression of the Advertisement, while Creamer Media did not know or should not have reasonably known, that such material violated any law, regulations or other judicial or administrative action, violate the right of a Third Party or are defamatory or obscene. An Affiliate means, with respect to either party, any corporation, firm, partnership, person or other entity, whether de jure or de facto, which directly or indirectly owns, is owned by or is under common ownership with such party to the extent of at least 50% of the equity having the power to vote on or direct the affairs of the entity, and any person, firm, partnership, corporation or other entity actually controlled by, controlling or under common control with such party. A "Third Party" means an entity other than the parties to these Terms, their respective Affiliates, and each of their respective directors, officers, employees and agents.
- 8.2. Advertiser agrees to defend, indemnify and hold harmless Creamer Media its Affiliates and their respective directors, officers, employees and agents from any and all Losses incurred as a result of a Third Party claim, judgment or proceeding relating to or arising out of Advertiser's breach of Clause 12, violation of Policies (to the extent the applicable terms of such Policies have been provided to Advertiser at least ten days prior to the violation giving rise to the claim), or the content or subject matter of any Ad or Advertising Materials to the extent used by Creamer Media in accordance with these Terms as read with the relevant IO, including but not limited allegations that such content or subject matter violate the right of a Third Party, are defamatory or obscene, or violate any law, regulations or other judicial or administrative action.
- 8.3. If any action will be brought against either party (the "Indemnified Party") in respect to any allegation for which indemnity may be sought from the other party ("Indemnifying

Party”), the Indemnified Party will promptly notify the Indemnifying Party of any such claim of which it becomes aware and will: (i) provide reasonable cooperation to the Indemnifying Party at the Indemnifying Party's expense in connection with the defense or settlement of any such claim; and (ii) be entitled to participate at its own expense in the defense of any such claim. The Indemnified Party agrees that the Indemnifying Party will have sole and exclusive control over the defense and settlement of any such third party claim. However, the Indemnifying Party will not acquiesce to any judgment or enter into any settlement that adversely affects the Indemnified Party's rights or interests without the prior written consent of the Indemnified Party.

- 8.4. Notwithstanding the foregoing, in the event that any Indemnifying Party is required to defend, indemnify or hold harmless an Indemnified Party from a claim, judgment or proceeding of a Related Party (as defined below) of such Indemnified Party pursuant to this Clause 10, Losses incurred in connection with such claim, judgment or proceeding will be limited to those that are reasonably foreseeable. A "Related Party" is a party in a contractual relationship with the Indemnified Party where such specific contractual relationship relates to the Loss being asserted by that Related Party.

## **9. LIMITATION OF LIABILITY**

Excluding the parties obligations under Clause 10 or damages that result from a breach of Clause 12 or intentional misconduct by the parties, in no event will either party be liable for any consequential, indirect, incidental, punitive, special or exemplary damages whatsoever, including without limitation, damages for loss of profits, business interruption, loss of information and the like, incurred by the other party arising out of these Terms, even if such party has been advised of the possibility of such damages.

## **10. NON-DISCLOSURE, DATA OWNERSHIP, PRIVACY AND LAWS**

The parties shall treat all information, in whatever form and howsoever recorded, that may reasonably be argued to have commercial value and that a party receives from the other party as a result of this Agreement (“**confidential information**”), as private and confidential and safeguard it accordingly. The parties furthermore agree not to use or disclose or divulge or copy or reproduce or publish or circulate or reverse engineer and/or decompile or otherwise transfer, whether directly or indirectly, any confidential information to any other person and shall take all such steps as may be reasonably required to prevent confidential information falling into the hands of unauthorised persons.

## **11. MISCELLANEOUS**

- 11.1. Creamer Media represents and warrants that Creamer Media has all necessary permits, licenses, and clearances to sell the inventory represented in the IO subject to the terms and conditions of these Terms, including any applicable Policies. Advertiser represents and warrants that Advertiser has all necessary licenses and clearances to use the content contained in their Ads and Advertising Materials.
- 11.2. Advertiser may not resell, assign or transfer any of its rights or obligations hereunder, and any attempt to resell, assign or transfer such rights or obligations without Creamer Media’s prior written approval will be null and void. All terms and provisions of these Terms and each IO will be binding upon and inure to the benefit of the parties hereto and their respective permitted transferees, successors and assigns.
- 11.3. These Terms and Conditions and the related IO constitute the entire agreement of the parties with respect to the subject matter and supersede all previous communications, representations, understandings, and agreements, either oral or written, between the parties with respect to the subject matter of the IO. The IO may be executed in counterparts, each of which shall be an original and all of which together shall constitute

one and the same document.

- 11.4. In the event of any inconsistency between the terms of an IO and these Terms, the terms of the IO shall prevail.

All IO's shall be governed by the laws of the Republic of South Africa. Creamer Media and Advertiser (on behalf of itself and not Advertiser) agree that any claims, legal proceeding or litigation arising in connection with the IO (including these Terms) will be brought solely in the Republic of South Africa, and the parties consent to the jurisdiction of such courts. No modification of these Terms or any IO shall be binding unless in writing and signed by both parties. If any provision herein is held to be unenforceable, the remaining provisions shall remain in full force and effect. All rights and remedies hereunder are cumulative.

- 11.5. Any notice required to be delivered hereunder shall be delivered three days after deposit in SA postal mail, return receipt requested, one business day if sent by overnight courier service and immediately if sent electronically or by fax. All notices to Creamer Media and Advertiser shall be sent to the contact as noted in the IO with a copy to the Legal Department. All notices to Advertiser shall be sent to the address specified on the IO.

- 11.6. Clauses 3, 6, 10, 11, 12, and 14 shall survive termination or expiration of these Terms and Clause IV shall survive for 30 days after the termination or expiration of these Terms. In addition, each party shall return or destroy the other party's Confidential Information and remove Advertising Materials and Ad tags.