

# Terms & Conditions

## 1) **Definitions**

- i) Commencement means the commencement date indicated in the agreement.
- ii) YFM means Yired (Pty) Ltd, a company with Registration Number 1996/14304/07 registered in accordance with the Company Laws of South Africa, with its principal place of business at 4 Albury Road, Dunkeld West Extension 8, Sandton 2196, Johannesburg, South Africa.
- iii) Client shall mean the entity/ties cited as the party/ies entering into agreement with YFM. In cases of an advertising agency/ies entering into agreement with YFM, the client shall be the agency acting on behalf of the advertiser. In the case of a direct client, the party shall be the advertiser itself acting on its own behalf.
- iv) Intellectual Property Rights means patents, trade marks, service marks, trade and service names, copyrights, database rights and design rights (whether or not any of them are registered and including applications for registration of any of them), rights in know-how, moral rights, trade secrets and rights of confidence; all rights or forms of protection of a similar nature or having similar or equivalent effect to any of them which may subsist anywhere in the world at the date of this Agreement or in the future.
- v) Parties shall mean YFM and the Client/s.
- vi) Main Agreement shall mean the attached agreement detailing the specific terms, duration, campaign mechanics, investment summary, cost implications and cancellation terms as agreed to between the Parties.

## b. **Interpretation**

Unless inconsistent with the context, an expression in the Agreement which denotes:

- i) Any gender shall include the other genders
- ii) A natural person shall include a juristic person and vice versa
- iii) The singular shall include the plural and vice versa.

## c. **Headings**

The headings to clauses of the Agreement shall not be considered part thereof, nor shall the words they contain be taken into account in the interpretation of any clause.

## d. **Law**

The agreement shall be construed in accordance with and governed by the laws of the Republic of South Africa and the English language version shall prevail.

## e. **Conflict between Numerals and words**

Should there be any conflict between the numerals and words, the words shall prevail.

## f. **Schedules and Annexures**

All schedules and annexures hereto shall be deemed to be incorporated herein and shall form an integral part hereof.

## g. **Days**

Where a number of days is prescribed it shall consist of all calendar days including Saturdays, Sundays and Public Holidays and shall be reckoned exclusively of the first and inclusively of the last day;

Where the day upon which any payment or other specific act is required is not a business day, the parties shall be deemed to have intended such act to be performed upon or by the first business day thereafter.

## h. **Parties**

Any reference to the Client or YFM shall include its representatives, their successors in title, their respective agents, employees, servants, contractors and workmen.

## 2) **General**

- a. YFM, shall at all times, retain editorial control of all material broadcast.
- b. All communication, terms and conditions relating to this agreement is deemed confidential and parties are precluded from disclosing any information thereof to third parties except where required by law and with those persons with whom privileged relationships exist according to the law (i.e Legal Advisers).
- c. YFM reserves the right to refuse to broadcast any advertisement, or portion thereof, that does not comply with the law of the country including the Advertising Standards Authority of South Africa's codes and directives.
- d. Any and all complaints by the client broadcast of its material must be lodged with YFM in writing within 7 (seven) days of the first broadcast failing which, it shall

- be deemed that the client is satisfied with the broadcast in every respect.
- e. YFM reserves its right to interrupt scheduled programming from time to time as a result of important annual events, other breaking news as well as public holidays.
- f. Annual negotiated deals must be committed to in writing and signed by all parties before negotiated terms comes into effect.

**3) Competitions**

- a. No staff member or immediate family member of any staff member of YFM or the client or any affiliated company of either may enter the competition.
- b. YFM shall:
  - i) use its best efforts to ensure that the competition times are held as stipulated in the agreement.
  - ii) Make every effort in ensuring that the competition mechanics is executed as mutually agreed.
  - iii) Ensure that the client’s intellectual property and reputation is protected at all times and branded as agreed when executing the competition.
  - iv) Be responsible for all communication with the respective winners of the competition unless otherwise agreed to in the main agreement.
  - v) Ensure that all opening and closing billboards, pre-promos, promos and generics are executed and broadcast in accordance with the agreed terms as per main agreement.
  - vi) Keep records of all competition details and processes followed. Should the client require, it may at its own cost, acquire the services of an auditor to inspect the documentation for verification purposes.
- c. The client undertakes:
  - i) To ensure that each prize value exceeds R1500 (one thousand five hundred rand) in value.

Duration	35"	40"	45"	50"	55"	60"
Multiply by	1.167	1.333	1.6	1.667	1.833	2

provide all materials required including but not limited to logos, sound clips, etc to YFM at least 7 days prior to initial broadcast or any other time period agreed to and specified in the main agreement, failing which YFM reserves its right to cancel the agreement and claim any damages incurred as a result of such breach.

- iii) To ensure that all prizes are delivered to the YFM premises at least 7 working days prior to initial broadcast of the competition.
- iv) To ensure that if the prize consists of cash, that the cumulative cash prize is received in the respective YFM bank account at least 7 working days prior to the commencement of the competition.
- d. YFM, at its own cost, shall ensure that the all competitions are conducted transparently and shall ensure that an independent auditor certifies and reports on the competition during its internal audit process accordingly.
- e. The client agrees and accepts that YFM “judges” decisions are final and the client accepts that it has no right to interfere in such process.

**4) Advertising – (Generics / Live Reads)**

- a. The client is responsible to provide the promotional material required no less than 10 (ten) days prior to broadcast date, failing which the broadcast will be affected and alternative dates will be given at the discretion of YFM.
- b. YFM shall at any time at its discretion and without incurring any liability whatsoever to the client:-
  - i) Pull off air the broadcasting material if so required by the ASA or if the material contained is unsuitable and violates the ASA’s Code of Conduct or the ASA’s prior rulings or the ASA’s directives.
  - ii) Restrict any repeat broadcast of the same material and provide reasons for such restrictions.
  - iii) Rate card rates exclude VAT and are based on 30” (thirty) second commercials. Any other duration shall be charged with the following duration factors:

Duration	5"	10"	15"	20"	25"	30"
Multiply by	0.5	0.6	0.7	0.8	0.9	1

- iv) Surcharge for specified position and/or break is at 25% on net airtime costs.
- v) Surcharge for live reads is 50% of net airtime costs.
- vi) Added value is issued on net value.

- vii) Cancellation period 30 days prior to broadcast date: 100% cancellation fee applicable (This cancellation clause is only applicable to Generics and live reads)

viii)

**5) Outside Broadcasts**

- a. The Client undertakes:
  - i) To notify YFM of its intention to host and Outside Broadcast at least 7 days prior to such broadcast.
  - ii) To submit a detailed content schedule to the respective YFM Account Executive at least 12 hours prior to broadcast.
  - iii) To supply YFM, at its own cost, with the required power supply should the venue infrastructure not cater for the OB requirements.
- b. 100% cancellation fee will become due, owing and payable should the client cancel the booked outside broadcast within five days prior to broadcast date.
- c. "Agency" Clients do not qualify for agency commission on any hard costs incurred by YFM for executing the Outside Broadcast.

**6) Material and Property Liability**

- a. Neither party shall be liable for any loss suffered by the other party arising out of delay or in prevention of performance of the party's obligations due to any cause beyond its reasonable control (eg. Acts of God, satellite failure, war (declared or undeclared), strikes, riots, political insurrection, rebellion, revolution, flood, fire, earthquake, prohibition of import, acts or orders of government etc.) "Force Majeure". Should the circumstances persist for a period exceeding 30 days the Parties shall endeavour in good faith to agree on an alternative basis for achieving the objects of this Agreement failing which, either Party may terminate this Agreement upon written notice, and make financial adjustment between them as may be equitable. Client acknowledges that, YFM will be unable to refund the client but will give airtime value to Client should such eventuality occur.
- b. Should YFM fail to flight the advertising material for reasons within its control, YFM shall compensate the client for the exact amount accordingly, and such compensation shall be given in airtime and no monetary refund shall be passed.

**7) Warranties and indemnities**

- a. The client warrants that:
  - i) all material provided to YFM is compliant with the Advertising Standards Authority and with any other relevant legislation and does not infringe any intellectual property right or any other right of any third party.

**8) Cession or assignment of rights**

Client shall not be entitled to cede, transfer or assign any rights duties or obligations to any third party without the written consent from an authorized person at YFM.

**9) Variation and Cancellation**

No agreement varying, adding to, deleting from or canceling this agreement, and no waiver whether specifically, implicitly or by conduct of any right to enforce any term of these terms and conditions or the main agreement, shall be effective unless reduced to writing in the form of an addendum and signed by and on behalf of all parties.

**10) Termination**

- a. This agreement shall terminate at the end of the period of the agreement as stipulated in the Main Agreement.
- b. Either Party may terminate this Agreement at any time by giving notice in writing to the other Party if:
  - i) The other Party has committed a material breach of any of its obligations under the Agreement which is incapable of remedy; or
  - ii) The other Party has committed a material breach of an obligation to pay money hereunder which the other Party has not remedied within thirty (30) days of receipt of written notice to do so; or
  - iii) The other Party has committed a material breach of any of its obligations under the Agreement which is capable of remedy and which the other Party has not remedied within thirty (30) days of receipt of written notice to do so; or
  - iv) Proceedings are started for the other Party's winding up, dissolution or re-organization (otherwise than while solvent and for the purpose of a bona fide reconstruction or amalgamation) or for the appointment of a receiver, trustee or similar officer of any or all of the other Party's revenue or assets; or
  - v) The other Party ceases to carry on business or suffers any execution or distress over a material part of its assets; or
  - vi) The other Party becomes bankrupt or insolvent or files any application, petition or action for relief

under any bankruptcy, insolvency or moratorium law; or

- vii) The other Party suffers any similar event of insolvency or bankruptcy under the terms of the jurisdiction of its domicile.

**11) Domicilium Citandi Et Executandi**

- a. The parties choose as their domicilia citandi et executandi for all purposes under this agreement, whether in respect of court process, notices or other documents or communications whatsoever nature the following addresses:-  
YFM: Dunkeld Crescent South West Blocks,  
4 Albury Road, Dunkeld West Extension 8,  
Sandton, (telefax): 0117720921  
Client: As specified in main agreement.
- b. Any notice or communication required or permitted to be given in terms of this agreement shall be valid and effective only if given in writing but it shall be competent to give notice by telefax.
- c. Either party may by notice to the other change the physical address chosen as its domicilium citandi et executandi to another physical address or its telefax number, provided that the change will only become effective on the seventh day after receipt of the notice by the addressee.
- d. Any notice to a party which is:-
- i) Sent via registered post in a correctly addressed envelope to it at its domicilium citandi et executandi shall be deemed to be received on the seventh day after posting (unless the contrary is proved); or
  - ii) Delivered by hand to a responsible person during ordinary business hours at its domicilium citandi et executandi shall be deemed to have been received on the day of delivery; or
  - iii) Transmitted by telefax or email to its chosen telefax number or email address chosen (if any) stipulated in the attached form shall be deemed

to have been received on the date of transmission (unless the contrary is proved).

**12) Dispute Resolution**

The parties agree and consent to the Jurisdiction of the Magistrates Court in all proceedings arising out of or in connection with this agreement notwithstanding that the proceedings may otherwise exceed the jurisdiction of the magistrate's court.

**13) Entire Agreement**

This agreement constitutes the entire agreement between the parties with regard to the matters dealt with herein and no representations, terms, conditions or warranties expressed or implied not contained in this agreement shall be binding on the parties.

**14) Limitation of Liability**

In no event shall either party be liable to the other for consequential damages, loss of profit or income, irrespective of cause of action and howsoever arising.

**15) Warranty of Authority**

Each of the persons signing on behalf of the Parties to this Agreement warrants that each Party acts as principal (and not as agent for an undisclosed principal) and has the full power, authority and legal right to execute, deliver and perform their obligations imposed on it in terms of this Agreement and will be duly authorised by all the necessary action of the Party concerned and its officers and officials and that any obligations arising from this Agreement are valid and binding on the Party concerned.

**16) Severability**

If for any reason any provision of this Agreement is held invalid, all other provisions of this Agreement shall remain in full force and effect.