

DSTV MEDIA SALES STANDARD SPONSORSHIP TERMS AND CONDITIONS

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1. Introduction

- 1.1 DStv Media Sales is responsible for the sale of Sponsorships and management of the Sponsorship Elements in respect of the Programme.
- 1.2 The Sponsor wishes to Sponsor the Programme, and the full details of which elements are applicable are outlined in **Annexure A**.
- 1.3 Subject to the terms of these terms and conditions, DStv Media Sales hereby appoints the Sponsor as the Sponsor of the Programme and the Sponsor accepts such appointment.
- 1.4 Accordingly, these terms and conditions, together with **Annexure A** attached hereto and any additional Annexes and Addendums, which have been duly signed by the Parties, shall govern the Sponsorship of the Programme, termed the 'Sponsorship Agreement' and / or 'Agreement'.

2. Definitions and Interpretation

- 2.1 In this Agreement, the following words shall, unless otherwise stated or inconsistent with the context in which they appear, bear the following meanings and other words derived from the same origins as such words (that is, cognate words) shall bear corresponding meanings:
- 2.1.1 **"Ad bumper"** means a short commercial message featuring Sponsor branding to open and/ or close Advertisement breaks as detailed in Annexure A
- 2.1.2 **"Addendum"** means any addendums which may be necessitated by any variations to any of the agreed terms in **Annexure A**;
- 2.1.3 **"Advertisement"** Means marketing or branding elements to be Broadcast or displayed as agreed to by the Parties in **Annexure A**;
- 2.1.4 **"Advertiser Funded Programme"**
- "AFP"** means advertiser funded programming where an advertiser funds all or part of the costs of producing the Programme with a view to promoting their name, trade mark, image, activity, service or product;
- 2.1.5 **"Agreement"** means these terms and conditions, including the Annexes and Addendums as amended from time to time;
- 2.1.6 **"Agency"** means the advertising media or creative agency who may be assigned by the Sponsor to represent it and who is responsible for the Sponsorship booking with DStv Media Sales, if so appointed by the Sponsor;
- 2.1.7 **"Airtime"** the commercial television Broadcast of an Advertisement and/or the Sponsorship element/s, or the like;
- 2.1.8 **"Annexe[s]"** means the annexes attached to this Agreement;

2.1.9	“Broadcast”	means to transmit, or the transmission of, video or other content by whatever means whether wire or wireless, including without limitation, the internet, mobile transmission means, by way of satellite, analogue terrestrial, digital terrestrial and cable transmission and other technology, 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”;
2.1.10	“Broadcaster”	means MultiChoice Africa (Proprietary) Limited, a provider of subscription Broadcasting and other ancillary services including, but not limited to, the Broadcast and / or exposure of content on the various Broadcaster’s commercial platforms in South Africa and other regions in the African continent;
2.1.11	“Billboard”	A 5-10 second element featuring Sponsor branding that establishes the Sponsor association with the Programme and which opens (“Opening Billboard”) and closes (Closing Billboard) each Broadcast of the Programme as detailed in Annexure A ;
2.1.12	“Business Day”	means any day other than a Saturday, Sunday or gazetted national public holiday in the Republic of South Africa;
2.1.13	“Channel”	means the channel specified in Annexure A , being a channel on the Broadcaster’s commercial platforms;
2.1.14	“Companies Act”	means the Companies Act, 71 of 2008, as amended;
2.1.15	“Competitor/s”	means any third party that competes with the business of a Sponsor in the Product Category;
2.1.16	“Co-Op Transaction”	means a transaction concluded between the Primary Sponsor and any third party in relation to the Sponsorship of the Programme, which transaction shall be in accordance with the provisions of these terms and conditions;
2.1.17	“DStv Media Sales”	means DStv Media Sales (Proprietary) Limited, registration number 1995/001791/07, a private company incorporated in the Republic of South Africa in terms of the Companies Act;
2.1.18	“Effective Date”	means the date on which the Agreement was signed by the last Party to do so;
2.1.19	“End Board”	means a still screen that displays one or more Sponsor logos, and is applicable to local productions and is usually placed between the final segment and the end credits if applicable as specified in Annexure A .
2.1.20	“End Credit Logo”	means a Sponsor or partner’s logo is placed into the end credit roll.
2.1.21	“End Credit Text”	means a text only placement of a partner or Sponsor as part of the end credits, made in the same size and font as credit roll of the Programme.

2.1.22	"Incidental Branding"	means any and all exposure that a Sponsor receives during the content of the Programme, where client branded elements appearing in the Broadcast with no specific reference to the brand. It may include but is not limited to, exposure of a logo, location, branding, product placement, a graphic representation and brand identity;
2.1.23	"Intellectual Property Rights"	means (without limitation) all current and future intellectual property rights of any kind whatsoever and however embodied which may subsist or be capable of protection wheresoever in the world, including (without limitation) patents, trademarks, present and future rights of copyright, rights in and to designs, rights in and to inventions, topography rights, rights in and to trade secrets, rights in and to: trade names, business names, domain names and logos, the right to keep information confidential and private, rights in and to know how, rights in and to databases (including rights of extraction), and all rights and forms of protection of a similar nature or having equivalent effect to any of them which may subsist or be capable of protection as at the Effective Date or in the future wheresoever in the world, whether or not any of these is registered and including applications for any such rights or registration thereof;
2.1.24	"Inventory"	means commercial 'Airtime';
2.1.25	"Landmark"	means the brand library used by DStv Media Sales as a booking tool for Advertisements in commercial breaks by identifying clashing brand categories to ensure that the Advertisements of direct Competitors are not placed within the same commercial break;
2.1.26	"L Board"	means the branded commercial element that appears in the shape of an L over agreed content, advertisement or promotional material no longer than 10" in duration;
2.1.27	"Parties"	means the parties to this Agreement, being DStv Media Sales, the Sponsor; and if applicable the Agency;
2.1.28	"Pre-Roll"	means the commercial element that plays out prior to the Programme in a VOD platform or any other digital environment where the Programme or elements of the Programme are Broadcast as specified in Annexure A
2.1.29	"Presenter Mentions"	is applicable to local productions and means any verbal mention during the content of the Programme. The verbal mention may come from contestant(s), host(s), character(s) and / or any party that speaks during the Programme. The verbal mention refers directly to the Sponsor within the context of the Programme. One presenter mention equates to a 5" (5 seconds) exposure value, as specified in Annexure A if applicable.
2.1.30	"Primary Sponsor"	means, in relation to a Co-Operative Transaction, the single Sponsor of the Programme within the agreed Product Category, as specified in Annexure A ;

2.1.31	"Product Category"	means, for purposes of Sponsorship exclusivity, the specific Product Category to which the goods or services of the Sponsor belong, as agreed between the Parties in Annexure A ;
2.1.32	"Product Integration"	Refers to a product or brand that is actively interacted with during the content of the Programme i.e. used, consumed or referred to or referenced during the Programme.
2.1.33	"Product Placement"	means the inclusion of a commercial name, trade mark, image, activity, service or product within programming in return for payment or other valuable consideration with a view to promoting a name, trade mark, image, activity, service or product, as agreed between the Parties in Annexure A ;
2.1.34	"Production House"	the producer of 'Television Content' as commissioned by the 'Channel';
2.1.35	"Programme Supplier"	means the Production House and/or Studio as commissioned and/or appointed by the Channel for purposes of the production and/or Broadcast of the Programme;
2.1.36	"Programme"	means the television Programme, episode, movie, marketing campaign, or the like to be Broadcast on television and/or additional ancillary platforms by the Channel during the Broadcast period as set out in Annexure A ;
2.1.37	"Promotional (Promo) Spot"	means the Programme marketing promotional spot that is create awareness and drive viewership to the Programme;
2.1.38	"Signature Date"	means, when these have been signed by each Party (whether or not in counterpart), the latest of the dates on which this Agreement (or any counterpart) was signed by any Party;
2.1.39	"Surviving Provisions"	means 2.1 (<i>Definitions and interpretation</i>), 26 (<i>Mediation and arbitration</i>), 27 (<i>Miscellaneous matters</i>) and any other provisions of these terms and conditions which are expressed to continue in force after termination or which by necessary implication must continue after termination;
2.1.40	"Sponsor"	means the Sponsor, as specified in Annexure A ;
2.1.41	"Sponsorship[s]"	shall mean any sales in connection with the right for an entity to be associated with content (i.e. a Programme or series) which can be facilitated by placing a name, trade mark, image, activity, service or product juxtaposition to the content or within its credits (but excludes AFP or and Product Placements unless otherwise agreed with Channel Supplier)
2.1.42	"Sponsorship Cost"	means the financial resources contributed by the Sponsor to DStv Media Sales in respect of the 'Sponsorship Elements' for the 'Programme';

2.1.43	"Sponsor Category"	means the type of Sponsorship selected by the Sponsor in Annexure A from the following options: (i) headline Sponsor: naming or tactical, (ii) tactical association advertiser: tactical or generic, (iii) marketing and/or competition campaign, (iv) channel association, (v) product placement, or (vi) any other similar type of Sponsorship made available by DStv Media Sales;
2.1.44	"Sponsorship Elements"	means the elements comprising the Sponsorship Rights provided to the Sponsor, including but not limited to, Opening and Closing Billboards, Advertising Bumpers, any Advertisements, branding on Promotional Spots, and/or online exposure, which elements shall be specified in Annexure A ;
2.1.45	"Sponsorship Rights"	means the rights granted to the Sponsor by DStv Media Sales in consideration for the payment made by the Sponsor, which rights are set out in this Agreement and Annexure A ;
2.1.46	"Spot"	means a Channel marketing promotional and / or competition television Advertisement;
2.1.47	"Sting[s]" or "Ad bumper[s]"	A 5-10" commercial element that opens (" Opening Sting ") or closes (" Closing Sting ") the adbreak as specified in Annexure A
2.1.48	"Strapline"	A strapline is a graphic element that is edited into the content and refers to the Sponsor(s). In instances where it is applicable, the Channel Supplier will advise the appropriate placement of such messaging, usually towards the bottom of the screen and remains on screen for up to 10" (ten seconds) or as specified in Annexure A .
2.1.49	"Studio"	the distributor or rights holder of television content providing programming as appointed by the 'Channel';
2.1.50	"Tag-On"	means a 5" commercial message that allows the Sponsor to build association with the Programme and is attached to the Programme's marketing promotional (promo) spot
2.1.51	"Television Content"	the television 'Programme';
2.1.52	"VAT"	means value-added tax levied in terms of the Value-added Tax Act, 89 of 1991, as amended.
2.1.53	"VOD"	means catch-up programming available to MultiChoice, DStv subscribers on: <ul style="list-style-type: none"> i "DStv" the Video on Demand Platform which is a web and mobile application owned by MultiChoice, and ii "Catch Up on STB" the facility where catch up programming is made available to MultiChoice (DStv) Subscribers via the MultiChoice proprietary decoder set top box (STB) or personal video recorder (PVR)

2.2 In this Agreement:

- 2.2.1 reference to a statutory provision includes any subordinate legislation made from time to time under that provision and includes that provision as modified or re-enacted from time to time;
- 2.2.2 if there is any conflict between any definitions in this Agreement then, for purposes of interpreting any clause of this Agreement or paragraph of any Annexe or Addendums, the definition appearing in that clause or paragraph shall prevail over any other conflicting definition appearing elsewhere in this Agreement;
- 2.2.3 where the day upon or by which any act is required to be performed is not a Business Day, the Parties shall be deemed to have intended such act to be performed upon or by the next succeeding Business Day; and
- 2.2.4 references to any amount shall mean that amount exclusive of VAT, unless the amount expressly includes VAT.
- 2.2.5 The expiration or termination of this Agreement shall not affect such of the provisions of this Agreement which are expressly provided to operate after any such expiration or termination, or which of necessity must continue to have effect after such expiration or termination, notwithstanding that the relevant provisions themselves do not provide for this.

3. Appointment

- 3.1 DStv Media Sales appoints the Sponsor as a Sponsor for the Programme, and the Sponsor accepts such appointment, upon and subject to the terms and conditions of this Agreement.

4. Term of this Agreement

- 4.1 This Agreement shall commence on the Effective Date and endure for the period specified in **Annexure A**.

5. Sponsorship Rights and Commercial Airtime Elements

- 5.1 In consideration for the Sponsorship Cost, DStv Media Sales hereby grants to the Sponsor, as the Sponsor of the Programme, the Sponsorship Rights as set-out in **Annexure A** to this Agreement, subject to the terms and conditions set out in this Agreement.
- 5.2 DStv Media Sales undertakes to ensure that Competitors within the Product Category of the Sponsor have no more than 1 (one) Advertisement each per episode of the Programme to protect the Sponsor from any ambush marketing; and Competitor Advertisements shall not be placed in the same Advertisement break as the Sponsor's as per clause 9.3
- 5.2.1 Further to the above clause 5.2; the amount of different Competitors that may appear in a sponsored Programme shall be determined by the number Advertisement breaks within the Programme.
- 5.2.2 In the case of late confirmation of a Sponsorship whereby the commercial bookings for the month/s have opened, DStv Media Sales shall endeavour to adhere to clause 5.2 above; but this cannot be guaranteed in the instance where Competitor Advertisements have already been contracted.

6. Sponsorship Renewal

- 6.1 Subject to the provisions of clause 6.2, DStv Media Sales hereby grants the Sponsor a right of first refusal to enter into an agreement for the continued Sponsorship of the Programme after the date of the expiry of this Agreement, subject to the terms set out in this clause 6.

- 6.2 The Sponsor's right of first refusal contemplated in this clause 6 shall be subject to:
- 6.2.1 The Programme returning for an additional series on the same Channel and in the same format, within two-years of the termination of this Agreement;
- 6.2.2 the Studio and/or Channel's terms and conditions and regulations, as amended or varied from time to time; and
- 6.2.3 the Sponsorship rights in question being made available by DStv Media Sales upon the Programme's return for an additional series.
- 6.3 Should the Sponsorship rights be made available by DStv Media Sales, the Sponsor shall be required to exercise its rights of refusal within **75 (five) Business Days** after the Sponsor has received the new written proposal and the standard Letter of Intent from DStv Media Sales in respect of the additional series of the Programme. Should the Sponsor fail to notify DStv Media Sales of its acceptance of the proposal by signing the DStv Media Sales Standard Letter of Intent within the prescribed time period above, DStv Media Sales shall be entitled to offer the proposal to other potential advertisers and Sponsors.
- 6.4 Should the Sponsor exercise its rights in terms of this clause 6, the Parties shall, as soon as reasonably practicable and in any event no later than **40 (forty) Business Days**, conclude a new agreement in respect of the renewed Sponsorship.
- 6.5 In the event that the Sponsor fails to exercise the right of first refusal referred to hereinabove, then DStv Media Sales undertakes that it will not offer a third party (or accept an offer from a third party in respect of) the same or similar right/s to Sponsor the Programme on terms (including in respect of the pricing/cost of the Sponsorship Rights or any similar rights) that are more favourable than those offered to the Sponsor.

7. Limitation of Liability

- 7.1 The Parties agree to indemnify and hold each other harmless, in so far as they are respectively negligent, against direct claims, liability, losses, damages, judgments, costs and expenses, including attorney's fees, which may be made, paid or incurred by the other Party, as a result of any injury or damage to any person or property whatsoever (including the Parties and/or the Parties' property), which may arise out of this Agreement and against claims, demands, proceedings, damages, costs, charges and expenses whatsoever in respect thereof or in relation thereto; except where such claim, loss or damage has been caused by the gross negligence or intentional acts or omissions or wilful misconduct of the other Party or any of its agents, directors or employees.
- 7.2 Notwithstanding anything to contrary stated anywhere in this Agreement, DStv Media Sales shall not be liable to the Sponsor or its Agent for any compensation or refund should there be any changes in the Sponsored Programme for whatsoever reason. However, the Parties may agree to an equivalent and/or suitable value of exposure.
- 7.3 All Parties agree that the maximum aggregate liability under or in connection with this Agreement, whether in contract, delict or otherwise, will in no circumstances exceed twice the Sponsorship fees paid by the Sponsor to DStv Media Sales in terms of this Agreement; and no Party will be liable under this Agreement for any loss of actual or anticipated income or profits, loss of contracts or for any special, indirect or consequential loss or damage of any kind howsoever arising and whether caused by delict, breach of contract or otherwise, unless caused by the negligence and/or misconduct of such Party. The Parties agree that the above limitations shall not apply to breaches of clauses 21 and 22 relating to intellectual property and confidentiality, however any and all claims related to clauses 21 and 22 shall be limited to direct damages only.

8. Warranties

- 8.1 The Parties represent and warrant that they have the full right, power and authority to enter into and perform their obligations in terms of this Agreement.
- 8.2 The Sponsor and the signatories hereto on behalf of the Sponsor warrant, while this Agreement subsists, that the Sponsor shall not use the name of the Programme, the brand or the name personality, likeness or photograph of any actor, participant, contestant, presenter or person appearing in the Programme in any manner, without obtaining prior written consent from DStv Media Sales and/or the Channel and/or the Studio; should consent be obtained thereunto, a cost estimate, if applicable, shall be provided to the Sponsor and associated costs to be paid for by the Sponsor.
- 8.3 DStv Media Sales and/or the Channel undertake that they shall not make use of the Sponsor name, brand, images, or any other association in any way other than as set out in this Agreement; without obtaining prior written consent from the Sponsor.
- 8.4 It is specifically recorded that nothing herein or in the negotiations leading to the conclusion of this Agreement constitutes a representation, warranty or any undertaking by DStv Media Sales, the Channel or the Programme Supplier relating to any promotional benefits or marketing enhancement, or the positive effect on product sales or image, or the audience ratings, viewership figures or responses, or any other form of publicity, that may consequent upon the project as set out herein.

9. Exclusivity

- 9.1 DStv Media Sales undertakes to the Sponsor that during the term of this Agreement it will not appoint any Sponsor that is a Competitor of the Sponsor in the Product Category as defined in **Annexure A**, or accept any Sponsorship of any kind from any such Competitor, for the Programme or any of its parts, divisions or initiatives.
- 9.2 DStv Media Sales undertakes that it has not appointed a Competitor as a sponsor nor has it granted any rights of Sponsorship to any Competitor.
- 9.3 The Sponsor will be entitled to receive one Advertisement in a commercial break of the Programme; subject to clause 9.3.2.1 below, during which no Advertisements of its direct Competitors, as determined by the Landmark, shall appear; subject to clause 9.3.1 and 9.3.2.2 below.
- 9.3.1 Should the Sponsor opt to have 2 (two) Advertisements of shorter durations (shorter than 30 seconds) per Programme, shall only be offered in 1 (one) commercial break; subject to clause 9.3.2 below.
- 9.3.2 In the case of late confirmation of a Sponsorship whereby the commercial bookings for the month/s have opened;
- 9.3.2.1 should there be no available Airtime DStv Media Sales shall offer the Sponsor additional Airtime in the same Programme in subsequent episodes, or in available Inventory on the Channel/s, as defined in **Annexure A**, to a value equal to the rate card value, within the Sponsorship period.
- 9.3.2.2 DStv Media Sales shall endeavour to provide exclusivity as per the above clause 9.3, but this cannot be guaranteed in the instance where Competitor Advertisements have already been contracted prior to Sponsors extensions.

10. Co-Op Transactions

- 10.1 Should a Primary Sponsor wish to enter into a Co-Op Transaction with any affiliate companies and/or suppliers ("**Co-Op Partners**"), the Primary Sponsor shall, prior to conducting any negotiations or concluding any transaction with any Co-Op Partner, obtain the prior written consent of DStv Media Sales for the conclusion of such a transaction, which consent may be granted or declined by DStv Media Sales in its sole discretion, taking into account any factors which are deemed relevant by DStv Media Sales.
- 10.2 The number of the Co-Op Partners approved by DStv Media Sales in respect of each Programme may vary. DStv Media Sales may, in its sole and absolute discretion, make its approval of any Co-Op Transaction subject to the Sponsor agreeing to an adjustment of the Sponsorship Cost in an amount determined by DStv Media Sales. Any such adjustment to the Sponsorship Cost shall be recorded in **Annexure A** or an Addendum to the Agreement
- 10.3 The Primary Sponsor acknowledges that any exclusivity rights granted to the Primary Sponsor in terms of this Agreement shall not extend to the Co-Op Partner.
- 10.4 DStv Media Sales reserves the right to reject any Co-Op Transaction that conflicts with any other Sponsorship agreement concluded by DStv Media Sales.
- 10.5 The conclusion of a Co-Op Transaction shall not relieve the Sponsor of any liability or obligation under this Agreement. For the avoidance of doubt, should the Co-Op Transaction terminate or fail for whatever reason, the Primary Sponsor shall remain bound by the terms of this Agreement.

11. Respecting the Rights of Other Sponsors

- 11.1 The Sponsor acknowledges, subject to clause 9, that it understands and accepts the role and importance of other Sponsors for the Programme (but excluding any Sponsor who is or would be a Competitor of the Sponsor in the Product Category), and accordingly DStv Media Sales shall not be precluded from offering other Sponsorship Rights for the Programme to any client that is not a Competitor of the Sponsor and / or does not provide the same or similar goods or services as the goods or services provided by the Sponsor.
- 11.2 Notwithstanding the provisions of clause 11.1 above, no other Sponsorship Rights for the Programme granted by DStv Media Sales to any other Sponsor pursuant to those provisions may undermine the Sponsor's rights as set out in this Agreement and **Annexure A** to this Agreement.
- 11.3 The Sponsor shall ensure that the creative material developed by the Sponsor in relation to the Sponsorship Elements and/or Advertisements developed by the Sponsor do not, in any way, shape or form, conflict or interfere with the rights granted to another Sponsor of the Programme.

12. Competition Campaign

- 12.1 DStv Media Sales and the Channel may from time to time elect to conduct competitions ("**the Competition Spots**") aimed at promoting or marketing the Programme. In such event, DStv Media Sales undertakes to offer the Headline Sponsor of the Programme the option of supporting such competitions.
- 12.2 In the event that a competition associated with the Programme is offered to the Sponsor during the Sponsorship and the Sponsor elects not to support the competition, DStv Media Sales shall be entitled to offer the competition to the tactical association advertiser/s or any other client that is not a Competitor and that does not provide the same or similar goods or services as the goods or services provided by the Sponsor.

12.3 DStv Media Sales will, on behalf of the Channel, make the required entry mechanisms available for the competition/s, as detailed in **Annexure A**. DStv Media Sales, the Channel and the Broadcaster are indemnified and shall remain indemnified from any consequences arising out of or in consequence of the Sponsor's Sponsorship of the competition(s) unless due to the negligence, wilful misconduct or wrongful acts or omissions of DStv Media Sales, the Channel and/or the Broadcaster.

12.4 Details of competition entrants, other than the winner's details, shall remain the property of the Channel and cannot be released to the Sponsor or any third party, unless the entrant has opted to have further communication with the Sponsor.

Should the Sponsor elect to exercise its rights in terms of clause 12.1, the Parties agree to, as soon as reasonably possible, the terms and conditions that shall govern their relationship in respect of the competition/s in question. For the avoidance of doubt, the Sponsor shall always be responsible for payment and delivery of the prizes offered as part of the competition/s. The Channel and DStv Media Sales shall not be held responsible for any prizes delivered to winners that are not in a satisfactory condition, and the Sponsor shall be solely responsible for the replacement of any defective goods provided to the winners of any competition/s; and any defective prize will also be subject to standard Sponsor warranty terms.

13. Sponsorship Cost

13.1 The extent of the Sponsorship Cost payable to DStv Media Sales for the duration of this Agreement is set out in **Annexure A**.

14. Programme Broadcast Details

14.1 The details for the Broadcast of the Programme are specified in **Annexure A**.

15. Exposure and Association

15.1 The Sponsor shall only be entitled to the exposure and Sponsorship Elements as specifically set out in **Annexure A**.

15.2 The Sponsor acknowledges that the Programme may be Broadcast by the Channel on various other platforms (other than television). The Sponsor shall not, as a result of its Sponsorship of the Programme on television, consequentially, or by implication, be entitled to any association or rights in relation to the Broadcast or re-Broadcast of the Programme or exposure or Sponsorship Elements of the Programme in or through any other platform, channel, or media (unless specifically set out and described in **Annexure A**), including but not limited to, Internet, telephony (land and mobile), DVBH, IPTV, print media and or any other form of exposure or association on any other platform.

15.3 All values as set out in **Annexure A** in respect of exposure and Sponsorship Elements are approximate values. DStv Media Sales shall use all reasonable endeavours to avoid changes. Notwithstanding any other provision of this Agreement the Sponsor shall receive exposure equal in value to that which has been set out in this Agreement and **Annexure A**, as determined by DStv Media Sales, in consultation with the Sponsor.

16. Commercial Sponsorship Exposure

16.1 The Sponsor shall receive the association elements and exposure as set out in **Annexure A**.

17. Promotional Elements

- 17.1 A "marketing" campaign with an allocated amount of Airtime may be scheduled across the Channels in relation to the Programme ("the promotional spot/s") and may (at the discretion of the Channel) include a 5" branded Sponsor Tag-On.
- 17.2 The material to be included in the Sponsor Tag-On must be generic in nature and be designed so as not require any changes during the campaign period. The Sponsor shall be liable for any changes required. The Sponsor acknowledges that any changes required by it will take a minimum **5 (five) business** days to effect.
- 17.3 The promotional spots shall be created by the Channel's marketing department, and shall be scheduled at the discretion of the Channel's marketing and/or scheduling department, or by DStv Media Sales.
- 17.4 The Sponsor acknowledges that the Channel has the right to schedule additional Promotional Spots to promote the Programme and/or episode information. It is recorded that in such instances, the Channel may, in its sole discretion, elect not to include the Sponsor Tag-On.

18. Value of Sponsorship

- 18.1 The total value of the exposure to be provided to the Sponsor in terms of this Agreement shall be as set out in **Annexure A**.

19. Production and Material Requirements

- 19.1 The specific restrictions imposed on the Sponsor in respect of the production and material deadlines are set out in **Annexure A**.
- 19.2 The production costs of the material to be used by the Sponsor in the Sponsorship Elements and any other commercial material will be borne by the Sponsor, unless otherwise specified in **Annexure A**.
- 19.3 Sponsor must consult with DStv Media Sales in respect of the creative treatment of the Sponsorship of the Programme to ensure compliance with the Channel, producer and/or Studio rules, regulations, and standard operating procedures.
- 19.4 Should the Sponsor wish to, in its Advertisements and/or Sponsorship Elements, in some way exploit its Sponsorship of the Programme by incorporating elements that capture "the feel of the Programme", the Sponsor shall be precluded from (unless otherwise stated in **Annexure A**), in any way:
- 19.4.1 using any terms / words that relate to the Programme;
- 19.4.2 using any actors (or other individuals associated with the Programme), images, names or likeness associated with the Programme;
- 19.4.3 using any images, music, graphics or video clips or likeness from the Programme;
- 19.4.4 blending its Advertisements and/or Sponsorship Elements with the Programme or making use of anything that may result in a viewer getting the impression that the Sponsor's products or services are in any manner part of or an extension of the Programme.
- 19.5 The Sponsorship of the Programme may not impinge on or use the copyrighted material of the Programme, except in a general reference, verbally, to the title of the Programme, provided such reference has been pre-approved by DStv Media Sales in writing.
- 19.6 The Sponsor undertakes that its Advertisements and/or Sponsorship Elements that make reference, whether directly or indirectly, to the Programme and its Sponsorship of the Programme shall not be harmful to, disparage or create liability for the Programme, the actors and individuals related to the Programme, and the Channel, its related companies and its officers and employees.

19.7 The Sponsor shall be precluded from using phrases such as “Brought to you by....” for the duration of the Sponsorship in respect of the Programme, unless provided otherwise in **Annexure A**.

19.8 The Sponsor undertakes to produce all production material in High Definition format where required as set out in **Annexure A**.

20. Rules and Regulations

20.1 DStv Media Sales and the Channel are bound by the rules and regulations stipulated in the Programme supplier contracts. The rules and regulations stipulate that the Programme supplier has the right to terminate any Sponsorship Agreement if the Sponsorship Agreement results in a breach of the Programme supplier contract.

20.2 Should the Programme supplier terminate this Agreement pursuant to clause 20.1, the provisions of clause 20.4 below shall apply.

20.3 Despite anything to the contrary contained in this Agreement, this Agreement shall terminate automatically should the Channel decide, for whatever reason, to cease production and / or Broadcasts of the Programme. In such circumstances, DStv Media Sales will advise the Sponsor of the reasons in writing within **10 (ten) Business Days** after the Channel decides to cease production and / or Broadcasts of the Programme.

20.4 In such an instance DStv Media Sales shall offer the Sponsor Airtime in available Inventory on the Channel/s, as defined in **Annexure A**, to a value equal to the rate card value, as applicable on the date of the commencement of this Agreement, for the amounts already paid by the Sponsor, but for which the Sponsor has not yet received Airtime exposure as provided for.

20.4.1 Sponsor shall be entitled to receive advertising exposure on the Channel to the value of:

20.4.1.2 the amounts already paid by Sponsor; and/or

20.4.1.3 the Products provided by it; and/or

20.4.1.4 less the value of advertising already received by Sponsor.

20.5 The Sponsor acknowledges that due to unforeseen Programme changes or sporting events, the Programme may be pre-empted and the Sponsorship Elements may therefore not be flighted consecutively and clause 20.5.1. below shall apply.

20.5.1 The Sponsor shall be consulted and compensated at the same value in Airtime in available Inventory on the Channel/s to a value equal to the rate card value, as set out in Annexure A.

20.6 Should an incorrect Sponsorship Element be Broadcast, or alternatively not Broadcast at all, in the scheduled Programme or agreed time-slot, clause 20.5.1 above shall apply; however, should the Sponsor submit the incorrect information and/or not adhere to the production and material deadlines set-out in **Annexure A**, the Sponsor shall not be compensated whatsoever.

20.7 The Sponsor acknowledges that the Channel(s) reserves the right to make schedule changes from time to time. In such instances the Sponsor will be notified in writing as soon as the information is made available to DStv Media Sales.

20.7.1 There shall be a consultation process between DStv Media Sales and the Sponsor in an attempt to reach agreement as to the adjustments and / or changes necessitated by any schedule change

20.8 In the event that there will be additional episode/s or repeat/s in respect of the series of the Programme and/or additional ancillary opportunities, the Sponsor will be given the option to increase its exposure to include the additional episodes calculated at the same cost/benefit level as this Agreement and **Annexure A**.

20.9 Any verbal agreements, after signing of the Agreement with DStv Media Sales, must be put into writing and will be added to this Agreement as an Addendum.

21. Naming Rights and Intellectual Property Rights in general

- 21.1 All trademarks, logos, brands, domain and other intellectual property belonging to DStv Media Sales, the Channel and/or the Producer or held by DStv Media Sales and/or the Channel under any licensing agreements with any third parties at the date of commencement of this Agreement shall remain the sole property of DStv Media Sales, the Channel and/or the Producer and such licensors, to the extent of their respective ownership.
- 21.2 Ownership of all trademarks, brands, logos and domain names belonging to the Sponsor on the date of commencement of this Agreement shall remain vested in the Sponsor, provided that the Sponsor, hereby grants a non-exclusive license to DStv Media Sales Airtime Sales and the Channel to use its trademarks, brands, logos, domain names, and other intellectual property provided to it by Sponsor or as set out in this Agreement to the necessary extent, if at all, in order to fulfil its obligations in terms of this Agreement. Sponsor shall at all times retain control of the use of its trademarks during the term of this Agreement and shall be entitled to request an immediate removal of any items featuring its known marks or trademarks from the Programme upon 24-hours' notice to DStv Media Sales Airtime Sales. The license shall automatically terminate on termination of this Agreement.
- 21.3 Use of the title and marks
- 21.3.1 It is recorded that only the Headline Sponsor of the Programme, as the primary Sponsor of the Programme, may be granted the right to utilise the title "Title of the Programme" or an equivalent phrase agreed upon between the Parties in writing in any commercial or public communications in respect of the Programme.

22. Confidentiality, Publicity and Data Protection

- 22.1 Save with the prior written consent of DStv Media Sales and subject to such reasonable conditions as such consent shall stipulate, the Sponsor shall not be entitled to, and shall ensure that its employees or agents do not, make any claim in any marketing, publicity or advertising that it has entered into this Agreement with DStv Media Sales, nor may the Sponsor use the DStv Media Sales name or logo in that connection.
- 22.2 The Parties shall not disclose to any third party, other than their respective staff or professional advisors, in their capacity as such, any information relating to the terms and conditions of this Agreement except: -
- 22.2.1 to the extent necessary to comply with any law, valid court order or the requirements of any recognised stock exchange; or
- 22.2.2 as part of its normal reporting or review procedures to its auditors and its attorneys; or
- 22.2.3 to the extent required by any regulatory authority; or
- 22.2.4 to the extent necessary of purposes of instituting legal proceedings by the one Party against the other.
- 22.2.5 A Party required to disclose in terms of clause 22.2, shall notify the other Party of such requirement, which may enable the other Party to take any appropriate action it deems necessary, limiting the disclosure of information.
- 22.3 For the avoidance of doubt, no provision in this Agreement should be construed in such a way that the disclosing Party is deemed to have granted its consent to the receiving Party to disclose confidential information in the event that the receiving Party receives a request for confidential information in terms of the provisions of the Promotion of Access to Information Act 2 of 2000, as amended.
- 22.4 Neither Party shall at any time during or after the termination of this Agreement, disclose to any person whatsoever any information relating to the other Party or any of the business or trade secrets of the other Party to which it may have or may become privy to during the term of this Agreement.

22.5 Each Party acknowledges that information provided by the other Party during the term of this Agreement may contain personal information, the handling or processing of which may be subject to applicable data protection legislation. Each Party agrees that it will take appropriate measures to ensure compliance with all such data protection legislation. Where applicable, the Parties undertake to sign Data Protection Agreements.

23. Breach

23.1 In the event that either Party materially and /or other breaches any of its obligations under this Agreement and fails to remedy such material and /or other breach within **fourteen (14) Business Days** of receiving written notice from the other Party requiring it to do so, the innocent Party without prejudice to any other right which it may in law have shall be entitled to cancel this Agreement; and/or claim specific performance and/or claim damages.

23.2 The remedies of each Party in terms of this clause 23. shall not be exhaustive and shall be in addition and without prejudice to any other remedies it has under or in consequence of this Agreement.

23.3 Any cancellation is without prejudice to any claim that either Party may have in respect of any and /or other material breach of the terms and conditions of this Agreement by the other Party arising prior to the date of cancellation.

24. Rights on Termination

24.1 Either Party shall have the right to cancel this Agreement on **40 (forty) Business Days'** written notice to the other Party.

24.2 Either Party ("the Innocent Party") shall further be entitled to summarily terminate this Agreement on written notice to the other Party ("the Offending Party") should the Offending Party commit or become adversely implicated in any act or omission which, in the reasonable opinion of Innocent Party, results in it no longer being desirable for the Innocent Party to continue being associated with the Programme.

24.3 The effect of termination, as set out in clause 24.1 and clause 24.2 above, shall be as follows:

24.3.1 The Parties shall have no further claim/s against one another (for loss/damages or otherwise) unless such claims/s existed at time of termination.

24.3.2 The Parties shall not be entitled to any cash or monetary refund or any other refund whatsoever in respect of services or products already delivered in pursuance of this Agreement. The Sponsor shall similarly not receive any further exposure in relation to the Programme. For the avoidance of doubt, the Sponsor shall, to the extent that the Agreement is terminated at DStv Media Sales' election and not as a result of the Sponsor's conduct, be entitled to a cash or monetary refund in respect of all amounts paid in advance by the Sponsor.

24.3.3 Should the Sponsor elect to cancel this Agreement in accordance with clause 24.1, the Sponsor acknowledges and agrees that it shall, notwithstanding such termination, remain responsible for the payment of the full monthly amount payable in respect of the cost of Sponsorship Elements (but excluding the cost of the Advertisements).

24.4 Should either Party:

24.4.1 be placed under judicial management or in liquidation or be sequestrated (whether provisional, final, voluntary or compulsory); or

24.4.2 commit an act which would constitute an act of insolvency by a natural person in terms of section 8 of the South African Insolvency Act, 1936 (as amended); or

24.4.3 enter into or attempt to enter into any compromise with its creditors to be released entirely or partially from payment of its debts; or

24.4.4 postpone the date of payment thereof or should a third-party endeavour to do so on its behalf,

then, either Party shall be entitled to terminate this Agreement immediately on written notice given to the other Party.

25. Force Majeure

25.1 A Party shall not be liable for any loss suffered by any other Party arising out of any delay in or prevention of performance of that Party's obligations due to any cause, including but not limited to pandemic and government regulations, the adverse effects of which the Party concerned could not and cannot reasonably and practicably have avoided in the ordinary conduct of that Party's business

If the Party's performance is delayed or prevented, it shall immediately give written notice of this to the other Party.

25.2 If a Party's performance is delayed by such a cause, the Party concerned shall be entitled to a reasonable extension not exceeding **14 (fourteen) Business Days** for performance. If performance is or will be delayed for longer than this period, the performance shall be regarded as having been prevented.

25.3 If a Party's performance is prevented by a Force Majeure, the Parties shall endeavour, in good faith, to reach agreement on an alternative basis for achieving the objects of this Agreement. If Agreement on an alternative basis is not reached, this Agreement shall terminate and the normal effect of termination of the Agreement shall apply as provided for in this Agreement.

26. Mediation and Arbitration

26.1 Prior to a dispute being referred to third party mediation and/or arbitration such dispute shall be referred to the CEO's of the respective Parties or their nominated representatives (who must be senior members in the organisation) in an attempt to resolve the dispute. Should the dispute not be resolved within 7 days the dispute be referred to mediation and then arbitration if required.

26.2 separate, divisible agreement

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

26.2.2 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 at all times be and remain subject to arbitration in terms of this clause;

26.2.3 remain in effect even if the Agreement terminates or is cancelled.

26.3 disputes subject to mediation and arbitration

- 26.3.1 Save as may be expressly provided for elsewhere in this Agreement for the resolution of particular disputes, any other dispute arising out of or in connection with this Agreement or the subject matter of this Agreement, including without limitation, any dispute concerning:
- 26.3.2 the existence of the Agreement apart from this clause;
- 26.3.3 the interpretation and effect of the Agreement;
- 26.3.4 the Parties' respective rights or obligations under the Agreement;
- 26.3.5 the rectification of the Agreement;
- 26.3.6 the material and/or other breach, termination or cancellation of the Agreement or any matter arising out of the breach, termination or cancellation;
- 26.3.7 damages arising 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,
- 26.3.8 shall be referred to mediation as set out in 26.3.

26.4 mediation

- 26.4.1 If the Parties are unable to agree on a mediator or to resolve any dispute by way of mediation within 14 days of any Party in writing requesting that the dispute be resolved by mediation, then the dispute shall be submitted to and decided by arbitration as set out in this clause.

26.5 appointment of arbitrator

- 26.5.1 The Parties shall agree on the arbitrator who shall be an attorney or advocate on the panel of arbitrators of the Arbitration Foundation of Southern Africa ("AFSA"). If agreement is not reached within 10 Business Days after any Party calls in writing for such agreement, the arbitrator shall be an attorney or advocate nominated by the Registrar of AFSA for the time being.
- 26.5.2 The request to nominate an arbitrator shall be in writing outlining the claim and any counterclaim of which the Party concerned is aware and, if desired, suggesting suitable nominees for appointment as arbitrator, and a copy shall be furnished to the other Parties who may, within 7 days, submit written comments on the request to the addressee of the request with a copy to the first Party.

26.5 venue and period for completion of arbitration

- 26.5.1 The arbitration shall be held in **[Johannesburg]** and the Parties shall endeavour to ensure that it is completed within **[90]** days after notice requiring the claim to be referred to arbitration is given.

26.6 Arbitration Act - rules

- 26.6.1 The arbitration shall be governed by the Arbitration Act, 1965, or any replacement Act and shall take place in accordance with the Commercial Arbitration Rules of AFSA.

26.7 arbitrator may apply equity

- 26.7.1 The arbitrator need not strictly observe the principles of law and may decide the matters submitted to him according to what he considers equitable in the circumstances.

26.8 **Application to court for urgent interim relief**

26.8.1 Nothing contained in this 26 (*Arbitration*) shall prohibit a Party from approaching any court of competent jurisdiction for urgent interim relief pending determination of the dispute by arbitration. Should the Parties not be able to reach agreement on referring a dispute to arbitration/ mediation, then either Party may proceed with litigation.

27. Miscellaneous Matters

27.1 Any written notice or documents (including documents in legal proceedings) in connection with this Agreement may be addressed to the addresses provided by the Parties in **Annexure A**.

27.2 The notice shall be deemed to have been duly given:

27.2.1 **5 Business Days** after posting (**14 Business Days** if the address is not in the Republic of South Africa), if posted by registered post (airmail, if available) to the Party's address in terms of sub-clause 27.1;

27.2.2 on delivery, if delivered to the Party's physical address in terms of sub-clause 27.1 between 08h30 and 17h00 on a Business Day (or on the first Business Day after that if delivered outside such hours);

27.2.3 on dispatch, if sent to the Party's e-mail address between 08h30 and 17h00 on a Business Day (or on the first Business Day after that if dispatched outside such hours);

27.2.4 unless the addressor is aware, at the time the notice would otherwise be deemed to have been given, that the notice is unlikely to have been received by the addressee through no act or omission of the addressee.

27.3 A Party may change that Party's address or e-mail address for this purpose by notice in writing to the other Party, such change to be effective only on and with effect from the 7th Business Day after the giving of such notice.

27.4 Notwithstanding anything to the contrary herein contained, a written notice or communication actually received by a Party shall be an adequate written notice or communication to that Party notwithstanding that it was not sent to or delivered at that Party's chosen address in 27.1.

27.5 **entire contract**

27.5.1 This Agreement contains all the express provisions agreed on by the Parties with regard to the subject matter of the Agreement and supersedes and novates in its entirety any previous understandings or agreements between the Parties in respect thereof, and the Parties waive the right to rely on any alleged provision not expressly contained in this Agreement.

27.6 **no representations**

27.6.1 A Party may not rely on any representation which allegedly induced that Party to enter into this Agreement, unless the representation is recorded in this Agreement.

27.7 **variation, cancellation and waiver**

27.7.1 No contract varying, adding to, deleting from or cancelling this Agreement, and no waiver of any right under this Agreement, shall be effective unless reduced to writing and signed by or on behalf of the Parties.

27.8 **indulgences**

27.8.1 The grant of any indulgence, extension of time or relaxation of any provision by a Party under this Agreement shall not constitute a waiver of any right by the grantor or prevent or adversely affect the exercise by the grantor of any existing or future right of the grantor.

27.9 **cession and delegation**

27.9.1 A Party may not cede any or all of that Party's rights or delegate any or all of that Party's obligations under this Agreement without the prior written consent of the other Party.

27.10 **applicable law**

27.10.1 This Agreement is to be governed, interpreted and implemented in accordance with the laws of the Republic of South Africa.

27.11 **jurisdiction of South African courts**

27.11.1 The Parties consent to the non-exclusive jurisdiction of the High Court of South Africa, [**South Gauteng High Court, Johannesburg**] for any proceedings arising out of or in connection with this agreement.

27.12 **costs**

27.12.1 Each Party shall bear that Party's own legal costs and disbursements of and incidental to the negotiation, preparation, settling, signing and implementation of this Agreement.

27.12.2 Any actual costs, including all legal costs on the Party and Party scale, incurred by a Party arising out of or in connection with a breach by another Party shall be borne by the Party in breach.

27.13 **signature in counterparts**

27.13.1 This Agreement may be executed in counterparts, each of which shall be deemed to be an original and which together shall constitute one and the same agreement.

27.14 **independent advice**

27.14.1 Each of the Parties hereby respectively agrees and acknowledges that:

27.14.2 it has been free to secure independent legal advice as to the nature and effect of each provision of this Agreement and that it has either taken such independent legal advice or has dispensed with the necessity of doing so; and

27.14.3 each provision of this Agreement (and each provision of the Annexes) is fair and reasonable in all the circumstances and is part of the overall intention of the Parties in connection with this Agreement.

27.15 **good faith**

27.15.1 The Parties shall at all times act in good faith towards each other and shall not bring any of the other Parties into disrepute.

27.16 **severability**

27.16.1 If any provision or part of this Agreement is found to be invalid or unenforceable by a competent court, it will be severed from the remainder of this Agreement which will remain in full force and effect to the fullest extent permitted by law

27.16 **co-operation**

27.16.1 Each of the Parties undertakes at all times to do all such things, perform all such acts and take all such steps, and to procure the doing of all such things, within its power and control, as may be open to it and necessary for and incidental to the putting into effect or maintenance of the terms, conditions and import of this Agreement.