

**DStv MEDIA SALES (PTY) LTD ANNUAL COMMITMENT AGREEMENT  
TERMS AND CONDITIONS**

**1. INTRODUCTION**

- 1.1. In consideration for an annual upfront commitment by Client in respect of airtime and digital / OTT expenditure on the Video Entertainment television channel known as the DStv Platform, DStv Media Sales ("**DMS**"), a company registered in accordance with the company laws of South Africa, undertakes to afford Client certain Discounts and other value added benefits on airtime the full details of which are outlined in the **Annual Commitment Commercial Term Sheet**.
- 1.2. The **Annual Commitment Commercial Term Sheet** is deemed to have commenced on the Effective Date and shall, save as otherwise agreed in writing between the Parties, endure for the Term as set out in the **Annual Commitment Commercial Term Sheet**.
- 1.3. The **Annual Commitment Commercial Term Sheet** shall be read in conjunction with the **DMS Standard Terms and Conditions** and these **Annual Commitment Terms and Conditions** and any additional Annexures and Addendums, which shall jointly be referred to as the **Agreement**.
- 1.4. For the sake of clarity, and definitions not defined in this Agreement shall bear the meaning as defined in the Standard Terms and Conditions.
- 1.5. Should there be any conflict pertaining to the terms in this **Annual Commitment Commercial Term Sheet** and the DStv Media Sales **Standard Terms and Conditions**, and / or the **Annual Commitment Terms and Conditions**, and any further Annexure's and/or Addendum's, the commercial terms herein shall prevail. For the avoidance of doubt, the legal terms contained in the **Standard Terms and Conditions** shall always apply.

**2. DEFINITIONS**

- 2.1. "**Annual Commitment**" shall mean the amount of money the Client shall spend over a 12 (twelve) month period;
- 2.2. "**Commitment Amount**" shall mean the actual amount spent by Client, exclusive of any discount, added value and /or incentive and excludes VAT ("**Net Spend**");
- 2.3. "**Commitment Benefit**" shall mean the incentives awarded to a Client including but not limited to Discounts and Added Value;
- 2.4. "**Commitment Period**" shall mean the 12 month Fiscal period the Client elects to track their Annual Commitment, unless otherwise specified in **Commercial Term Sheet**;
- 2.5. "**Position in Break**" ("**PIB**") is the first or last commercial Advertisement within an Advertisement break;
- 2.6. "**Pre-emptible**" shall mean the Airtime that is booked in an Advertising break which may be moved and/or replaced in another comparable Advertising break, on the same Channel;
- 2.7. "**Overspend**" shall mean where a Client has exceeded their Annual Commitment by R1,000,000 (One Million Rand);
- 2.8. "**Volume Discount Deal**" shall mean the Discount Benefit and/or Added Value Benefit awarded based on the level of the Annual Commitment;

**3. THE VOLUME DISCOUNT DEAL:**

- 3.1. A Volume Discount Deal shall only be awarded once the Annual Commitment has been made to DMS, as set out in the Annual Commitment Commercial Term Sheet.
- 3.2. All Discounts shall be calculated as a concession on the standard rate card rate applicable from time to time, as generally made available to the Client and /or Agency in respect of the relevant Channels on which Advertising Airtime is to be broadcast;
- 3.3. Commitment Benefit Inclusions and Exclusions:
  - 3.3.1. All Net Spend by the Advertiser on Channels and /or Platforms that DMS represents commercially in South Africa shall accrue towards the Annual Commitment.
  - 3.3.2. The Discount Benefit and Added Value Benefit as detailed in the **Annual Commitment Commercial Term Sheet** are applicable as follows:
    - 3.3.2.1. Discount and Added Value Benefits shall apply to loose spots bought across Linear TV on STB,
    - 3.3.2.2. Discount Benefit shall apply to loose spots bought on Catch Up on STB and on Pause Screen.
  - 3.3.3. Discount and Added Value Benefits shall not apply to the following, including but not limited to:

- 3.3.3.1. Any Airtime bookings not listed above;
  - 3.3.3.2. Sponsorships; and
  - 3.3.3.3. Digital or OTT campaigns
- however spends on these campaigns will accrue towards the Annual Commitment.

- 3.3.4. The following spends are excluded and shall not accrue towards the Annual Commitment:
- 3.3.5. "Off-air" or "hard" costs that may be incurred including but not limited to, an Advertising or Sponsorship campaign; i.e. such as events or on-the-ground production costs or activations;
- 3.3.6. Advertiser, Sponsorship campaigns and/or the like, on DStv Channels that DMS represent but where DMS does not contract and/or invoice;
- 3.3.7. Elements of a campaign that DMS do not contract and invoice; i.e. elements sold through a third-party and
- 3.3.8. Spends on DStv Channels that DMS does not represent.

#### 4. COMMITMENT SPEND

- 4.1. The Spends shall be tracked on a quarterly basis, and DMS shall perform a reconciliation of the Airtime used and Spends received to ensure that the Net Spend objectives are met.
- 4.2. In the event that a Discount Benefit has been afforded to Client by DMS, it is on the assumption and expectation of a Net Spend by the Client during the Term as set out in the **Annual Commitment Commercial Term Sheet**.
  - 4.2.1. Should Agency therefore fail, or appear likely to fail (in DMS's reasonable discretion), to spend the total Net Spend during the Term, the Parties shall assess the situation and take remedial action to ensure that the Net Spend objectives are met, or that any Discount Benefits are adjusted accordingly. Discounts shall be reduced for future campaigns, or where applicable the Client or Agency will be invoiced for the excess of the Discount Benefit gained and/or additional penalties.
  - 4.2.2. Where an Overspend is indicated in the abovementioned tracking, DMS shall consider such Overspend and the appropriate Incentive based on the level of overspend, and adjust accordingly;
- 4.3. In the event that a Client achieves an Overspend on their Annual Commitment:
  - 4.3.1. 10% Added Value shall be awarded on the Overspend amount only;
  - 4.3.2. This Added Value is to be taken a maximum of 3 (three) months after the Commitment Period has ended;
  - 4.3.3. Added Value airtime shall be allocated at full rate-card rate;
  - 4.3.4. Added Value shall be placed by DMS in available inventory at DMS discretion, and can be taken pro-rata according to Channel Network spend for the Fiscal, or across the M-Net owned Channels.
  - 4.3.5. Alternatively, at no later than 8 (eight) months into the Commitment Period, the deal may be re-negotiated accordingly at an agreed revised Commitment Amount by the Parties; as overspend is not able to be factored into a new Annual Commitment deal.

#### 5. ADDED VALUE

- 5.1. The Added Value Benefit is subject to available inventory;
- 5.2. Added Value may be pre-empted by DMS;
- 5.3. It may not be accumulated and must be taken on a campaign by campaign basis as scheduled by DMS;
- 5.4. Subject to prior written approval by DMS, Added Value may be carried over for broadcast in January, February and/or March of the following year in the event that Airtime is sold out during the October to December period;
- 5.5. Added Value must be applied for on a campaign by campaign basis, on the Channels along with the Spots which have been paid for, unless otherwise specified in the **Annual Commitment Commercial Term Sheet**;
- 5.6. Added Value is to be used on paid for campaigns only;
- 5.7. Added Value booking requests should be clearly marked as Added Value and shall be scheduled at DMS reasonable discretion having due regard to the available inventory upon receipt of booking information from Client or Advertising Agent.;
- 5.8. In the event that the Added Value Airtime on M-Net, Mzansi Magic, and kykNET as per the Added Value booking request is not available, the Added Value may be taken on the following M-Net owned Channels :
  - 5.8.1. 1Magic, Africa Magic Epic, Channel O, fliekNET, kykNET & kie, kykNET Nou, ME, M-Net Movies 1, M-Net Movies 2, M-Net Movies 3, M-Net Movies 4, Mzansi Music, Mzansi Wethu, Mzansi Bioskop, Novela Magic,; and any other M-Net DStv Channels that launch post this Agreement.
- 5.9. Added Value on all the other DStv Channels represented by DStv Media Sales must be taken in proportion to the spend level for that Channel;
- 5.10. It is the responsibility of Client to supply the relevant information and material to flight to ensure that all Added Value offered is utilised during the Commitment Period as per the terms laid out in **Annual Commitment Commercial Term Sheet**. Should Added Value Airtime not be used accordingly, such unused Added Value shall lapse and shall no longer be available for use. The Client shall not be entitled to any compensation or any other

payment or benefit whatsoever should it fail to use all its Added Value Benefit as a result of not supplying the relevant information and material to flight.

## 6. POSITION IN BREAK:

- 6.1. PIB is applicable to Loose Spots only, and is the Spot rate is subject to a PIB loading which is detailed in the **Annual Commitment Commercial Term Sheet**, if applicable;
- 6.2. The Agency and/or Client are responsible for applying for PIB positions and monitoring the delivery thereof;
- 6.3. Channel self-promotional spots ("Promo Spots") and Channel Billboards ("Idents") are not considered commercial elements;
- 6.4. Should a Programme be Sponsored, the Sponsor Billboard shall be the 1<sup>st</sup> and/or last element in an Advertising-Break; and the PIB Advertisement shall be allocated thereafter/before as 1<sup>st</sup> and/or last in the advertising-break respectively.
- 6.5. PIB endeavours are not guaranteed.

## 7. SETTLEMENT OF ACCOUNTS

- 7.1. The Advertiser shall effect payment as set out in **Clause 6.2** in the **DMS Standard Terms & Conditions**, on receipt by the Advertiser of a valid invoice.
- 7.2. The Advertiser to ensure the requisite securities are in place with DMS, and / or trade credit insurance limits have been approved by DMS.

## 8. GENERAL:

- 8.1. Queries in respect of post campaigns and/or airtime spots shall only be considered within three-months of the campaign end-date;
- 8.2. Spots that are booked by the Advertiser, and contracted by DMS and are thereafter not flighted for whatever reason, shall not be paid for by the Advertiser. It is for this reason acknowledged, that the Advertiser contracts, may differ to the final contract for billing by DMS;
  - 8.2.1. In such instances, DMS shall ensure that these spots are not accounted for towards any Commitment Benefit.
- 8.3. Where applicable, a deal roll-over into the next Client Commitment Period will only be done on a consultation basis; the deal roll-over shall be for a period not exceeding one-month, provided the Commitment amount has been met and/or exceeded within the current Commitment Period as set out in the **Annual Commitment Commercial Term Sheet** or any further Annexure's and/or Addendum's, and that there will be a Commitment Agreement in place for the new Commitment Period, and that DMS has agreed to the deal roll-over in writing to the Advertiser.
- 8.4. The provisions of this Agreement shall be treated as strictly confidential and shall not be disclosed by either Party without the prior written approval of the other unless required by law or for purposes of performance or enforcing performance of the obligations.
- 8.5. Neither Party may cede, assign, delegate or in any other manner transfer any of its rights and/or obligations in terms of this Agreement without the prior written of the other Party, which consent shall not unreasonably be withheld or delayed.
- 8.6. Nothing in this Agreement shall be construed as constituting DMS as the agent of Client, or granting any authority to DMS to represent Client, or to give any warranties or representations of whatsoever nature on behalf of Client, or constituting a partnership between Client and DMS.
- 8.7. The Parties shall, in all their dealings with each other, display good faith.
- 8.8. The expiration or termination of this Agreement shall not affect such of the provisions of this Agreement as expressly provided that they will operate after any such expiration or termination or which of necessity must continue to have effect after such expiration or termination, notwithstanding that the clauses themselves do not expressly provide for this.
- 8.9. Each Party shall bear their own costs of and incidental to the negotiation and preparation of this Agreement.