

## ALPHA GOLF (PTY) LTD STANDARD TERMS AND CONDITIONS FOR INTERNET ADVERTISING FOR MEDIA BUYS ONE YEAR OR LESS

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 ALPHA GOLF (PTY) LTD (Registration No. 1994/005053/07) ("ALPHA GOLF (PTY) LTD") in respect of rendering by ALPHA GOLF (PTY) LTD of advertisements (constituted of such text, graphics, image, content or any other marketing or promotional material provided by the Advertiser to ALPHA GOLF (PTY) LTD from time to time pursuant to an IO) ("**the Ads**") on the ALPHA GOLF (PTY) LTD web sites (being the web sites owned and/or operated by ALPHA GOLF (PTY) LTD and/or by any Affiliate (any third party with whom ALPHA GOLF (PTY) LTD 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 agreement is for the provision of search technology and/or otherwise for the placement of Ads) ("**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 clauses 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 ALPHA GOLF (PTY) LTD will render the Ads on the Sites for the benefit of Advertiser. At Advertiser's discretion, an IO may either be submitted by Advertiser to ALPHA GOLF (PTY) LTD or be submitted by ALPHA GOLF (PTY) LTD, signed by Advertiser and returned to ALPHA GOLF (PTY) LTD. 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 exclusive of VAT; (c) the maximum amount of money to be spent pursuant to the IO (if applicable) exclusive of VAT, (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. ALPHA GOLF (PTY) LTD will make commercially reasonable efforts to notify Advertiser within 2 business days of receipt of an IO signed by Advertiser if ALPHA GOLF (PTY) LTD 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 ALPHA GOLF (PTY) LTD and Advertiser; or (b) the display of the first Ad impression by ALPHA GOLF (PTY) LTD 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 in writing and 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. ALPHA GOLF (PTY) LTD shall use its best endeavours to 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 ALPHA GOLF (PTY) LTD deviates from the IO, it shall do so only with the prior approval of the Advertiser which approval shall not be unreasonably withheld, provided that where ALPHA GOLF (PTY) LTD is unable to obtain the approval of the Advertiser to any IO (having used its reasonable commercial endeavours to do so), ALPHA GOLF (PTY) LTD may deviate from the

IO in such a manner and to such an extent as ALPHA GOLF (PTY) LTD, acting reasonably, considers to be in the interests of the Advertiser.

- 2.2. ALPHA GOLF (PTY) LTD will use commercially reasonable efforts to provide Advertiser at least 7 business days prior notification of any material changes to the Site of which ALPHA GOLF (PTY) LTD 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 ALPHA GOLF (PTY) LTD 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 ALPHA GOLF (PTY) LTD with written notice to such effect within 7 days of receipt of the aforesaid notice by Advertiser. If ALPHA GOLF (PTY) LTD 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, in writing 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 such third party finds that the Advertiser was not justified in cancelling the IO, ALPHA GOLF (PTY) LTD is entitled to recover payment for the campaign.
- 2.3. ALPHA GOLF (PTY) LTD will submit or otherwise make electronically accessible to Advertiser within five business days of acceptance of an IO, final technical specifications, as determined by ALPHA GOLF (PTY) LTD. Changes to the specifications of the already purchased Ads after that five business day period will allow Advertiser to suspend (without impacting the CED 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 ALPHA GOLF (PTY) LTD resize the Ad at ALPHA GOLF (PTY) LTD's cost, and with final creative approval of Advertiser, (which approval shall not be unreasonably withheld) 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

Advertiser shall pay to ALPHA GOLF (PTY) LTD such amount as ALPHA GOLF (PTY) LTD may stipulate from time to time in respect of the Deliverables, together with value added tax thereon in respect of any vat-able supply. ALPHA GOLF (PTY) LTD shall issue invoices at such intervals as ALPHA GOLF (PTY) LTD 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, without deduction, set off or bank charges, by electronic funds transfer into the bank account nominated by ALPHA GOLF (PTY) LTD, within 30 days from the date stipulated in the invoice, unless Advertiser is an accredited media agency in which case it will be within 45 days of the date stipulated in the invoice, or as otherwise stated in a payment schedule set forth in the duly agreed IO. Should Advertiser fail to pay any amount to ALPHA GOLF (PTY) LTD by due date, ALPHA GOLF (PTY) LTD shall be entitled, in its discretion and without prejudice to any other rights which it may have in law, forthwith to cancel these Terms or suspend performance of its obligations without notice. ALPHA GOLF (PTY) LTD shall also be entitled to charge interest, at the prime interest rate charged by its bank on all overdue amounts from the due date until date of payment. Should the Advertiser reasonably feel that any click fraud has occurred; both parties will use their best endeavours to remedy. If a resolution is not reached, an independent third party will be sought to resolve the dispute.

#### 3.3. Payment Liability

Where Advertiser is represented by an agent ("**Advertising Agent**"), Advertiser will make available to ALPHA GOLF (PTY) LTD, 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 ALPHA GOLF (PTY) LTD, Advertising Agent will confirm in writing whether Advertiser has paid to Advertising Agency in advance funds sufficient to make payments pursuant to the IO.

If ALPHA GOLF (PTY) LTD, acting in its sole discretion, considers Advertiser or Advertising Agency's creditworthiness to be impaired, ALPHA GOLF (PTY) LTD 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 ALPHA GOLF (PTY) LTD, its Affiliates and their respective directors, officers, employees and agents from any and all Losses incurred as a result of Advertising Agent'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 business days prior to the CSD (unless otherwise agreed and indicated on the IO). Failure to make such upfront payment will lead to the CSD being postponed until proof of such payment has been received by ALPHA GOLF (PTY) LTD with ALPHA GOLF (PTY) LTD having no obligation and incurring no liability in terms of the IO.

#### 3.4. REPORTING

ALPHA GOLF (PTY) LTD shall provide Advertiser with such reports as Advertiser on a monthly basis.

### 4. CANCELLATION AND TERMINATION

#### 4.1. For Campaigns other than Sponsorships

4.1.1. Prior to Campaign Start Date as stipulated on the IO (“CSD”)

At any time 30 days or more before the CSD, Advertiser may cancel the IO in writing, without penalty. Where Advertiser gives written notice of the cancellation, on a date (“the Cancellation Date”) less than 30 days prior to the CSD, the IO shall continue to be effective for 30 days from the Cancellation Date. The Advertiser shall accordingly be liable for the costs (as stipulated in the IO) for each of those days from the CSD which occur in the aforementioned 30 days. For clarity and by way of example, if Advertiser cancels the IO 15 days prior to the CSD, Advertiser will be responsible and liable for the cost of the first 15 days of the IO. Excluded from this will be newsletter and promotional mailer inserts for which an IO has been signed which carry a compulsory 30 days written cancellation notice. Should any of these inserts be cancelled within 30-days of the CSD, Advertiser will be liable for the full cost of the inserts affected by the less than 30 days cancellation notice.

4.1.2. Post the CSD

Once the CSD has been reached, Advertiser may cancel the IO for any reason, by providing ALPHA GOLF (PTY) LTD with written notice of cancellation, which cancellation will be effective after the later of: (i) 30 days after the CSD; and (ii) 14 days after providing ALPHA GOLF (PTY) LTD with such written notice.

4.2. **For Sponsorships (as classified in the Campaign Name of the IO)**

Sponsorships are subject to a minimum 6 weeks prior written cancellation notice.

4.3. 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 defined below) that is not cured within 2 business 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 breach of the Policy (as defined below), on three separate occasions after having received timely notice of each such breach, even if such breach has been cured by Advertiser, then ALPHA GOLF (PTY) LTD may terminate the IO associated with such breach upon written notice.

**5. MAKEGOODS**

5.1. ALPHA GOLF (PTY) LTD shall monitor delivery of the Ads, and shall notify Advertiser as soon as reasonably possible if ALPHA GOLF (PTY) LTD believes that an under-delivery is likely. If by the end of the first half of the campaign, ALPHA GOLF (PTY) LTD notifies the Advertiser that it believes the campaign will not deliver in full as per IO, the Advertiser has a right to cancel that remaining portion of the IO and allocate the remaining underserved budget to other media campaigns or Sites.

5.2. In the event that actual Deliverables for any campaign fall below stipulated levels, as set forth in the IO, and/or if there is an omission of any Ad (placement or creative unit), Advertiser and ALPHA GOLF (PTY) LTD 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, ALPHA GOLF (PTY) LTD shall, as Advertiser’s sole remedy, provide Advertiser with a credit equal to the value of the under-delivered portion of the IO.

**6. BONUS IMPRESSIONS**

6.1. Where Advertiser utilises a 3rd Party Ad Server, (it being recorded that ALPHA GOLF (PTY) LTD accepts only the following 3rd Party Ad Servers: Adtech, Double Click, Atlas, Eyeblander and Blue Streak) ALPHA GOLF (PTY) LTD will not serve more than 10% above the Deliverables specified in the IO without prior written consent from Advertiser. Permanent or exclusive placements shall run for the specified period of time regardless of over-delivery, unless the IO establishes an impression cap for Third Party Ad served activity. Advertiser will not be charged by ALPHA GOLF (PTY) LTD for any additional Ads above any level guaranteed or capped in the IO. If a 3rd Party Ad Server is being used and Advertiser notifies ALPHA GOLF (PTY) LTD that the guaranteed or capped levels stated in the IO have been reached, ALPHA GOLF (PTY) LTD will use commercially reasonable efforts to suspend delivery and, within 48 hours, may either 1) serve any additional Ads itself or 2) be held responsible for all applicable incremental Ad serving charges incurred by Advertiser after such notice has been provided and associated with over delivery by more than 10% above such guaranteed or capped levels.

6.2. Where Advertiser does not utilize a 3rd Party Ad Server, ALPHA GOLF (PTY) LTD may serve as many ad units as ALPHA GOLF (PTY) LTD chooses unless otherwise indicated on the IO. Advertiser will not be charged by ALPHA GOLF (PTY) LTD for any additional advertising units above any level stipulated in 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 ALPHA GOLF (PTY) LTD suffers such a delay or default, ALPHA GOLF (PTY) LTD 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, ALPHA GOLF (PTY) LTD 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 7.

7.3. To the extent that a force majeure has continued for more than 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. AD MATERIALS

- 8.1. The Advertiser shall provide ALPHA GOLF (PTY) LTD with Advertising Materials in accordance with ALPHA GOLF's (PTY) LTD then existing advertising criteria or specifications (including content limitations, technical specifications, privacy policies, user experience policies, policies regarding consistency with ALPHA GOLF (PTY) LTD's public image, community standards regarding obscenity or indecency (taking into consideration the portion(s) of the Site on which from time to time the Ads are to appear), other editorial or advertising policies, and material due dates) (collectively "**Policies**") On breach of the Policies, ALPHA GOLF (PTY) LTD shall be entitled, amongst other things, to invoke the provisions of clauses 8.2 and 8.3 below. Advertiser shall inform ALPHA GOLF (PTY) LTD, timeously in writing, if late delivery of creative is expected. ALPHA GOLF (PTY) LTD shall make reasonable effort to accommodate the campaign at an agreed later date. Should this not be possible, Advertiser and ALPHA GOLF (PTY) LTD shall attempt to remedy through revision of the IO to alternative placements and/or creative. Should no agreement be reached, Advertiser is obliged to cancel the IO as per the cancellation terms stipulated in clause 4.
- 8.2. ALPHA GOLF (PTY) LTD shall be entitled, in its sole discretion, to reject or remove from its Site any Ads where the Advertising Materials or the site to which the Ad is linked do not comply with its Policies, or that in ALPHA GOLF (PTY) LTD's sole judgment, do not comply with any applicable law, regulation or other judicial or administrative order. ALPHA GOLF (PTY) LTD shall be entitled, in its sole discretion, to reject or remove from its Site any Ads where the Advertising Materials or the site to which the Ad is linked are or may tend to bring disparagement, ridicule, scorn, or the like upon ALPHA GOLF (PTY) LTD or any of its Affiliates (as defined below).
- 8.3. If Advertising Materials provided by Advertiser are damaged, not compliant with the Policies, or otherwise unacceptable, in ALPHA GOLF (PTY) LTD's opinion, ALPHA GOLF (PTY) LTD will use commercially reasonable efforts to notify Advertiser within two business days after its receipt of such Advertising Materials.
- 8.4. ALPHA GOLF (PTY) LTD will not edit or modify the submitted Ads in any way, including, but without limitation, resizing the Ad, without Advertiser approval, which approval shall not be unreasonably withheld. ALPHA GOLF (PTY) LTD shall use all such Ads in strict compliance with these Terms and any reasonable, written instructions provided by Advertiser.
- 8.5. When applicable, Third Party Ad Server tags shall be implemented so that they are functional in all aspects.
- 8.6. If Advertising Materials delivered via 3rd Party Ad Server are damaged, not compliant with ALPHA GOLF (PTY) LTD's specifications, or otherwise unacceptable in ALPHA GOLF's (PTY) LTD opinion, ALPHA GOLF (PTY) LTD will immediately deactivate such 3rd Party Delivery and use commercially reasonable efforts to notify Advertiser within two business days of its actions and required correction to 3rd Party Delivery. Advertiser will be afforded corrective timelines as per Clause 8.1.
- 8.7. ALPHA GOLF (PTY) LTD, on one hand, and Advertiser, on the other, will not use the other's trade name, trademarks, logos or Ads in a public announcement (including, but not limited to, through any press release) regarding the existence or content of these Terms or an IO without the other's prior written approval which approval shall not be unreasonably withheld.
- 8.8. Advertiser grants to ALPHA GOLF (PTY) LTD a worldwide, royalty free license to use the Ads and any logo, trade name, trade mark, brand name, logo, domain name or the like associated therewith for the purposes of fulfilling its obligations in respect of any IO.
- 8.9. Advertiser hereby warrants that it is, and at all relevant times will be, the lawful owner of the copyright in, and all other intellectual property rights relating to, the Ads and all the material and content provided by Advertiser to ALPHA GOLF (PTY) LTD for the purposes of the IO (alternatively that Advertiser is the duly authorized representative of such lawful owner) and hereby irrevocably and unconditionally indemnifies ALPHA GOLF (PTY) LTD and each Affiliate and holds ALPHA GOLF (PTY) LTD and each Affiliate harmless against any claim made by any person, howsoever arising, from any infringement of copyright and/or infringement of any other intellectual property rights or other third party rights by the Ads and/or any other material provided by Advertiser to ALPHA GOLF (PTY) LTD and/or otherwise relating to the Ads.

## 9. INDEMNIFICATION

- 9.1. Subject to the provisions of Clause 10, ALPHA GOLF (PTY) LTD 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 ALPHA GOLF (PTY) LTD's breach of Clause 12, ALPHA GOLF (PTY) LTD's display or delivery of any Ad in breach of these Terms as read with the relevant IO, or that materials provided by ALPHA GOLF (PTY) LTD (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 ALPHA GOLF (PTY) LTD 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 Ads, while ALPHA GOLF (PTY) LTD 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.

- 9.2. Advertiser agrees to defend, indemnify and hold harmless ALPHA GOLF (PTY) LTD 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 8.1, violation of Policies, or the content or subject matter of any Ad or Advertising Materials to the extent used by ALPHA GOLF (PTY) LTD in accordance with these Terms as read with the relevant IO, including but not limited to allegations that such content or subject matter violate the right of a Third Party, are defamatory or obscene, or to violate any law, regulations or other judicial or administrative action.
- 9.3. 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, in writing, 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 defence or settlement of any such claim; and (ii) be entitled to participate at its own expense in the defence of any such claim. The Indemnified Party agrees that the Indemnifying Party will have sole and exclusive control over the defence 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.
- 9.4. 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 9, 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.

## 10. LIMITATION OF LIABILITY: ALPHA GOLF (PTY) LTD

- 10.1 In no event will ALPHA GOLF (PTY) LTD 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 Advertiser arising out of these Terms, even if ALPHA GOLF (PTY) LTD has been advised of the possibility of such damages.
- 10.2 Notwithstanding anything to the contrary herein contained, ALPHA GOLF's (PTY) LTD total liability, whether for breach of contract, breach of warranty, negligence, indemnification in terms of Clause 9.1 or otherwise, shall be limited to the total amount received by ALPHA GOLF (PTY) LTD from the Advertiser in the 12 months preceding any claim giving rise to such liability.

## 11. 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 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.

## 12. THIRD PARTY AD SERVERS (Applicable if 3rd Party Server Is Used)

- 12.1. ALPHA GOLF (PTY) LTD will track delivery through its ad server and Advertiser will also track delivery through its proprietary or subcontracted 3rd Party Ad Server whose identity will be disclosed to ALPHA GOLF (PTY) LTD prior to CSD. Advertiser may not substitute such 3rd Party Ad Server without ALPHA GOLF's (PTY) LTD prior written consent. Advertiser and ALPHA GOLF (PTY) LTD agree to give reciprocal access to relevant and non-proprietary statistics from both ad servers, or if such is not available, provide weekly placement-level activity reports to each other. In the event that "ALPHA GOLF's (PTY) LTD" ad server measurements are higher than those produced by the Advertiser's 3rd Party Ad Server by more than 10% over the campaign period, Advertiser will facilitate a reconciliation effort between ALPHA GOLF (PTY) LTD and 3rd Party Ad Server. If the discrepancy cannot be resolved and Advertiser has made a good faith effort to facilitate the reconciliation effort, the Advertiser shall be entitled to either:
  - 12.1.1. Consider the discrepancy an under-delivery of the Deliverables whereupon the parties shall act in accordance with Clause 6; or
  - 12.1.2. Pay ALPHA GOLF (PTY) LTD based on delivery of Deliverables as quantified by the Advertiser's 3rd party Ad Server.
- 12.2. Where an Advertiser is utilizing a 3rd Party Ad Server and that 3rd Party Ad Server cannot serve the Ad, the Advertiser shall have a one-time right to temporarily suspend delivery under the IO for a period of up to 72-hours. Upon written notification by Advertiser of a non-functioning 3rd Party Ad Server, ALPHA GOLF (PTY) LTD has 24 hours to suspend delivery. Following that period, Advertiser will not be held liable for payment for any Ad that runs within the immediate 72-hour period thereafter until ALPHA GOLF (PTY) LTD is notified, in writing, that the 3rd Party Ad Server is able to serve Ads. After the 72-hour period passes and Advertiser has not provided written notification that ALPHA GOLF (PTY) LTD can resume delivery under the IO, Advertiser will pay for the Ads that would have or have run after the 72 hour

period but for the suspension. The Advertiser can elect that ALPHA GOLF (PTY) LTD serve Ads until 3rd Party Ad Server is able to serve Ads. If the Advertiser does not so elect for ALPHA GOLF (PTY) LTD to serve the Ads until 3rd Party Ad Server is able to serve Ads, ALPHA GOLF (PTY) LTD may utilise the inventory that would have been used by the Advertiser for ALPHA GOLF's (PTY) LTD own ads or ads provided by a third party. Upon written notification that the 3rd Party Ad Server is functioning, ALPHA GOLF (PTY) LTD will have 72 hours to resume delivery.

### 13. MISCELLANEOUS

- 13.1. ALPHA GOLF (PTY) LTD represents and warrants that ALPHA GOLF (PTY) LTD 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, consents, clearances and the like to use the content contained in their Ads and Advertising Materials.
- 13.2. 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 ALPHA GOLF (PTY) LTD'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.
- 13.3. 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.
- 13.4. In the event of any inconsistency between the terms of an IO and these Terms, the terms of the IO shall prevail only insofar as there is an inconsistency. All IOs shall be governed by the laws of the Republic of South Africa. ALPHA GOLF (PTY) LTD 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.
- 13.5. 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 ALPHA GOLF (PTY) LTD and Advertiser shall be sent to the contact as noted in the IO. All notices to Advertiser shall be sent to the address specified on the IO. Notwithstanding anything to the contrary herein contained, a written notice of communication actually received by a party shall be adequate notice to it, notwithstanding that such was not sent to or delivered at its chosen address.
- 13.6. The termination of this agreement shall not affect those provisions of this agreement which expressly provide that they will generate after such termination or which, of necessity must continue to have effect after such termination, notwithstanding that the clauses themselves do not expressly provide therefore. On termination, each party shall return or destroy the other party's Confidential Information and remove Advertising Materials and Ad tags.
- 13.7. ALPHA GOLF (PTY) LTD shall be entitled to recover from the Advertiser any and all legal costs incurred by ALPHA GOLF (PTY) LTD in enforcing its rights under this agreement on an attorney/own client scale.