

## **GAP COMMUNICATION DESIGN – STANDARD CLIENT TERMS AND CONDITIONS**

TERMS AND CONDITIONS governing the supply of services to be provided (and, to the extent applicable, the products to be delivered) (“Services”) as identified in the cost estimate, quotation, invoice, purchase order or other document to which these terms and conditions are attached or which refers to them (“CE”) by GAP COMMUNICATION DESIGN(GAPdesign) company number 2009/177173/23 whose registered address is 4th Floor, Spaces Sunclare, 21 Dreyer St, Claremont, Cape Town, 7708, South Africa and which issues the CE to the person, firm, company or organisation whose name appears in the CE, or who accepts the CE(“Client”).

### **1 BASIS OF AGREEMENT**

1.1 By signing the CE, the Client hereby appoints GAPdesign to provide the Services in accordance with these terms and conditions. The Client acknowledges that, unless and until the CE has been signed by the Client and returned to GAPdesign, no contract shall have come into existence. In the event that the CE is not properly signed or executed, in whole or in part, the Client acknowledges and agrees that, notwithstanding the aforesaid provisions of this clause 1.1, it shall be and remain liable to compensate GAPdesign in full and on demand for all Services provided and for all costs incurred by or on behalf of GAPdesign in respect of or in relation to the CE and/or the services, deliverables and/or other items to be provided or procured by GAPdesign as set out in therein.

1.2 These terms and conditions will be incorporated into and be part of the CE and shall be subject to Condition 8.4 apply to the exclusion of any other terms that the Client seeks to impose or Incorporate, or which are implied by trade, custom, practice or course of dealing, in respect of GAPdesign’s provision of the Services. This CE constitutes the entire agreement between the parties in respect of the Services. The Client acknowledges that it has not relied on any statement, promise or representation made or given by or on behalf of GAPdesign which is not set out in this CE.

1.3 Except to the extent otherwise stated in the CE, any estimate, offer or quote contained in the CE shall only be valid for a period of 30 days from its date of issue.

1.4 Unless otherwise terminated in accordance with these terms and conditions, the CE will continue to bind the Client and GAPdesign for the duration of the period (if any) stipulated therein.

1.5 GAPdesign enters into the CE on its own behalf and for the benefit of each member of its “Group” (which term means, in respect of a company, all subsidiaries of that company and its ultimate holding company).

## 2. PROVISION OF SERVICES

2.1 GAPdesign shall supply the Services with due care, skill and diligence and on or by the relevant date(s) specified in the CE.

2.2 The Client understands and agrees that, in respect of any report, review, advice, opinion, observation, recommendation or other statement made or given by GAPdesign in the course of the provision of the Services:

2.2.1 GAPdesign aims to act in a diligent and careful manner but does not accept any responsibility for any omission or misstatement, except in the event of its gross negligence or willful misconduct;

2.2.2 GAPdesign does not accept a duty of care to any person other than the Client; and

2.2.3 it is made or given for the exclusive use of the Client and is not to be relied on by any other party without GAPdesign's prior written consent.

## 3 PAYMENT

3.1 The fee for the Services is set out in the CE and, unless indicated otherwise, is inclusive of VAT, sales taxes and/or any other applicable taxes.

3.2 The Client shall pay the fee(s) for the Services in the manner and at the time(s) or within the number of days (as the case may be) stipulated in the CE. Where the fee(s) is payable in installments (as stipulated in the CE), the Client shall pay each installment in the manner and at the time(s) or within the number of days (as the case may be) stipulated in the CE. Where no payment terms are stipulated in the CE, payments shall be due within 7 working days following date of invoice. The Client shall remain liable to pay the fee(s) irrespective of whether the Services are being provided by GAPdesign directly for the benefit of the Client or any other subsidiaries, associates, employees, contractors or agents of the Client.

3.3 The parties agree that all third party media and related costs are payable strictly in advance. Gap shall not be entitled to incur any third party media or related expense unless and until payment in respect thereof has been received in full by Gap.

3.4 Interest on all overdue payments under this CE shall accrue from the date when payment becomes due from day to day until the date of payment at a rate of 3% above the rate that the FNB of South Africa charges on its prime overdraft facilities from time to time, which interest shall be calculated daily, compounded monthly and payable by the Client to GAP on demand.

3.5 All amounts payable by the Client to GAP shall be paid free of deduction, set-off, exchange or withholding and shall be paid in the manner stipulated in the CE or as directed by GAP in writing from time to time.

#### **4 OWNERSHIP AND IP RIGHTS**

4.1 For the purpose of this CE:

4.1.1 "IP Rights" shall include all patents, copyrights, design rights, trademarks, service marks, trade secrets, trade, business and domain names, rights in trade dress or get-up, rights in designs, rights in computer software, database rights, moral rights, rights in confidential information (including know-how and trade secrets) and other rights in the nature of intellectual property rights (whether registered or unregistered) and all applications for the same, anywhere in the world; and

4.1.2 "GAP Proprietary Material" includes any product, software, document, business process, text, artwork, trade mark, branding, logo, slogan, design, still, graphic, video, photograph, sound recording, script, music, picture, document and/or other data or material of any nature whatsoever, and all right, title and interest therein (including but not limited to, the underlying copyright in any source code or business methodology associated therewith and all other IP Rights therein) which is used, owned, developed and/or created by or for, or licensed to, GAP at any time, but shall not include any designs, software, programs, creative work, copy, documents, data or other materials developed by GAP expressly, specifically and exclusively at the request and instance of the Client in terms of the CE.

4.2 All risk in each Service shall pass to the Client upon delivery.

4.3 Subject to the remaining provisions of this clause 4, all right, title and interest in and to each Service shall be owned and remain fully vested in GAP until the Client has paid in full all amounts owing to GAP under the CE in respect of such Service, whereupon GAP shall grant to the Client in respect of such Service an exclusive, perpetual, irrevocable, worldwide and royalty-free license to reproduce, adapt, modify, translate, publish, publicly perform, publicly display and distribute the Service.

4.4 All right, title and interest in and to the GAP Proprietary Materials shall at all times remain fully vested in and belong to GAPdesign and its licensors, and the Client shall have no rights whatsoever in or to the GAP Proprietary Materials other than as granted pursuant to this Agreement, however GAPdesign shall grant to the Client a non-exclusive, non-transferable, perpetual, irrevocable, worldwide and royalty-free license in respect of such GAPdesign Proprietary Materials as GAPdesign in its sole discretion determines to be strictly necessary to enable the Client to enjoy the benefit of any licence granted pursuant to clause 4.3 above, provided that the GAPdesign Proprietary Material, or any derivatives or components thereof, may not be reproduced, modified, duplicated, copied, sold, assigned, distributed, visited, discovered by any third party (which discovery shall include without limitation any discovery of any software or other digital properties), rented, leased or otherwise exploited in whole or in part without GAPdesign's written consent.

## 5 LIABILITY AND INDEMNITY

5.1 To the fullest extent permitted by law, GAP's liability to the Client under this CE, howsoever arising, shall be limited to direct damages and losses only and in no event shall GAP be liable for any:

5.1.1 business interruption, loss of use, profit, anticipated profit, contracts, revenues, goodwill, anticipated savings, business information, data or other pecuniary loss; or

5.1.2 consequential, incidental or indirect losses; or

5.1.3 special or other damages, arising out of or in connection with this CE or the provision of the Services regardless of whether such liability is based on breach of contract, delict, strict liability or otherwise. Notwithstanding this clause or anything to the contrary in this CE, GAP's total liability howsoever arising in connection with this CE shall be limited to the total fees actually paid by the Client in respect of the Services.

5.2 Clause 5 shall not operate to exclude GAP's liability arising as a result of GAP's fraudulent conduct or in respect of any death or personal injury caused by GAP's negligence.

5.3 Except to the extent otherwise provided in this CE, all warranties, conditions and other terms implied by statute or common law are, to the fullest extent permitted by law, excluded from this CE.

## 6 TERMINATION

6.1 Either party (the "Complaining Party") may terminate the CE immediately by giving written notice to the other Party (the "Defaulting Party") if any of the following events occurs:

6.1.1 the Defaulting Party has failed to make any payment of any sum due and payable under the CE within 14 days of written notice from the Complaining Party calling on it to make such payment;

6.1.2 the Defaulting Party commits any material breach of any of the provisions (other than a provision relating to payment) of the CE and fails to remedy it within 30 days after receiving a written notice from the Complaining Party containing full particulars of the material breach and requiring it to be remedied; or

6.1.3 the Defaulting Party is unable to pay its debts as they fall due; enters into compulsory or voluntary liquidation; compounds with or convenes a meeting of its creditors; is or becomes subject to any bankruptcy, insolvency or liquidation proceedings or order of a competent court; or ceases for any reason to carry on business in the ordinary course.

6.2 Either party may terminate the CE at any time after the expiry of the minimum term set out in the CE on prior written notice to the other of no less than the period set out in the CE (which shall be twenty (20) business days if no notice period is so specified).

6.3 On termination of the CE for any reason:

6.3.1 the Client shall cease all activities authorised by the CE in respect of the GAPdesign Proprietary Materials;

6.3.2 the Client shall immediately pay to GAPdesign all of GAPdesign's outstanding unpaid invoices and interest and, in respect of Services supplied but for which no invoice has yet been submitted, GAPdesign shall submit an invoice, which shall be payable by the Client immediately on receipt;

6.3.3 the accrued rights and remedies of the parties as at termination shall not be affected, including the right to claim damages in respect of any breach of the CE which existed at or before the date of termination or expiry; and

6.3.4 clauses which expressly or by implication have effect after termination shall continue in full force and effect.

## 7 NON-SOLICITATION

7.1 The Client acknowledges that GAPdesign's employees will have a close working relationship with the Client and that GAPdesign is reliant upon its employees and has invested substantial time and money in their training and development.

7.2 The Client undertakes and agree that it will not at any time during the term of agreement constituted in accordance with this CE or for a period of six (6) months from the date at which this agreement terminates or expires, however that may occur:

7.2.1 induce to leave, solicit or entice away or endeavour to induce to leave, solicit or entice away any director or employee of GAPdesign (and the Client agrees that, without prejudice to any other rights or remedies that GAPdesign might have, if the Client acts in breach of this provision it will be liable for a recruitment fee for each of the relevant employees induced to leave, solicited or enticed away at a rate equivalent to three months' wages or salary for the relevant employee);

7.2.2 solicit or offer services or custom, or endeavour to solicit or offer services or custom, to any subcontractor engaged by GAPdesign to perform or provide services or perform obligations under or in connection with this CE to the Client; or

7.2.3 cause or permit any person directly or indirectly under its control or supervision, or in its employ, to do any of the acts or things specified above.

7.3 For the avoidance of doubt, and without derogating from any other provision of this CE, a reference to "GAPdesign" in this clause Error! Reference source not found. shall likewise be a reference to any member of GAPdesign's Group.

## 8 GENERAL

8.1 The parties choose the respective addresses specified in the CE as the addresses at which they will accept service of all documents, legal process and notices in respect of the CE.

8.2 No party shall be liable to the other for any delay or non-performance of its obligations under this CE arising from any cause beyond its control including, without limitation, any of the following: governmental act, war, fire, flood, explosion, civil commotion or any act of God, except that nothing in this clause 8.2 shall excuse the Client from any payment obligations under this licence.

8.3 No relaxation or indulgence granted by either party to the other shall be deemed to be a waiver of any of that party's rights in terms hereof, nor shall same be deemed to be a novation of the terms and conditions and nor shall same stop either party from enforcing its rights

hereunder. These terms and conditions shall not in any way be deemed to be a waiver by either party of any of its rights in law.

8.4 No agreement to vary, add to or cancel the CE shall be of any force or effect unless reduced to writing and signed on behalf of both parties to the CE.

8.5 Nothing in the CE is intended to, or shall be deemed to, constitute a partnership or joint venture of any kind between any of the parties, nor constitute any party the agent of another party for any purpose. No party shall have authority to act as agent for, or to bind, the other party in any way.

8.6 GAPdesign may at any time cede, assign, transfer, subcontract or deal in any other manner with all or any of its rights under the CE and may subcontract or delegate in any manner any or all of its obligations under the CE to any third party. The Client shall not, without the prior written consent of GAPdesign, cede, assign, transfer, charge, subcontract or deal in any other manner with all or any of its rights or obligations under the CE.

8.7 The parties agree that the CE and its termination shall be governed by and construed in terms of the laws of South Africa. The parties hereby consent to exclusive jurisdiction of the South African magistrates' courts in connection with any action or motion which either party to this CE may institute arising out of or in connection with the CE, its interpretation or its termination.

8.8 If any part or provision of the CE is or becomes unenforceable for any reason, that part or provision shall be deemed to be severable and shall not affect the validity of the remaining parts and provisions.

8.9 In the CE, unless the context require otherwise:

8.9.1 A person includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).

8.9.2 Where the words include(s), including or in particular are used in the CE, they are deemed to have the words "without limitation" following them. The words other and otherwise are illustrative and shall not limit the sense of the words preceding them.

8.9.3 Any obligation in the CE on a person not to do something includes an obligation not to agree or allow that thing to be done.

8.9.4 The headings are inserted for convenience only and shall not affect the construction  
Acceptance of cost estimate.

8.10 All prices quoted exclude Value Added Tax at 14% (Not a VAT Vendor).

8.11 Any changes requested by Client to the services and/or deliverables as set out in this Cost estimate may result in a revised Cost Estimate being issued to the Client any may result in additional costs to the Client.

8.12 Except to the extent otherwise provided in this Cost Estimate, all invoices are payable within 30 days following date of invoice, however all third party media costs are payable **STRICTLY UPFRONT AND IN ADVANCE**. GAPdesign will not incur any third party media costs until payment in respect thereof has been received in full.



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PUBLICATION DESIGN

INFOGRAPICS

BRAND DEVELOPMENT

EDITORIAL SERVICES

SIGNED at ..... on this ..... day of ..... 201.....

**CLIENT:** ..... [SIGN HERE]

acting by:

Signatory name: .....  
[AUTHORISED CLIENT REPRESENTATIVE]

Signatory title: .....

who warrants that he/she is duly authorised to sign this document on behalf of the Client.