

INTERNATIONAL PERFORMER'S AGREEMENT

STANDARD TERMS & CONDITIONS FOR ON-CAMERA PERFORMANCE

1. DEFINITIONS

In this Agreement unless the context clearly otherwise requires:

- 1.1. The letter "S" followed by a numeral is a reference to the similarly numbered paragraph in the schedule
- 1.2. "*advertiser*" means the person more fully set out in S3.
- 1.3. "*agreement*" means this agreement read with and incorporating the schedule.
- 1.4. "*authorized medium*" means the broadcasting or publishing, as the case may be, of the material in respect of any printed electronic, digital or audio-visual medium (including, for the avoidance of doubt, a commercial) and including any copy, reproduction or adaptation thereof referred to in S10.3, S10.4 and S12.
- 1.5. "*broadcast origin*," means the territories (as set out in the Schedule) to which any material made in terms of this agreement may be transmitted, published or broadcast (see clause 7.1) as the case may be.
- 1.6. "*commercial*" means moving footage produced for the purposes of advertising any product, service, or cause and which incorporates the whole or a portion of the material.
- 1.7. "*days*" means any day other than a Saturday, Sunday or public holiday in South Africa, as defined .
- 1.8. "*facilitator*" means the production service company more fully set out in S2.1 and which has been appointed by the practitioner to engage the performer.
- 1.9. "*featured*" means where a performer is recognizable in the authorized medium as one of the central or prominent figures therein as more fully set out in clause 4 below
- 1.10. "*material*" means any aural or visual fixation (moving or still) of a performance by the performer relating to the authorized medium whether in whole or part thereof.
- 1.11. "*performance*" means the performance for which the performer is engaged in terms of this agreement.
- 1.12. "*performance fee*" means the fee payable by the practitioner for the performance of the performer as set out in S10.1
- 1.13. "*performer*" means the person more fully described in S2 and which performer may in terms of 1.28 below be duly represented by the performer's agent as the case may be.
- 1.14. "*performer's agent*" means the person more fully set out in S2 and who is duly authorized to represent the performer.
- 1.15. "*practitioner*" means the party appointing the facilitator to engage the performer to render the performance. The practitioner may be the commissioning party, a production company or an advertising agency as the case may be and the person signing this agreement on behalf of the practitioner warrants that he/she is duly authorized to enter into this agreement, and shall be the contact person in terms of this agreement once the facilitator's obligations have ceased.
- 1.16. "*product/service/cause*" means the product, service or cause being the subject of the authorized medium for which the performer is engaged in terms of this agreement.
- 1.17. "*renewal fees*" means the fees set out in S10.7 for the renewal of the usage.
- 1.18. "*renewal period*" means after the usage period the period, that the practitioner wishes to renew the agreement in terms of clause 5 below by paying the renewal fees set out in S10.7.

- 1.19. "testimonial" means, in respect of the performer or members of the performers family any direct or indirect reference in the material that the aforesaid persons personally use, support, endorse or recommend the use of such product, service or cause; .
- 1.20. "usage" means, if applicable, if the performer is featured, the right to use, publish, reproduce, perform, exhibit or otherwise deal with the material in the authorized medium for the usage period.
- 1.21. "usage period", if applicable, means either:
- 1.21.1. a calendar year commencing from the date specified in S7 for the usage unless it is a period as otherwise stipulated in S10.3 and S10.4.; or
- 1.21.2. if no date is stipulated in S7 then a calendar year from the last shoot date of the product/service/cause.
- 1.22. "usage fee", if applicable, means the fee paid to the performer for the use of the material for the usage period.
- 1.23. reference to a gender includes the other gender.
- 1.24. references to a natural person include legal persons and associations of persons.
- 1.25. the singular includes the plural and vice versa.
- 1.26. words or phrases not defined in this agreement will have their ordinary accepted meaning with due regard for meanings customarily attributed to such words or phrases in the advertising industry.
- 1.27. clause headings are for convenience only and do not affect interpretation. Whenever notification is required in terms of this agreement, then such notification shall be on a business day.
- 1.28. matters relating to the performers agent:
- 1.28.1. Where a performer is represented by the performer's agent any reference in this agreement to the performer, shall be deemed to be a reference to the performer's agent and any reference to a performer's agent shall be deemed to be a reference to a performer save where the context clearly specifies otherwise.
- 1.28.2. The performer will not be represented by a performer's agent unless a performer's agent is duly appointed by the performer and named in S2 or until the performer has given written notice to the facilitator or practitioner nominating a performer's agent and setting forth all the details required in S2.
- 1.28.3. If an agent is appointed by the performer and is named in S2 (for purposes of this agreement defined as the "performer's agent") or is subsequently appointed to represent the performer, any agreement or arrangement concluded with the practitioner or facilitator arising from the performance in terms of this agreement or payment made to or notice given or statement delivered by such performer's agent on behalf of the performer in respect of this agreement shall be deemed to have been concluded with or made to, given or delivered by or to the performer, as the case may be.
- 1.28.4. The address of the performer's agent will be deemed to be the *domicilium citandi et executandi* of the performer unless otherwise directed by the performer or the performer's agent in writing at any time.
- 1.28.5. Under no circumstance shall any other person or entity sign on behalf of the performer unless such person or entity is duly and properly authorized to the satisfaction of the facilitator or the practitioner as the case may be.
- 1.28.6. if a performer's agent dies, is sequestered or surrenders his/her estate or is liquidated or wound up, each reference to "the performer's agent" should be deemed a reference to "the performer" from the date of death, sequestration, surrender, liquidation or winding up as the case may be.

2. TERMS RELATING TO ANY PERFORMANCE GENERALLY

- 2.1. The performer shall render the performance in accordance with the provisions of this agreement in such manner as practitioner may reasonably require for the purposes of obtaining material for the advertising and/or promoting of the product, service or cause referred to in S4.

- 2.2. The practitioner may make a fixation of the material and a reproduction thereof within the meaning of the Performer's Protection Act 1967 (as amended from time to time). However, the practitioner may not depict the performance in any authorized medium in which the nature of the performance has been materially altered unless practitioner has obtained the prior written consent of the performer.
- 2.3. For the avoidance of doubt, in respect of the performance, during the usage period (as set out in clause 4 below) and any renewal period (as set out in clause 5 below), the practitioner has usage of the material:
 - 2.3.1. in the authorized medium in any form and whether altered, reworked, touched up, dubbed, edited or added to in any manner whatsoever and in composite form and whether imperfect or defective in any way;
 - 2.3.2. notwithstanding the death or incapacity of the performer or any change in the status or name of the performer;
subject however to;
 - 2.3.3. the practitioner having timeously paid the performer the performance fees, the usage fees (if applicable) and the renewal fees (if applicable) due in terms of this agreement; and
 - 2.3.4. subject to clause 2.2 above.
- 2.4. Unless an agreement stipulates in S12 for a testimonial, there may be no indication of a testimonial in the material and the performer will be portrayed as a fictitious or anonymous person.
- 2.5. No part of the performer's performance shall be used, published, reproduced, performed, exhibited, transmitted or otherwise dealt with in connection with any product, service or cause other than such product, service or cause specified in the schedule unless practitioner has obtained the prior written consent of the performer.
- 2.6. For purposes of clarity if the performer is not featured he/she shall receive only the performance fee stipulated in the schedule, the receipt of which is acknowledged to be sufficient as a buy-out of all rights.

3. TERMS RELATING TO THE PAYMENT OF FEES GENERALLY

- 3.1. The performance fee, usage fees, renewal fees and other fees stipulated in the schedule will be paid by the practitioner, or its duly designated representative, to the facilitator, performer or performer's agent in accordance with the provisions of this clause 3.
- 3.2. Payments will be due and payable thirty (30) days from the end of the month in which an invoice/statement has been rendered, correctly setting forth the amount payable for the relevant product/service/cause set out in S4 and S5, provided that the invoice/statement may not be presented prior to completion of the performance or confirmation of usage fees being applicable or not.
- 3.3. Payments shall be made to the designated bank account of the performer or performer's agent, by means of Electronic Funds Transfer or other acceptable means on or before the due date.
- 3.4. If any payment is not paid as provided on or before due date, interest will thereon be calculated at a rate being two percentage points above the prime rate prescribed, from time to time.

4. FEATURED PERFORMERS: USAGE, USAGE PERIOD AND USAGE FEES

- 4.1. It is recorded and agreed that the payment of usage fees and renewal fees and any provisions in this agreement, which limit the usage period shall only apply if the performer is featured in the authorized medium. Where there is a dispute in respect of whether the performance of the performer constitutes being "featured" or not, such dispute shall be referred to a board consisting of one (1) member from each of CPA and CAMA or PMA or NAMA or OSCA (or the applicable organization from time to time) and a casting director. Subject to the rights of either party to approach the courts to protect its rights, any decision by the aforementioned board shall be final and binding on the parties.
- 4.2. Usage fees are payable before first broadcast or publication in the authorized medium.
- 4.3. Unless otherwise stipulated in S12, should the performer appear only as one of a group of persons in a crowd or background shot, or if it is the performer's outline or silhouette, the performer will for the purposes of this agreement be deemed not to have appeared in recognizable form in the commercial. In such event the usage period will be unlimited.

- 4.4. The procedure for the performer or the performer's agent to be advised as to whether the performer is featured or not is as follows:
- 4.4.1. within forty-five (45) days of the last day of the shoot, the practitioner (or the duly authorized representative of the practitioner) shall notify the performer and/or the performer's agent of when the material is first to be broadcast, or published (if such date is different to that stipulated in S7 or is not stipulated in S7) and whether the performer is featured or not; or
 - 4.4.2. should no such notification have been received from the practitioner within the forty-five day period, the performer and/or the performer's agent shall serve written notice on the practitioner (or the duly authorized representative of the practitioner) requesting that they be advised within seven (7) days of receipt of such written notice whether the performer is to featured or not; or
 - 4.4.3. should the practitioner (or the duly authorized representative of the practitioner) thereafter fail to provide written notice that the performer is to be featured then such failure to notify the performer or performer's agent shall have the result that the performer is deemed to have been featured and the usage fee for the authorized medium shall be payable on demand; alternatively,
 - 4.4.4. the practitioner shall, at its election within the periods set out in clause 4.4.1 and 4.4.2 above, have the right to notify the performer or the performer's agent that it requires an extension of time in which to advise the performer or the performer's agent as to whether the performer is being utilized in accordance with clause 4.1 or not and the performer or the performer's agent hereby agrees to negotiate such extension of time with the practitioner in good faith, provided that such period shall not exceed an additional thirty (30) days, in which event failure by the practitioner to provide notice as aforesaid shall cause the usage fee (as applicable) in S10.3 and S10.4 to be payable by the practitioner. Any notification in terms of this clause 4.4 shall be in writing and deemed received by the performer or the performer's agent, three (3) days from the date of such notification being issued by the practitioner.
- 4.5. Notwithstanding the provisions of clause 4.4 above, if, after a period of six (6) months from last day of the shoot, the material has not been broadcast or published (and the performer is featured), a usage fee of 110% of the usage fee stipulated in S10.3 and S10.4 will become payable before first broadcast or publication in the authorized medium.
- 4.6. In the event that the facilitator or practitioner has informed the performer or the performer's agent as contemplated above, then the facilitator or practitioner shall not be held liable for failure of the performer's agent to advise the performer accordingly.
- 4.7. The usage period commences on the date in S7 and runs for the relevant calendar period thereafter.

5. **FEATURED PERFORMERS: RENEWAL, RENEWAL PERIOD, RENEWAL FEES**

- 5.1. It is recorded and agreed that the payment of renewal fees shall only apply if the performer is featured in the material.
- 5.2. The practitioner will be entitled to renew the agreement by notice in writing to the performer or performer's agent by not later than thirty (30) days prior to the expiry date of the usage period or renewal period, failing which such rights shall cease subject always to the provisions of clause 5.3.
- 5.3. If the agreement is renewed, the renewal fees in S10.7 will be payable.
- 5.4. Subject to clause 5.5 below the practitioner shall retain an option to renew the use of material in the authorized mediums and the terms of this agreement indefinitely. Should the practitioner exercise its option to renew then for the avoidance of doubt the practitioner shall only pay any renewal fees for the year/s in which the option to renew the usage is exercised.
- 5.5. If the agreement is not renewed timeously and lapses and provided that the performer has not, since the lapse of the agreement, entered into a conflicting agreement with a third party, the practitioner may at any time in the future (but subject always to clause 5.6 below) revive and renew the agreement by notice in writing to the performer and/or performer's agent. If approved by the performer or the performer's agent or if no approval is received within fourteen (14) days of such notice being provided by the practitioner, in which event approval shall be deemed to have been given, then the practitioner shall pay the renewal fee as provided for in clause 3.2. This amount will be calculated on the basis of the renewal amount that would have been payable for the renewal period in the current year

had the usage been renewed for each renewal period during the intervening period. The provisions of this clause apply each time the usage period or renewal period lapses. For the purposes hereof "*conflicting agreement*" means an agreement in respect of a performance by the performer, which is subject to exclusivity.

5.6. Notwithstanding the above, the performer and/or performers agent is entitled to give the practitioner six (6) months notice prior to the expiry of four (4) years from date of the first usage period of reasonably legitimate (including that the performer has become famous) or other reasons of his/her intention not to allow the practitioner to exercise its option to renew the terms of this agreement.

6. REJECTION

6.1. Practitioner shall have the right to reject any performances and/or material pursuant to such performance.

6.2. If the performer fails, refuses or is not reasonably able to render the performance as required, or is unreasonably late for the performance or the performer contemplated by the practitioner has materially altered his appearance or behavior for the shoot, or if the performance or any material is rejected arising from any material breach on the part of the performer, then in such event the practitioner shall be entitled to terminate the agreement or to re-schedule the performance or to reject any material without an obligation to pay any remuneration set out in S10.

7. MEDIA AND BROADCAST ORIGIN

7.1. Subject to clause 7.2 and any special provisions in S12 the material may only be used in the authorized medium and transmitted from the broadcast origin as applicable. Neither the practitioner nor the advertiser will be held responsible for any piracy or broadcast spillage of the commercial.

7.2. The material may be used in any authorized medium from a broadcast origin other than those specified in S10.3 and S10.4, if the practitioner gives written notice in that regard to the performer or the performer's agent not less than thirty (30) days prior to such use, in which event additional fees will become payable to the performer, calculated according to the CPA usage tables, as amended from time to time.

8. STILLS

Unless otherwise agreed and recorded in S10.4 the practitioner shall not be entitled to use any still photograph, illustration or likeness of the performer in any printed advertising. In the event that additional media usage is required, clause 7 will apply.

9. EXCLUSIVITY / NO COMPETITIVE PRODUCT

In the event that a Total Exclusivity/No Competitive Product fee, as specified in S10.5 has been agreed upon, the performer undertakes that he will not authorize or permit his voice, name, image or likeness to be used for the promotion of any other/competitive product, service or cause whatsoever, for the agreed usage period.

10. WORKING REQUIREMENTS

10.1. CALLS

10.1.1. A call comprises eleven (11) consecutive hours including make-up and wardrobe, meal and tea breaks, commencing at the time and place fixed by practitioner and ending when the performer is released at the time and place agreed. If the location is further than forty (40) kilometers from the call point, travel time shall be included in the call.

10.1.2. There shall be a break of not less than ten (10) hours between the end of one call and the commencement of the next, unless the performer otherwise agrees.

10.2. CANCELLATION OF A CALL

10.2.1. In the event of a cancellation of performer's call by the practitioner and/or facilitator or in the event of a cancellation of performer's call by the performer and/or performer's agent:

10.2.2. Less than seventy two (72) hours but not less than forty eight (48) hours prior to the date of the shoot, the performer/facilitator/practitioner will be paid 25% of the call fee in S 10.1 or R500.00 whichever is the greater;

- 10.2.3. Less than forty eight (48) hours but not less than twenty four (24) hours prior to the date of the shoot, the performer/facilitator/practitioner will be paid 50% of the call fee as in S 10.1 or R500.00 whichever is the greater;
- 10.2.4. Less than twenty four (24) hours prior to the date of the shoot, the performer/facilitator/practitioner will be paid the full call fee as in S10.1; save that, the facilitator or the practitioner may, in their sole discretion, waive any cancellation fee payable in terms of this clause 10.2 should the performer furnish any satisfactory reason for the cancellation
- 10.3. In the event of the entire shoot being cancelled less than five (5) working days prior to the day of the shoot, a cancellation fee will be negotiated, which fee shall not exceed a total of 50% of the total fee in S10.2
- 10.4. MEAL AND TEA BREAKS
- Performer shall be afforded reasonable meal and tea breaks and practitioner/facilitator undertakes to provide the performer with reasonable meals and refreshments during the performance.
- 10.5. ACCOMMODATION
- If the practitioner requires the performer to remain on location overnight the practitioner/facilitator shall provide the performer with reasonable accommodation and subsistence.
- 10.6. TRANSPORT
- 10.6.1. If the performer is required to perform at a location or studio which is more than forty (40) kilometers from the city closest to the performer's place of residence, the practitioner undertakes to provide the performer with transport from the call or pick-up point to the location or studio or vice versa.
- 10.6.2. If the performer is only returned to the pick-up point or call point after 19h00, the practitioner shall provide transport, at its own cost to the place of residence of the performer.
- 10.7. OVERTIME, NIGHT SHOOTS & EXTENDED DAYS
- 10.7.1. OVERTIME: If the performer is required to work more than eleven (11) consecutive hours, the performer will be paid for the excess hours as specified in S10.10. This provision does not apply to children under the age of fifteen (15) years (see clause 10.12)
- 10.7.2. NIGHT SHOOTS & EXTENDED DAYS: The practitioner or facilitator must notify the performer or the performer's agent in good and reasonable time of an extended day or a night shoot. In such instance the performer must be paid at a premium rate (time and a half) on the first night of a night shoot. This rate is calculated on the daily performance fee as stipulated in S10.1. A night shoot shall mean the performer being obliged to be on set after 24h00. For the avoidance of doubt the usage fee is to be calculated on the standard daily performance fee. If the performer or the performer's agent is not advised as aforesaid, then a performer who has a call the following day (on this or another shoot) has the rights to leave the set at 22h00.
- 10.8. WEATHER CALL
- The practitioner is entitled to cancel the call on any day if the practitioner is of the opinion that the performance should be terminated on that day due to adverse weather conditions. In this event, 50% of the daily performance fee stipulated in S10.1 is payable if not called to set; 70% of the daily performance fee stipulated in S10.1 is payable if called to set and released within one (1) hour; and 100% of the daily performance fee stipulated in S10.1 is payable thereafter.
- 10.9. REMAKE/ ADDITIONAL CALLS
- If a performance is not completed or is cancelled for any reason or if the practitioner rejects any material or for any other reason wishes to remake same, the fees stipulated in S10.8 will be paid in respect of the additional calls.

10.10. POST-SYNCHRONIZATION

Where the performer is required to post-synchronize his own performance, the fee set forth in S10.1 will be paid in respect thereof. A half day rate can be negotiated by agreement in respect of calls in this regard of less than two (2) hours.

10.11. DANGEROUS PERFORMANCE

10.11.1. The performer's express consent is necessary for the performance of hazardous activity. If such consent is given the performer's obligation to participate in hazardous activity will be limited to such activity to which the performer has consented.

10.11.2. The parties will record in S12 whether or not the performance involves hazardous activity.

10.11.3. Where the performer is required to undertake dangerous or hazardous work in which he is not experienced he must be supervised by a person(s) with the training and experience to arrange and supervise his safety.

10.11.4. Where dangerous work is involved all reasonable safety and precautionary measures shall be taken by the practitioner and where practical adequate notice that such measures have been taken shall be given to the performer. Practitioner shall insure the performer against injury or death as per clause 12 unless otherwise agreed between the parties in advance of performance and as stipulated in S12.

10.12. CHILD PERFORMERS

10.12.1. The contracting of children as performers within the meaning of the Children's Act No. 38 of 2005 shall at all times be in accordance with the appropriate government legislation, regulation and by-laws, and in particular with all provisions of Sectoral Determination 10 relating to children in the Performance of Advertising, Artistic and Cultural Activities. Such compliance shall include, but is not limited to the duties, obligations and responsibilities as set out in Sectoral Determination 10.

10.12.2. In respect of clause 10.12.1 above, the performer and/or his/her parent, legal guardian or performer's agent (as contemplated by this agreement) acknowledges that the terms under which he/she renders the performance does not in any way constitute a contract of employment and insofar as it may be necessary, the aforesaid parties hereby indemnify the facilitator and the practitioner in respect of any claim and dispute arising out of any contention of employment.

10.13. CALL BACK / HAIR & MAKE-UP / WARDROBE FITTING / REHEARSAL

10.13.1. The performer may be required to attend call back / hair & make-up / wardrobe fitting on a day other than the period of engagement, subject to the performer's professional availability. For such initial attendance the performer shall receive no fee. The call back should not exceed 1 hour and the hair & make-up/wardrobe fitting 2 hours, after which a pro rata payment of the agreed daily performance fee specified in S10.1 will become applicable. For second and subsequent attendances, the performer shall be paid a mutually agreed fee. Once the call back / hair & make-up / fitting has been scheduled the performer's agent will not confirm another booking for the same time without prior notice.

10.13.2. The performer may be required to attend a rehearsal on a day other than the period of engagement subject to the performer's professional availability. The performer shall receive a fee being the equivalent to 50% of their day rate stipulated in S10.1. This payment shall be subject to overtime after 5 hours, limited to a maximum of 2 hours of overtime, thereafter the standard day rate shall become applicable and standard overtime rates shall apply.

10.14. ADVERSE CONDITIONS

In the event of the performer being required to perform under wet or other conditions of extreme discomfort, such conditions being necessary in order to achieve the performance required and not resulting from unforeseen weather conditions, the performer shall be notified in advance and shall be provided with adequate facilities for drying or to alleviate such discomfort.

11. COSTUMES, SCRIPTS AND PROPERTIES

- 11.1. All costumes, scripts and properties will be provided by practitioner at practitioner's cost except where the performer is engaged as a specialty, in which case the performer will, subject to the approval of the practitioner, supply his own costumes, which shall be hired by practitioner at a mutually agreed fee.
- 11.2. Practitioner will, at his cost, clean all costumes worn by the performer and maintain them suitably for the duration of the performance. Where the performer has supplied his own wardrobe, practitioner undertakes to replace any such garments that may be damaged as a result of the performer fulfilling his obligations in terms of this agreement, at the then current market replacement cost of such garments.

12. INSURANCE

- 12.1. Practitioner undertakes to insure the performer to the benefit of the performer and his beneficiaries against loss of life, permanent, temporary, total or partial disability and proven medical costs as a result of an accident during the period the performer is rendering the performance in terms of this agreement, if such accident was due to negligence on the part of the practitioner (or the duly authorized representative of the practitioner).
- 12.2. The minimum insurance limits, unless otherwise agreed shall apply as follows:
- 12.2.1. For proven medical costs – R150 000.00
 - 12.2.2. For temporary total disablement – R5 000.00 for a maximum of 26 weeks (excess of 7 days)
 - 12.2.3. Death – R250 000.00
 - 12.2.4. Permanent total disablement – R250 000.00
 - 12.2.5. In respect of children – the insurance ordinarily obtained in respect of children of certain ages from the insurance broker
- 12.3. Any claim shall be directed to the Insurance Broker or company. The practitioner (or the duly authorized representative of the practitioner) undertakes to take all reasonable steps to facilitate settlement of the claim.
- 12.4. The amounts set out above are prevailing rates and will be subject to change in accordance with the prevailing standard rates at the time.

13. CESSION AND ASSIGNMENT

- 13.1. The performer may not cede, assign or otherwise dispose of his rights or obligations in terms of this agreement; save that the performer is duly represented by the performer's agent who shall in terms of this agreement be entitled to act on behalf of the performer and to the maximum extent permissible by law take cession and assignment of the performers rights and obligations arising out of this agreement. Notwithstanding the aforergoing the performer shall always be personally liable for the grant of the rights in and to and the usage of the material by the practitioner (or the duly authorized representative of the practitioner) and to this end is also a signatory to this agreement.
- 13.2. Practitioner may cede, assign or otherwise legally transfer its rights and obligations vis-a-vis the material or a portion thereof to any person or legal entity whatsoever. Copyright in any material may be assigned independently of the right to use.
- 13.3. The practitioner undertakes that if it shall assign any material made hereunder it shall be a condition of the assignment that the assignee and any person acquiring the material or any rights therein directly or indirectly from the assignees shall comply with the provisions of this agreement. The original practitioner assigning the material undertakes to be held liable for all fees and obligations owing to the performer to the date of such assignment.
- 13.4. Practitioner shall notify the performer and/or performer's agent of the name and address of any assignee or other person acquiring any rights in and to any material as a result of the assignment referred to above.

14. **UNDERTAKINGS AND WARRANTIES**

14.1. **THE PERFORMER:**

- 14.1.1. will fulfill his obligations in a diligent and professional manner and to the best of his ability.
- 14.1.2. will not, during the entire usage and renewal period and for a period of six (6) months thereafter, use, utter, publish or cause to be published by way of press, radio, television or otherwise any comments likely to discredit or damage the reputation of advertiser or the product, service or cause advertised.
- 14.1.3. will comply with the regulations of the studios or locations including, without limiting the generality of the foregoing, the "no smoking" and "no consumption of alcoholic beverages" regulations. A copy of such regulations shall be furnished to the performer before commencement of a call:
- 14.1.4. will not have in his possession or take any alcoholic beverage or dependence producing substances save those prescribed by a practicing medical practitioner or supplied by the advertiser;
- 14.1.5. if a non-resident of the Republic of South Africa, warrants that he is in possession of a valid work permit and shall present same upon the immediate request of the facilitator;
- 14.1.6. will not, without the practitioner's prior written consent, disclose any concept or technique or other information concerning the product, service or cause or the recording or making of any material or to make available or release any such information to, or allow the use thereof by any person for any purpose whatsoever.
- 14.1.7. warrants and represents that he/she is free and able to conclude the agreement and to comply with the obligations and to grant the rights granted by him/her under the agreement;
- 14.1.8. if signing this agreement warrants that he/she is at least 18 years of age;
- 14.1.9. warrants that he/she will not, at the time of entering into this agreement, (and provided that the provisions of clause 9 have been invoked by the practitioner), have entered into another agreement whether personally, through a performer's agent or any other person, for the right to use his name or image, whether in the form of a photograph, a film or a television recording, a dimensional likeness, a drawing or a painting for the purpose of/or in connection, with material for the advertising promotion of a product, service or cause similar to or competing with or used for the same purpose as the product, service or cause described in S4;
- 14.1.10. warrants that he/she is not subject to any investigation, civil litigation or criminal proceedings for which, on conviction he will be sentenced to a jail term without the option of a fine; nor has he been convicted of serious crimes;
- 14.1.11. warrants that, to the best of his/her knowledge, he will be able to do the performance and that there is no health or personal impediment, which might or is likely to cause him to be unable to perform or to not be ready for the call;
- 14.1.12. will return a signed copy of this agreement to the practitioner prior to the date of performance provided that practitioner has supplied a fully completed agreement its prescribed in clause 14.2.2.

14.2. **PRACTITIONER:**

- 14.2.1. will not other than as may be necessary during the performance period, communicate the performer's contact address and telephone number to any other party and shall at all times respect the privacy of the performer and the confidentiality of any personal information or detail in possession of the practitioner;
- 14.2.2. shall ensure that a fully completed agreement shall be in the possession of the performer and/or performer's agent not less than twenty-four (24) hours before the required performance unless under exceptional circumstances;
- 14.2.3. warrants that it will endeavour to ensure that the facilitator or assignee with whom the practitioner may be in a contractual relationship with shall comply with the provisions of this agreement.

- 14.3. It is agreed that each of the warranties constitutes material terms of the agreement and should any party at any stage wish to prove the contrary, the onus of such proof shall rest on such party.

15. **BREACH**

- 15.1. Save for any notification periods that may be relevant in terms of this agreement, should any of the parties hereto breach any term of this agreement and fail to remedy such breach within fourteen (14) days of receipt of notice in writing calling upon it to remedy same, the aggrieved party shall be entitled, but not obliged to, terminate the agreement, without prejudice to any right to damages.
- 15.2. Should the practitioner make any charge of intemperance or concerning the use of dependence producing substances against the performer, then such a charge shall be made at the time of the offence, provided that the performer shall be entitled to produce a certificate issued by a medical doctor, obtained at his own expense within three (3) hours of such allegation being made in order to disprove the charge. In the event of such allegation being made, the fourteen (14) day notice period in clause 15.1 will not apply.
- 15.3. If practitioner is provisionally or finally liquidated, wound up or declared insolvent the agreement shall be deemed to have been assigned as provided for in clause 13.3.

16. **ALTERNATIVE DISPUTE RESOLUTION**

- 16.1. Internal resolution: - Any disputes arising under this agreement (save for that dealing with 'featured'), including but not limited to any disputes relating to the rights granted herein, the rectification, termination or cancellation of this agreement shall be resolved by the parties meeting as soon as reasonably possible after written notice of such dispute or difference arising has been provided to the other party or at least within three (3) days after the last shoot date. The parties further agree to use all reasonable endeavours to resolve the dispute amicably.
- 16.2. Mediation: - In the event of the parties being unable to resolve a difference or dispute by themselves within a period of fourteen (14) days, any party shall be entitled to request that an attempt be made to resolve the difference or dispute by way of mediation. If the parties cannot agree on a mediator, the mediator shall be, the nominee of the president for the time being of the Law Society of the Republic of South Africa. In this regard the parties agree that all the parties shall be obliged to attend the mediation and shall only be represented by their executive officers and not be entitled to any other representation. The mediator shall in his absolute discretion determine the nature and format of the mediation with the sole aim of resolving the difference and/or dispute by way of negotiation as soon as possible and the cost of the mediation as determined by the mediator shall be borne by the parties to the dispute in equal shares.
- 16.3. Arbitration: - Should the parties be unable to resolve their difference or dispute, the matter in dispute shall be referred to arbitration in accordance with the provisions of the Rules of the Arbitration Foundation of Southern Africa by an arbitrator or arbitrators appointed by the Foundation. Furthermore in respect of the arbitration it is agreed that:
- 16.3.1. There shall be one arbitrator;
- 16.3.2. The arbitration shall be conducted on an expedited arbitration basis in terms of which:
- 16.3.2.1. each party shall be required to submit a brief statement of its case to the other party;
- 16.3.2.2. no other pleading shall be required;
- 16.3.2.3. prior to the expedited arbitration, a meeting between the parties and their representatives will be held in order to:
- 16.3.2.3.1. agree to the terms of reference and powers of the arbitrator;
- 16.3.2.3.2. arrange for all exchange of documents;
- 16.3.2.3.3. limit the issues between the parties;
- 16.3.3. The said terms of reference and powers of the arbitrator shall include a clause, which states:

- 16.3.3.1. "The Arbitrator is hereby empowered to take all steps as may, in his discretion, be necessary to expedite the proceedings and shall be entitled to make an order of costs."
- 16.3.4. The expedited arbitration shall be conducted in Cape Town or Johannesburg unless otherwise agreed between the parties.
- 16.3.5. The parties shall take all reasonable steps to ensure that the said arbitration is completed within thirty (30) days after the arbitration has been requested.
- 16.3.6. The arbitrator's award shall be final and binding on all parties.
- 16.3.7. The parties consent to the procedure of expedited arbitration or any other forms of mediation and/or arbitration that may from time to time form part of the rules of AFSA.
- 16.3.8. The arbitrator shall be entitled to make an order as to which party or parties bear the costs of arbitration.
- 16.3.9. Notwithstanding anything to the contrary anywhere else in this agreement, nothing in this clause 16 shall preclude any party to the arbitration from seeking interlocutory relief in any Court having jurisdiction pending the institution of appropriate proceedings for the enforcement of any rights under this agreement.
- 16.3.10. The parties to the arbitration undertake to keep the arbitration, including the subject matter of the arbitration, confidential and not to disclose it to anyone except for the purposes of an order to be made in terms of this clause 16.
- 16.3.11. The decision of the arbitrator shall, in the absence of manifest error, be final and binding on the parties to the arbitration and may be made an order of Court at the instance of any party to the arbitration
- 16.4. The provisions of this clause are separate and severable from the rest of this agreement and, accordingly, shall remain in effect despite the termination or invalidity for any reason of this agreement.

17. NOTICES

- 17.1. Subject to the provisions of clause 17.4, the parties choose as their *domicilium citandi et executandi* for all purposes under this agreement, the addresses set forth in S1 and S2.
- 17.2. Any notice or communication required or permitted to be given in terms of the agreement shall be valid and effective only if in writing.
- 17.3. Any party may, by notice to the other parties, change his *domicilium citandi et executandi* to another physical address, provided that the change shall become effective on the fourteenth (14th) day after receipt of the notice by the addressee.
- 17.4. Any notice to a party at the addresses set out in the schedule hereto, shall be deemed to have been given:
- 17.4.1. If posted by prepaid registered post to that party's postal address ten (10) days after the posting thereof or,
- 17.4.2. If delivered by hand to a responsible person during ordinary business hours at that party's *domicilium citandi et executandi*, on the day of delivery.
- 17.5. 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 it, notwithstanding that it was sent to or delivered as provided above.

18. INDEMNITY

- 18.1. If the material does not include a testimonial there may be no indication to the contrary in the material and the performers' contribution will be depicted or portrayed as that of a fictitious person.
- 18.2. The performer indemnifies practitioner against any claim that may be brought against practitioner by any person whatsoever (including advertiser) relating to or connected with the breach by the performer of his obligations as recorded in this agreement.
- 18.3. The performer or the performer's agent as the case may be shall use his best endeavours to ensure that the performer shall comply with the obligations as recorded in this agreement.

18.4. The parties record that in the event of any claim of any nature whatsoever being made against the performer in respect of any performance given or any testimonial made in terms hereof, that practitioner indemnifies and hold the performer harmless in respect of any such claim.

19. **NON-DISCRIMINATION CLAUSE**

The parties affirm their commitment to a policy of non-discrimination and fair employment in connection with the engagement and treatment of performers on the basis of sex, race, colour or creed subject to the specific requirements of the script and casting brief.

20. **ILLNESS OR ACCIDENT**

20.1. If the performer is absent from the studio or location by reason of illness or accident, the performer must provide a medical certificate to the practitioner and practitioner shall be entitled to require the performer to submit to a medical examination by a medical practitioner of its choice and at its cost.

20.2. If the performer is unable by reason of accident or illness to fulfill or complete the engagement practitioner may, at its discretion either:

20.2.1. terminate the engagement forthwith upon payment to the performer of all fees (i.e. the performance fees) accrued up to the time of the performer's incapacity, or;

20.2.2. make such other arrangements with the performer by way of postponement and the like as may be practicable to fulfill the engagement.

21. **GOVERNING LAW**

The agreement shall be interpreted in accordance with the laws of the Republic of South Africa, irrespective of where the performer renders services and notwithstanding the place of signature and subject to the jurisdiction of the South African courts.

22. **RELAXATION**

No relaxation or indulgence which any party may give at any time whatsoever in regard to the other party's obligations in terms of this agreement shall prejudice any party's rights hereunder in any manner whatsoever, nor shall such relaxation or indulgence be regarded as a waiver of any rights in terms hereof.

23. **VARIATION**

No variation or notification of the agreement is of any force or effect unless reduced to writing and signed by the parties.

24. **MISCELLANEOUS**

24.1. No agreement exists between the parties hereto in connection with the subject matter of the agreement, which are not contained in this document. Neither of the parties shall be bound by any representation, warranty promise or the like not recorded therein.

24.2. Any special provisions to the agreement shall be in writing and signed by all parties and shall be deemed to be included in S12.

24.3. Neither of the parties has made any representations nor given any warranties to any other party in connection with the subject matter of this agreement, which are not contained in this document.

24.4. It is recorded that nothing contained in this document restricts the rights of the parties to negotiate other terms of contract.