

# VOICE RECORDING AND ON-CAMERA PERFORMERS' AGREEMENT

## STANDARD TERMS AND CONDITIONS

ASSOCIATION FOR COMMUNICATION AND ADVERTISING ("ACA")  
NATIONAL ASSOCIATION OF MODEL AGENCIES ("NAMA")  
PERSONAL MANAGERS ASSOCIATION ("PMA")  
SOUTH AFRICAN GUILD OF ACTORS ("SAGA")  
SOUTH AFRICAN PERFORMING ARTIST MANAGEMENT ASSOCIATION ("SAPAMA")

TO BE READ IN CONJUNCTION WITH THE ON-CAMERA PERFORMERS AGREEMENT – SCHEDULE 1  
AND THE VOICE RECORDING AGREEMENT – SCHEDULE 2  
ALL TERMS AND CONDITIONS CONTAINED IN THESE DOCUMENTS ARE CONSIDERED BEST  
PRACTISE FOR THE COMMERCIAL INDUSTRY IN SOUTH AFRICA.

### 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, which forms part of this agreement.
- 1.2 "advertiser" means the person named in S4.
- 1.3 "agent" means the person named in S2, the facilitating party.
- 1.4 "agreement" means this agreement read with and incorporating the schedule.
- 1.5 "authorized - medium" means the broadcasting or publishing, as the case maybe, 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 S13.2, S14.3 and S20.
- 1.6 "broadcast territories," means the territories (as set out in the S12) to which any material made in terms of this agreement may be transmitted, published or broadcast to (see clause 7.1) as the case may be.
- 1.7 "commercial" means the advertisement which is made for the purposes of advertising any product, service, or cause and which incorporates any material in terms of this agreement.
- 1.8 "featured" means where the artist is featured if his / her image is viewed where they are recognizable and they have fulfilled the role for which they were cast in. If the artist is recognizable and their role is integral to the flow of the commercial, then he / she must be seen as a featured artist and usage applies. See Clause 9.1.
- 1.9 "medium" means any audio visual electronic medium platform (including but not limited to Internet, Mobile platforms. i.e. You Tube/Websites, Audio Visual, Documentaries, Training videos, Promotional or Marketing Videos, Audio Recordings, Audio Books, Multimedia Presentations)as well as any medium to be developed in the future.
- 1.10 "material" means any aural or visual fixation of a performance whether in whole or part thereof in any medium now known or hereafter devised, as specified in the schedule, including any copy, reproduction or adaptation thereof.
- 1.11 "performance" means the performance or other services for which the Performer is engaged in terms of this agreement.
- 1.12 "performer" means the person indicated in the Schedule who must give the performance, and, for the purpose of this agreement and Annexure A, will include the "artiste".

- 1.13 “*performer’s agent*” means the person more fully set out in S2 and who is duly authorized to represent the Performer.
- 1.14 “*testimonial*” means any direct or indirect indication in any material that the Performer (or members of the Performer’s family indicating the Performers name and / or suburb, town or city in which the Performer is living )personally use, support or recommend the use or support of the product, service or cause advertised.
- 1.15 “*practitioner*” means the party engaging 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.
- 1.16 “*product/service/cause*” means the product, service or cause being the subject of the commercial for which the Performer is engaged, as more fully described in the Schedule.
- 1.17 “*renewal fees*” means the fees set out in S13.4 and S14.5 for the renewal of the usage.
- 1.18 “*renewal period*” means after the usage period the additional period that the practitioner wishes to renew the agreement in terms of clause 5 below by paying the renewal fees set out in S13.4 and S14.5.
- 1.19 “*usage*” means, if applicable, if the Performer is featured in the specified medium the right to use, publish, reproduce, perform, exhibit or otherwise deal with the material in the authorized medium for the usage period. See Clause 9.
- 1.20 “*usage period*”, if applicable, means either: a calendar year commencing from the date specified in S9 for the usage unless it is a period as otherwise stipulated in S13.2 and S14.3; or if no date is stipulated in S9 then a calendar year from the last shoot date of the product/service/cause.
- 1.21 “*holding fee*” is calculated on a pro rata rate of 1/ 12 of the usage fee stipulated in S14.3 per month applicable after 60 days from date of shoot. Calculated at 1/12<sup>th</sup> of the usage fee for all the media as stipulated in S14.3 per month. The fee is calculated from 60 days from the shoot date, and notification from the Practitioner is accepted up to 90 days from the date of shoot or first flighting date in S9.
- 1.22 “*usage fee*” means the fee paid to the Performer for the use of the performance in material to advertise the product, service or cause, for the specified usage period.
- 1.23 “*materially different*” means material other than the original material where there is a significant or substantial difference.
- 1.24 “*package deal*” means a reduced rate for multiple usage mediums negotiated, that may or may not include the Performers fee.
- 1.25 “*internet*” means advertising by the Advertiser on their company corporate website, or social media platforms i.e. you tube, face book and twitter and blogs.
- 1.26 “*annexure A*” means the Artist Declaration Form, Annexure A to this agreement and forms part of this agreement.
- 1.27 “*annexure B*” means Annexure B to this agreement and forms part of this agreement containing the particular provisions pertaining to the employment of children younger than 15 years (Child Performer) and which forms part of this agreement.
- 1.28 “*writing*” will have the meaning as in the Electronic Communications and Transactions Act 25 of 2002.
- 1.29 references to a gender include the other gender.
- 1.30 references to natural persons include legal person and associations of persons.
- 1.31 the singular include the plural vice versa.
- 1.32 words or phrases not defined in this agreement will have their ordinary acceptance meaning, with due regard for meanings customarily attributed to such word or phrases in the advertising industry.
- 1.33 clause headings are for convenience only and do not effect interpretation.
- 1.33 Flighting/ Broadcast/Transmission; means the first date of exposure of material to the public.

## 2. SUBJECT OF THE AGREEMENT

- 2.1 The Performer shall render the performance in accordance with the provisions of this agreement in such a manner as Practitioner may reasonably require for the purpose of making material for the advertising and/ or promoting of the product, service or clause referred to in S5.
- 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).
- 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
  - 2.3.2 Manner whatsoever and in composite form and whether imperfect or defective in any way;
  - 2.3.3 Notwithstanding the death or incapacity of the Performer or any change in the status or name of the performer;
  - 2.3.4 Subject however to; the Practitioner having timelessly paid the Performer the performance fees, the usage fees and the renewal fees due in terms of this agreement;
  - 2.3.5 Cut Downs:

In respect to On – Camera Performances and Voice - Recordings:

    - 2.3.5.1 On- Camera Performances:
      - 2.3.5.1.1 Should the original commercial be replaced by the cut down, no additional usage for the performance will be payable, the expiry date will remain as per the 1<sup>st</sup> flighting date of the original commercial.
      - 2.3.5.1.2 Provided no new or additional footage featuring the Artist that is not “materially different” is used and the usage falls within the original Contract period, no additional usage fees are applicable, regardless of the number of cut downs flighting.

If new footage is used that is “materially different” from the original broadcast material and replaces the original, it would be regarded as a 2<sup>nd</sup> commercial and a additional usage fee will be applicable.
      - 2.3.5.1.3 Should any new or additional footage featuring the artist that changes the role of the Artist be used or if the cut down is used outside of the original contractual period another usage fee per cut down becomes payable.
    - 2.3.5.2 Voice – Recordings:
      - 2.3.5.2.1 The usage fees as stipulated in S13.2 will apply only for the duration specified in S12.2.
      - 2.3.5.2.2 Should the recording be used on any cut down of the visuals a usage fee becomes payable per cut down.
      - 2.3.5.2.3 Should the original visual be replaced by the cut down, no additional usage for the voice over becomes payable, the expiry date will remain as per the 1<sup>st</sup> flighting date of the original commercial.

- 2.3.6 Subject to clause 2.2 above and the Performers Protection Act as legislated and amended from time to time.
- 2.4 Unless an agreement stipulates in S15 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 The usage period commences on the date in S9 and runs for the relevant calendar period thereafter. Where no date is inserted into S9, the performance date in S11 shall apply.
- 2.6 The Performer's performance shall not be used, in any form in connection with any product, service or cause other than as specified in S5 unless the Practitioner has obtained the prior written consent of the Performer.
- 2.7 Matters relating to the performers agent:
- 2.7.1 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 reference to a Performer's Agent shall be deemed to be a reference to a Performer save where the context clearly specifies otherwise.
- 2.7.2 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 Practitioner nominating a Performer's agent and setting forth all the details required in S2.
- 2.7.3 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 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.
- 2.7.4 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.
- 2.7.5 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 Practitioner, in which case a copy of an authorisation letter will be supplied. i.e. Power of Attorney.
- 2.7.6 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.
- 2.7.7 The Agents / Artists, will apply for all payments due to the Performer for overtime, hold days, travel days, or any other applicable remuneration.

### **3. FEES**

- 3.1 The performance, usage, renewal and other fees stipulated in the schedule will be paid by Practitioner to the Performer or Agent (if an Agent is named in S2)
- 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, the Agency Official Order Number and the Advertiser/ Product/ Service/ Cause set out in S3, S4 and S5, provided that the invoice/ statement may not be presented prior to the completion of the performance.
- 3.3 Payments shall be made to the Performer or Performers Agent on or before the due date with the submission of a remittance advice provided that the payment will be made to either the Performer or to the Performer's agent as indicated in S2.

- 3.4 If any payment is not paid as hereinbefore provided on or before due date, interest will accrue monthly on the sum due from the due date until the date of payment, calculated at a rate being two percentage points above the rate prescribed at the time such interest begins to run by the Minister of Finance in terms of section 1(2) of the Prescribed Rate of Interest Act, 1975.

#### **4. PERIOD OF USE OF MATERIAL AND RENEWALS**

- 4.1 The fees payable in terms of S13 or S14 (as applicable) entitle the Practitioner to use material in any authorised medium during the applicable usage or renewal period for the commercial stipulated in S6.
- 4.2 If the agreement is renewed as hereinafter provided, renewal fees will be paid calculated at the rates set forth in S13.4 or S14.5 and S14.6, whichever is applicable.
- 4.3.1 The provisions of this agreement which provide for the renewal thereof and the payment of renewal fees and those provisions which limit the usage period shall, in relation to visual and on-camera performances, only apply if the face of the Performer appears in recognisable form in the commercial as one of the central or prominent figures therein.
- 4.3.2 Where an original usage period is less than twelve (12) months, an increased renewal fee will only apply after twelve (12) months from date of first lighting.
- 4.4 If the Performer appears only as one of a group of people in a crowd or background shot, or if is so stipulated in S19, the Performer's face, outline or silhouette will, for the purpose of this clause be deemed not to have appeared in recognisable form in the commercial. In such event the usage period will be unlimited and the Performer may perform in the commercial for a competitive product, service or cause.
- 4.5 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) representative from each of the ACA, NAMA, PMA, SAPAMA the Commercial Producers Association (CPA) and an independent Casting Director. A decision as to whether the artiste is "featured" or not shall be determined by a majority vote of the board and advised thereafter to the parties concerned.  
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 and the provisions of clause 16 hereunder will not apply.
- 4.6 A Holding fee becomes applicable when the date of first lighting is more than sixty (60) days from final date of shoot and usage has not been paid e.g. when date of first lighting has moved or has not been negotiated at time of casting.  
Notwithstanding the provisions of clause 4.4 above, if after a period of three (3) months from last shoot date; or a lighting date has not been stipulated in S9 and the material has not been broadcast or published; and the Performer is featured, a monthly pro rata holding fee of the usage fee stipulated in S14.3 will become payable every three (3) months for the period before first broadcast or publication in the authorized medium back dated to sixty (60) days from date of shoot.
- 4.7 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: (Applies to On Camera Performance ONLY)
- 4.7.1 Within ninety (90) 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 S9 or is not stipulated in S9) and whether the Performer is featured or not; or



- 4.7.2 Should no such notification have been received from the Practitioner within the ninety (90) day period, the Performer and/or the Performer's Agent shall deem the Performer to be featured.

## **5. RIGHT OF RENEWAL**

- 5.1 Practitioner will be entitled to renew the agreement by notice in writing to the Performer given by not later than thirty (30) days prior to the expiry date to the current exposure of renewal period, failing which such rights shall cease subject to the provisions in clause 5.3.
- 5.2 If the agreement is renewed, the renewal fees in S13.4 or S14.5 will be payable.
- 5.2.1 If S14.5 applies, this agreement may be renewed by the Practitioner at its option. However, after a period of four consecutive years of paid renewals from the date of first usage, as provided for in clause 2.5, the Performer is entitled to give the Practitioner twelve (12) months written notice for legitimate or lawful reasons of his/ her intention not to renew.
- 5.2.2 If S13.4 applies and the agreement is renewed then the renewal fees for each subsequent renewal period will be as provided in S13.4, until the expiry of twenty four (24) calendar months after the date in S9 or S11 (See Clause 2.5) and in respect of any renewal after such period the renewal fees payable will be the standard rates at the time of renewal as agreed between ACA, NAMA, PMA, SAGA and SAPAMA, provided that if no such standard rates have been fixed the renewal fees will be negotiable.
- 5.3 If S14 applies and the agreement is not renewed timeously and lapses and provided the Performer has not, since the lapse of the agreement, entered into a conflicting agreement with a third party, Practitioner may revive and renew the agreement by notice in writing to the Performer, and by payment of the renewal fee relevant to the year in which it is to be renewed, i.e. if renewal lapsed in year two and the Practitioner renews for year three then only year three renewal rate applies.
- 5.4 Unless otherwise negotiated, a "package deal" must be renewed as the full package (See Clause 1.24)

## **6. REJECTION**

- 6.1 Practitioner shall have the right to reject any performance and any material made at a performance. If any performance or material is so rejected after completion of the performance, or if it is decided not to publish the material, Practitioner shall inform Performer or Agent (if an Agent is named in S2) in writing within thirty (30) days of completion of the performance, in which case the rejection fee stipulated in S14.10.
- 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 if the performance or any material is rejected arising from any material breach on the part of the Performer, then in such event Practitioner shall be entitled to terminate the agreement or reschedule the performance or to reject any material without any obligation to pay performance of rejection fees.

## **7. BROADCAST TERRITORIES**

- 7.1 Subject to clause 7.3 and any special provisions in S20, the commercial may only be used in the authorised medium and broadcast territory referred to in S14.3 and S14.6 as applicable and S12. However neither the Practitioner nor the Advertiser will be held responsible for any piracy or broadcast spillage of the commercial.
- 7.2 A commercial may be used in electronic media or from a broadcast territory other than those specified in S14.3 or S12, subject to written consent from the Performer or Performers Agent in which event additional fees will become payable to the Performer calculated according to ACA, NAMA PMA, SAGA and SAPAMA agreed usage tables amended from time to time. The minimum usage applicable for the new

territory cannot be less than the equivalent of the one (1) year Television percentage of that country unless specifically agreed upon by both parties.

- 7.3 For the avoidance of doubt, the usage as contemplated in Clause 7.2 may only be withheld by the Performer or the Performers Agent if a conflicting usage agreement exists, or if the usage period and / or media differ from the original agreement, in which case this is subject to further negotiation (agreement) between the parties.
- 7.4 Additional usage for 6 months or less than the original 1 year contract term must be negotiated. For the International usage of a previously South African flighted commercial, no exclusivity applies. If a “package” deal is negotiated and the client wishes to renew, the entire “package” deal must be renewed.

## **8. STILLS**

- 8.1 Unless otherwise agreed and recorded in S16 or S20 the Practitioner shall not be entitled to use any stills photograph, illustration or likeness of the Performer in any printed medium.
- 8.2 In the event that such consent is given, a separate agreement must be negotiated between the parties.

## **9. EXCLUSIVITY**

### *9.1 Partial Exclusivity*

If the performance is an on camera performance and if a usage fee is payable, then unless otherwise specified in S20, the Performer shall not whilst the agreement remains in force authorise or permit the Performer’s name, image or likeness to be used in a commercial for the advertising of or promotion of any product, service or cause, that is, similar in the opinion of the ACA, NAMA, PMA, SAGA and SAPAMA to or in competition with the product, service or cause in S5 and as stipulated in S20. It is recorded that in the event that the performance is for the voice recording performance only, the Performer shall not be bound by the stipulation as set out in this sub-clause

### *9.2 Total Exclusivity*

In the event that Total Restriction (See clause S17.2) has been agreed upon, the Performer undertakes that he will not authorise or permit his voice, name, image or likeness to be used for the promotion of any other product, service or cause whatsoever, during the currency of this Agreement.

## **10. WORKING REQUIREMENTS**

The provisions of this clause apply only to visual/ On - Camera Performance.

### *10.1 Calls*

A call comprises ten (10) 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) kilometres from the call point, travel time shall be included in the call.

- 10.2 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.

- 10.3 In the event of the cancellation of Performers call:

- 10.3.1 less than seventy two (72) hours but not less than forty eight (48) hours prior to the date of the shoot, the Performer will be paid 25% of the call fee as in S14.2 or R500.00, whichever is the greater.
- 10.3.2 less than forty eight (48) hours but not less than twenty four (24) hours prior to the date of the shoot, the Performer will be paid 50% of the call fee as in S14.2 or R500,00, whichever is the greater.
- 10.3.3 less than twenty four (24) hours, the Performer will be paid the full call fee as in S14.2.

- 10.4 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 S14.1.
- 10.5 Meals and Tea Breaks  
Performer shall be afforded reasonable meal and tea breaks and Practitioner undertakes to provide the Performer with reasonable meals and refreshments during performance.
- 10.6 Accommodation  
If the Practitioner requires the performer to remain on location overnight the Practitioner shall provide the Performer with reasonable single accommodation and subsistence.
- 10.7 Transport  
If the Performer is required to perform at a location or studio which is more than forty (40) kilometres 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.  
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.
- 10.8 Overtime  
If the Performer is required to work more than ten (10) consecutive hours, the Performer will be paid for the excess hours as specified in S14.11 up to a maximum of sixteen (16) hours in any twenty four (24) hour period. This provision does not apply to children under the age of fifteen (15) years. Should unusual circumstances require the Performer to work beyond 16 hours this will be specifically subject to the Performer's consent.
- 10.9 Weather Call  
In the case of the visual / on camera performance, 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, 100% of the fees specified in S14.2 will be payable.
- 10.10 Night Shoots  
Will be ten (10) hours regardless of what time the artist is called. Performer or Performers Agent must be made aware of the night shoot at time of casting.
- 10.11 Remake/ Additional Call  
If a performance is not completed or is cancelled for any reason or if the Practitioner rejects any material or for any reason wishes to remake same, the fees stipulated in S14.9 will be paid in respect of the additional calls.
- 10.12 Post-synchronisation  
Where the Performer is required to post-synchronise his own performance, the fee set forth in S14.7 will be paid in respect thereof.
- 10.13 Dangerous Performance
- 10.13.1 The Performer express consent is necessary for the performance of hazardous activity. If such consent is given the Performers obligation to participate in hazardous activity will be limited to such activity to which the Performer has consented. The parties record in S18.2 whether or not the performance involves hazardous activity.
- 10.13.2 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.
- 10.13.3 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.



The Practitioner shall also obtain insurance as required under clause 12 hereunder, unless otherwise agreed between the parties in advance of performance, and stipulated in S20.

10.14 Child Performers

The Employment of Children as Performers (“child performer”) within the meaning of the BASIC CONDITIONS OF EMPLOYMENT ACT, NO 75 OF 1997 (“BCE) SECTORAL DETERMINATION 10: CHILDREN IN THE PERFORMANCE OF ADVERTISING, ARTISTIC AND CULTURAL ACTIVITIES., is subject to the terms and conditions contained in Annexure B, which is part of this agreement, provided that:

- 10.14.1 The provisions of this agreement will apply in addition to those of Annexure B, to the extent that the provisions of the agreement are not inconsistent with those of Annexure B and any reference to “Performer” in this agreement will *mutatis mutandis* include a reference to a “child Performer”.
- 10.14.2 The parent / guardian are required to sign this agreement, indicating the capacity of the signatory. An Agent, acting on written authority by the parent guardian may also sign the agreement on behalf of the child the original written authority or a certified true copy must be attached to this agreement and forms part of the agreement.
- 10.14.3 This agreement is subject to the condition that the parent/guardian or Agent acting on written authority submits to the Practitioner the original or a certified copy of the birth certificate of the child Performer.
- 10.14.4 The provisions of the BCE as amended and that of statutory instruments or subordinate legislation in terms thereof will prevail in the case of conflicting provisions.

10.15 Wig / Wardrobe Fitting / Rehearsal

- 10.15.1 The Performer may be required to attend wig / wardrobe fitting of a maximum of 2 consecutive hours on a day other than the period of engagement, subject to the Performer's professional availability.
- 10.15.2 For such initial attendance the Performer shall receive no fee, should the wig/wardrobe fitting or rehearsal exceed 2 consecutive hours then payment of R250 per hour or part thereof will be due .
- 10.15.3 For second and subsequent attendances, the Performer shall be paid the fee specified in S14.17 for a maximum of 5 hours per call.
- 10.15.4 Rehearsal fee is 50% of fee per call as stipulated in S14.1.

10.16 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 speciality, in which case the Performer will, subject to the approval of the Practitioner, supply his own costumes.
- 11.2 Where the Performer has supplied his own wardrobe, the Practitioner undertakes to replace any such garments that may be damaged as a result of the performer fulfilling is obligations in terms of this agreement, at the then current market replacement cost of such garments.

## 12. INSURANCE

- 12.1 The 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 per week 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.
  - 12.2.6 Proof of insurance to be attached to the schedule as Annexure 7.
  - 12.2.7 If the Performer consents to any dangerous/hazardous activity the Practitioner agrees to put in place additional insurance cover for the additional risk of a minimum of 100% of the general Performer's insurance cover as in 12.2.1, 12.2.2, 12.2.3 and 12.2.4 or as by agreement with Artiste.
- 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.
- 13.2 Practitioner may assign its rights and obligations vis-à-vis the Performer under the agreement to any person. Copyright in any material may be assigned independently of the right to use.
- 13.3 The Practitioner undertakes that if it shall assign any commercial made hereunder it shall be a condition of the assignment that the assignee and any person acquiring the commercial or any rights therein directly or indirectly from the assignee's shall comply with the provisions of the agreement.
- The original Practitioner assigning the commercial undertakes to be held liable for all fees owing to the Performer to the date of such assignment.
- The signing of the agreement by the Practitioner gives effect to the deemed assignment above. Practitioner shall notify the Performer or Agent indicated in S2 of the name and address of any assignee or other person acquiring any rights in and to any material as a result of but not limited to the deemed assignment referred to above.

## 14. UNDERTAKINGS AND WARRANTIES

- 14.1 **The Performer:**
- 14.1.1 Will fulfil his obligations in a diligent and professional manner and to the best of his ability;
  - 14.1.2 Will not, during the currency of the agreement and for a period of six months after the termination of the agreement, use, utter, publish or cause to be published by way of press, radio, television or otherwise any comments, or act in any manner that is 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.

- 14.1.4 Will not have in his possession or take any alcoholic beverage or dependence producing substances save those prescribed by a practising medical practitioner, or supplied by the Advertiser;
- 14.1.5 Non-residents of the Republic of South Africa to supply certified copies of work permit/passport and tax number.
- i. 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;
  - ii. Warrants and represents that he is free and able to conclude the agreement and to comply with the obligations and to grant the rights granted by him under the agreement.
  - iii. Warrants that he will not, at the time of entering into the agreement, (provided that the provisions of Clause 9 have been invoked by the Practitioner), have entered into an agreement whether personally, through an 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 the material for the advertising or 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 S5.
  - iv. For the purposes of a determination under clause 14.1.8 the Performer or Casting Director shall make available at time of casting an Artist Declaration Form (Annexure "A").  
This form shall contain complete and accurate details of all featured performances in the previous three years detailing the Advertiser and the products, services or causes in respect of which he/she has worked on noting each performance and the date of each performance or first flighting.  
The Agent is to submit, at shortlist stage, the Artists CV confirming the last three years history of all work done. The CV must include work done for shared Artists Agents, where applicable, to the best of their knowledge.
  - v. Warrants that he 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.
  - vi. Warrants that, to the best of his 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.
  - vii. 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 as prescribed in Clause 14.2.2.
  - viii. If signing this agreement warrants that he/she is at least 18 years of age;

**14.1 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 details in possession of the Practitioner;

- 14.2.2 Shall ensure that a fully completed agreement shall be in the possession of the Performer or Agent as indicated in S2 not less than forty eight (48) hours before the required performance unless under exceptional circumstances;
- 14.2.3 Warrants that it will endeavour to ensure that the Production House or any sub-contractor with whom the Practitioner may be in a contractual relationship shall comply with the provisions of this agreement.
- 14.2.4 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, on reasonable grounds, make any charge of intemperance or concerning the use of dependence producing substances against the Performer, then such 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 (14) day notice period in Clause 15.1 will not apply.
- 15.3 If the 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') see clause 4.5, 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
- 16.3.12 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
  - 17.4.3 If it can be proved otherwise that it came to the notice of the other party ;
  - 17.4.4 If it is received as in terms of section 23 of the Electronic Communications and Transactions Act 25 of 2002.
- 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 Performer's 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 and any statutory requirements.

## **20. ILLNESS/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 fulfil 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 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 fulfil 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 service 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, including this clause, 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 addenda to the agreement shall be in writing and signed by all parties and shall be deemed to be included in S21.
- 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.
- 24.5 It is hereby noted that SAGA – South African Guild of Actors will support and adhere to the collectively (ACA, NAMA, PMA, SAGA SAPAMA) negotiated agreement and terms and conditions and will support the best practise code as required in the commercial industry.

## 25. ANNEXURES

1	Individual and Group Country Percentages.
2	Local & International On Camera Quick Reference Guide.
3	Current Voice Over rates & International Percentages
4	Guidelines for On – Camera Commercials / Stills flighting in South Africa only.
5	Guidelines for On – Camera Commercials / Stills flighting Internationally.
6	Guidelines for Usage Periods and Renewals.
7	Proof of Insurance Cover Supplied by Practitioner (On Camera ONLY) Available on request.
A	Artist Declaration Form.
B	Sectorial Determination 10 – Children in the Performance of Advertising, Artistic and Cultural activities – South Africa.

## 26. ADDENDUMS

Addendum 1: On – Camera Renewals / Additional territories.