

## MEMORANDUM OF AGREEMENT

Entered into between:

**MOHAMMED ZIYAAD HOOSAIN**

**Identity Number 890207 5200 08 8**

**trading as PANDUH MARKETING**

(hereinafter called "the Marketing Agency")

and

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(hereinafter called "the Client").

IT IS AGREED AS FOLLOWS:

### 1. Introduction

Both the Client and the Marketing Agency act as principals in this contract and the Client acts as principal in all its contracts entered into with third parties in relation to the business covered by this contract.

### 2. Appointment

- 2.1.** The Client appoints the Marketing Agency to serve as its (*sole*) advertising agency for (*product or portfolio of products or services or causes*) set out in Schedule 1 to this agreement in accordance with the terms and conditions set out in this agreement.
- 2.2.** The Marketing Agency agrees to serve as the Client's (*sole*) advertising agency and undertakes to perform all the activities customarily performed by advertising agencies, including but not limited to those detailed in clause 5.

- 2.3. The Marketing Agency agrees not to accept any appointment as an advertising agency for any (*manufacturer or distributor or Marketing Agency*) of any (*product or service or cause*) which competes with (*is similar to*) any (*product or service or cause*) of the Client as set out in Schedule 1 without full prior discussion with and prior written approval of the Client.

### **3. Duration and termination**

- 3.1. This agreement commences on \_\_\_\_\_ and will continue for a period of 6 (SIX) months whereafter the Parties agree that the terms of this agreement will be reviewed. Either party may terminate the agreement by giving the other party 30 (THIRTY) days' written notice, such notice to be sent by electronic mail addressed to the other party's electronic-mail address at its principal place of business.
- 3.2. The rights, duties and responsibilities of the parties will continue in full force during the notice period, including the ordering and billing of all media whose closing dates fall within the notice period in so far as such media purchases relate to advertising created in the period prior to the date of the notice.

### **4. Working relationship**

- 4.1. The Marketing Agency must make all reasonable efforts to understand the Client's products, corporate goals, policies and procedures and service requirements, and must at all times maintain an in-depth knowledge of the Client and its products. The Marketing Agency must also make all reasonable efforts to familiarise itself with and to understand the markets in which the Client operates, including acquiring an in-depth knowledge of competing products.
- 4.2. The Client agrees to assist the Marketing Agency by providing to it all available information in these respects, ensuring that the Marketing Agency has access to the Client's products, corporate goals, policies and procedures and service requirements, and updating the Marketing Agency when changes are made.

### **5. Client 's responsibilities and duties**

- 5.1. The Marketing Agency must carefully scrutinise the Client's (*products or services or causes*) and maintain a continuous study of both the Client's (*products or services or causes*) as well as that of its competition in relation to both present and potential markets.
- 5.2. The Client will co-operate with the Marketing Agency or its appointee (*market-research consultants*) in the analysis and evaluation of its markets, advertising, media and related sales levels.

**5.3.** The Client will co-operate with the Marketing Agency in the formulation and development of all marketing and advertising-related functions such as advertising concepts, plans, programmes, campaigns, media schedules, sponsorships and merchandising.

**5.4.** In particular, and in co-operation with the Client, the Marketing Agency undertakes to

**5.4.1.** prepare the Client's advertisements including the creative work and copywriting;

**5.4.2.** contract in the Client's capacity as principal for the planning, ordering and purchasing of media time. The Marketing Agency undertakes in this regard to use its best endeavours to obtain the most advantageous rates available under the terms and conditions set out in the rate cards (standard terms and conditions) of the media concerned;

**5.4.3.** pay on time the accounts of the media for time or space booked and purchased;

**5.4.4.** maintain a check on all the Client's advertising which forms part of the business of this agreement so as to ensure that the marketing and advertising plans are carried out to the satisfaction of the Client and as may be reasonably expected from a Marketing Agency which maintains good business practices;

**5.4.5.** ensure to the best of its ability the maximum effectiveness of the Client advertising.

## **6. Client's duties and responsibilities**

**6.1.** The Client agrees to give the Marketing Agency as clear a brief as possible. The Client must ensure that all information provided in respect of its (*products or services or causes*) is factual and accurate.

**6.2.** The Client undertakes to co-operate with the Marketing Agency in respect of the verification of all information necessary in the support of its advertising.

## **7. Approval**

**7.1.** The Marketing Agency must submit to the Client for its general approval any proposed advertising concept, idea, plan, programme, campaign, sponsorship, merchandising and the like. Upon gaining general approval, the Marketing Agency will submit to the Client for its written specific approval any copy, layouts, artwork, storyboards, scripts, proofs, media schedules and the like.

- 7.2.** The Marketing Agency will simultaneously with the submissions mentioned in clause 7.1 (general and specific approval) include accurate costings of all aspects of the advertising, including media scheduling bookings and purchases.
- 7.3.** The Client's approval of any proposed advertising and media scheduling in terms of this agreement will serve as its authority to the Marketing Agency to fulfil its obligations as set out in this agreement in terms of the proposed advertising and media scheduling. The scope of the Client's authority includes all necessary and reasonable steps which the Marketing Agency must take so as to fulfil its brief in terms of this agreement. This includes but is not limited to the making of production contracts, engaging talent, briefing copywriters and third parties to provide creative input, and the booking and purchase of media time.
- 7.4.** The Client in its approval of all materials prepared by the Marketing Agency confirms the accuracy and truthfulness of the advertising.
- 7.5.** The approval may be accepted by the Marketing Agency only if it is given by an authorised official of the Client, and the Client will advise the Marketing Agency in writing from time to time of the names of such authorised officials.
- 7.6.** The approval of any advertising and media scheduling is in the sole discretion of the Client.
- 7.7.** The Client may require amendments to any advertising in progress and the Marketing Agency must use its best endeavours to comply with requests for amendments. Where the required amendments will result in financial loss as a result of the Marketing Agency's contractual obligations to third parties, the Client will reimburse the Marketing Agency in that amount forthwith. The cancellation or termination of any advertising or media scheduling is within the sole discretion of the Client and in the event that the Marketing Agency should be penalised in terms of its contractual obligations with third parties, the Client undertakes to reimburse the Marketing Agency in such amounts forthwith.

## **8. Confidentiality**

- 8.1.** The Marketing Agency must keep confidential all information and marketing materials entrusted to it and which may come into its possession in the course of its work, and may not disclose it to any third party without the prior written consent of the Client unless it can show that the information or material has come into the public domain through no fault of the Marketing Agency.
- 8.2.** The Marketing Agency's duty of confidentiality will continue after the termination of this agreement. The Marketing Agency specifically agrees to the continuation of its duty not to disclose any such confidential information or materials subsequent to the termination of this agreement.

## **9. Trade marks**

- 9.1.** The Marketing Agency undertakes to use the Client's trade marks strictly in accordance with the Client's requirements. In this regard, the Marketing Agency undertakes not to use the registered trade mark of any third party, competitor or otherwise, in the Client's advertising without prior consultation and agreement of the Client.
- 9.2.** The responsibility of ensuring the registration of trade marks which may come into existence as a result of work performed in terms of this agreement rests with the Client. All such trade marks will be the property of the Client.

## **10. Copyright**

- 10.1.** The Client acknowledges that advertising materials and creative properties, including copy used in advertising in terms of this agreement, are the sole property of the Marketing Agency.
- 10.2.** Future copyright and other rights in all advertising materials created in terms of this agreement, including material used in the production of advertising, are hereby assigned to the Marketing Agency by the Client and will be the sole property of the Marketing Agency.

## **11. General**

- 11.1.** The Marketing Agency must guard against losses to the Client as a result of its third-party contractors failing properly to meet their commitments. However, the Marketing Agency will not be held responsible for the failure of third parties to fulfil their commitments where the failure is outside the control of and is not due to the negligence of the Marketing Agency.
- 11.2.** The Client acknowledges and accepts the standard or individual conditions set by media suppliers as they apply between the Marketing Agency and those suppliers as if they were incorporated as terms of this agreement.

## **12. Indemnification**

- 12.1.** The Marketing Agency will not be liable for any delays or losses as a result of the omission of publication or transmission or any error in any advertisement in the absence of default or neglect on its part.
- 12.2.** The Marketing Agency warrants that all materials prepared by it under this agreement do not violate the rights of any third party.

- 12.3.**The Client indemnifies the Marketing Agency against any loss which may occur as a result of civil claims brought against the Marketing Agency as a result of advertising which was published or broadcast and which has been approved by the Client in terms of this agreement.
- 12.4.**In the event of a challenge, be it legal or self-regulatory, to the Client advertising, the Client undertakes to supply the Marketing Agency with objective, factual evidence in support of all claims which are contained in the challenged advertising.
- 12.5.**The Client undertakes to obtain all necessary consents and/or releases which may be required by the Marketing Agency from third parties whose names, likenesses, testimonies, scripts, musical compositions or similar materials or rights are used in advertising or any other materials prepared in terms of this agreement and the Client warrants that such consents will be obtained prior to the use of the advertising or other materials.
- 12.6.**In terms of the Electronic Communications Act, various media may require the Marketing Agency to obtain clearance of advertising materials prior to broadcast. The costs relating to the clearance of advertising materials are for the account of the Client and the Marketing Agency will not be held responsible for any delays or losses incurred as a result of the clearance process in relation to broadcasting media.
- 12.7.**The Client indemnifies the Marketing Agency in respect of any legal proceedings against the Marketing Agency arising out of any advertisement approved by the Client in terms of this agreement.

### **13. Remuneration**

- 13.1.**The Client agrees to remunerate the Marketing Agency on the basis set out in Schedule 2 in respect of all services, materials and disbursements provided under this agreement.
- 13.2.**The charges for these services, materials and disbursements will be invoiced monthly as they arise and the Marketing Agency undertakes to make payment within 5 (*FIVE*) working days of the date of invoice.
- 13.3.**In the event that the Marketing Agency's indebtedness to any third party in relation to work done in terms of this agreement exceeds R \_\_\_\_\_, the Marketing Agency may forward all accounts of that third party to the Client who will settle the debt directly with the third party and pay any commission due to the Marketing Agency.

### **14. Termination of agreement**

14.1. Notwithstanding the provisions of clause 2, either party will be entitled immediately to terminate this agreement in the event of:

14.1.1. breach by the other party of any material terms and conditions of this agreement, followed by a failure to remedy the breach within 7 (*SEVEN*) days of the receipt of a written notice delivered by hand or by courier service calling upon the party in breach to remedy the breach complained of within that time period;

14.1.2. the other party being placed in liquidation, whether provisionally or finally, or being placed under business rescue in terms of the Companies Act 71 of 2008.

14.2. Upon the termination of this agreement and the full settlement by the Client of all moneys outstanding and due and payable to the Marketing Agency, all media reservations, contracts and arrangements and other materials subject to this agreement will be transferred to the Client.

14.3. Any materials or services or media purchases to which the Marketing Agency is committed with the Client's approval for any work in progress previously approved by the Client, whether the subject of specific approval or general approval as set out in clause 7.1, will be paid for by the Client in accordance with the provisions of this agreement.

14.4. Any fixed-term contract with a third party which is not subject to cancellation and which was made by the Marketing Agency with the Client's authorisation and is still in force at the time of termination will be fulfilled by the Client and paid for by the Client unless the Client or the Marketing Agency and the third party come to an agreement to the contrary in writing.

14.5. Both parties agree to give each other all reasonable co-operation in the transfer of all arrangements in relation to media time, artwork to be created and all rights and claims upon the settlement of all financial obligations in regard to such transfer.

14.6. After the expiration of the notice period, no rights or liabilities will arise out of this agreement, regardless of any plans which may have been made for future advertising.

**14.7.** The termination of this agreement will not prejudice any claim which either party may have against the other arising out of the indemnities set out in this agreement.

## **15. General**

15.1. If either Party needs or wishes to give legal notice for any purpose contemplated in this Agreement, the Parties must deliver that notice to the other at the address below:

**15.1.1. The Marketing Agency**

10 Pikkewyn Street

Aviary Hill

Newcastle

[ziyaadhoosain@ymail.com](mailto:ziyaadhoosain@ymail.com)

**15.1.2. The Client**

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**16. Non-variation**

No change of this agreement will be of any force, unless put in writing and signed by the Mortgagor and the Mortgagee

SIGNED at

on this

AS WITNESSES:

1. \_\_\_\_\_

\_\_\_\_\_  
Name of Client:

2. \_\_\_\_\_

SIGNED at

on this



AS WITNESSES:

1. \_\_\_\_\_

\_\_\_\_\_  
Mohammed Ziyaad Hoosain on behalf of  
Panduh Marketing

2. \_\_\_\_\_

## **SCHEDULE 1**

*(Product, portfolio of products, services or causes of the Client.)*

## **SCHEDULE 2**

*(In this schedule, list and price all services, such as cost of media time, production services, creative work, physical materials, engaging talent, public relations, photography, merchandising, market research, designs, legal costs incurred on the Marketing Agency's behalf with its approval, work amended or stopped by the Marketing Agency in terms of the agreement, etc.)*