

# MEMORANDUM OF AGREEMENT

entered into

by and between

**[INSERT FULL DETAILS]**

**REG NO: [INSERT]**

(hereinafter referred to as "the Company")

and

**VISUAL IMPACT BROADCAST SOLUTIONS (PTY) LTD T/A VISUAL IMPACT**

**REG NO: 2001/019706/07**

(hereinafter referred to as "the Supplier")

for the project

**[INSERT]**

## **INTRODUCTION**

The Company and the Supplier are desirous to conclude an agreement that would govern the relationship between the two parties in respect of the above named Project to such an extent that each party is familiar with what is expected of them, and that clear and concise standards of delivery are agreed upon. The parties further wish to outline the responsibilities of each, the specific delivery in terms of quality and quantity, the costing of the respective services and remedies and consequences in instances of unsatisfactory delivery.

### **1. DEFINITIONS AND INTERPRETATIONS**

#### 1.1. Definitions

The following terms and phrases when used in this Agreement shall have the meanings given to them here below in this sub-clause unless such usage contradicts the context in which it is used or unless the contrary is expressly stated.

1.1.1. "Agreement" means this agreement together with where applicable, the Quotation and all schedules and appendices hereto;

1.1.2. "Commencement Date" means the start date as set out in clause 2 below.

1.1.3. "Equipment" means all equipment subject to this Agreement;

1.1.4. "Remuneration" means and refers to that amount the Supplier is entitled to receive for services rendered to the Company as per the Quotation.

1.1.5. "Term Period" means the period of this Agreement as detailed in clause 2 below;

1.1.6. "Quotation" means the quotation attached to this Agreement.

### **2. TERM OF THIS AGREEMENT**

2.1. This Agreement shall, notwithstanding the date of signature, commence on the **[INSERT]** and shall terminate on the **[INSERT]** or at the completion of the Project.

2.2. Any extension to the Term Period or addition to the Equipment shall be agreed to in writing by the parties and shall be invoiced separately.

### **3. ENTIRE AGREEMENT**

3.1. This Agreement constitutes the entire Agreement between the parties with respect to the subject matter herein contained.

3.2. The parties acknowledge that no other representations or offers not contained in this Agreement have been made to each other or are enforceable against each other.

#### **4. AMENDMENTS**

- 4.1. This Agreement shall only be amended if such amendment is in writing and signed by an authorised representative of the parties hereto whereafter such signed document shall be attached to the Agreement as a further Annexure.

#### **5. THE SUPPLIER'S DUTIES, OBLIGATIONS AND DELIVERABLES**

- 5.1. The supplier agrees to provide the Company with the following services:

Audio / Visual / Engineering services for the project – which will include the following:

**[Equipment]**

**[Crew & Transport - Setup & Strike Days]**

**[Workflow]**

**[Schedule]**

- 5.2. The Supplier takes overall responsibility for the services supplied to the Company and shall at all times ensure that the services/equipment/materials/goods are up to industry standards. If in the event of the suppliers services and/or goods break during the production, the Supplier shall endeavour to replace the services and/or goods in a timeous manner.
- 5.3. The Supplier has employed sufficient degrees of expertise to effectively render the services and or supply the goods in a professional manner.

#### **6. THE COMPANIES DUTIES, OBLIGATIONS AND DELIVERABLES**

- 6.1. The Customer undertakes to:

6.1.1. use and maintain the Equipment at all times strictly in accordance with the manufacturer's instructions and all user manuals, pamphlets and booklets provided by the Supplier to the Company and to comply with all safety instructions and regulations relating thereto;

6.1.2. maintain personal accident insurance for crew and public liability cover;

6.1.3. only allow persons with appropriate qualifications and experience to use the Equipment and to provide transport of the Suppliers crew;

- 6.1.4.ensure that only qualified underwater camera operators make use of the underwater camera's and housing;
- 6.1.5.not use the Equipment on any hazardous assignment or in any high risk areas without the prior written consent of the Supplier;
- 6.1.6.provide meals to the Supplier's crew during production that accords with industry standards and taking into account proper health precautions;
- 6.1.7.take all reasonable precautions to avoid loss or damage to the equipment;
- 6.1.8.provide a safe working environment for the use of the Equipment and the services to be supplied by the Supplier;
- 6.1.9.provide a continuous and balanced power supply on set to ensure functioning of the Equipment;
- 6.1.10.not remove the Equipment from the territory of South Africa.

## **7. DELIVERY, COLLECTION AND RETURN OF THE EQUIPMENT**

- 7.1. Unless otherwise agreed to by the Supplier in writing, the Company shall collect the Equipment from the Supplier's premises;
- 7.2. All vehicles brought onto the Supplier's premises will be at the vehicle owner's risk. The Supplier accepts no liability whatsoever for loss or damage to vehicles or personal property.
- 7.3. The person authorized to collect the Equipment on behalf of the Company shall be deemed to have authority to bind the Company in signing any agreement with the Supplier on behalf of the Company;
- 7.4. Where the parties have agreed in writing that the Supplier shall deliver the Equipment to the Company and the Supplier is unable to deliver or collect such Equipment due to the fault or negligence of the Company, the Company shall be obliged to pay all delivery and/or collection charges at the Supplier's standard transport rates as applicable at the date of such attempted delivery or collection.
- 7.5. Delivery or collection of the Equipment, as the case may be, shall be deemed to take place at the time the Supplier makes the Equipment available to the Company, any duly authorised agent of the Company or any carrier deemed to be the Companies duly authorised agent at the Supplier's premises or other delivery point agreed to in writing by the parties and all risk in and to the Equipment shall pass upon the Equipment being handed over to the Company at such delivery or collection point.
- 7.6. The Supplier shall not be liable for any penalty, loss, injury, damage or expense arising from the delay or failure to timeously deliver the Equipment or the delay or failure to make the Equipment timeously available to the Company for collection.

- 7.7. If the Company fails to collect or take delivery of the Equipment or any part thereof on the Commencement Date or fails to provide any instructions or authorisations required to enable the Equipment to be collected by or delivered to the Company, as the case be, on the Commencement Date, the Supplier shall be entitled upon written notice to the Company to terminate the Agreement forthwith and claim from the Company all damages and loss suffered as a result thereof.
- 7.8. The Company acknowledges that no warranty, condition, description or representation on the Supplier's part is given other than as contained in this Agreement and the Companies obligation to pay the Supplier and otherwise comply with this Agreement shall continue notwithstanding any subsequent defect or breakdown of the Equipment.
- 7.9. Unless otherwise agreed in writing by the parties, the Company shall be responsible for the return of the Equipment to the Supplier's premises and handed to an authorized representative of the Supplier upon expiration of the Term Period or termination of this Agreement. All costs incurred in or as a result of the return of the Equipment shall be borne solely by the Company.
- 7.10. In the event that the Company returns Equipment after hours and hands the Equipment to security personnel then the Equipment will only be accepted on the basis that the sole risk of loss or damage to the Equipment will remain vested in the Company until such time as the Supplier has recorded the return of the Equipment.
- 7.11. Any return note for the Equipment issued by the Supplier at or after the end of the Term Period shall not be evidence of the condition of the Equipment described in it.
- 7.12. On the return of the Equipment by the Company, the Supplier's engineers ("the Engineers") shall conduct a thorough inspection of the Equipment to ensure that the Equipment has been returned in the same condition as received by the Company at the Commencement Date.
- 7.13. The Engineers' report shall be forwarded to the Company upon completion thereof and shall detail any loss or damage caused to the Equipment during the Term Period. Such report shall constitute prima facie evidence of any loss or damage caused by the Company to the Equipment during the Term Period. The liquidated amount of the loss or damage to the Equipment shall be paid on demand by the Company to the Supplier. In the event of the Equipment being damaged beyond repair, then the loss will be in accordance with the Suppliers then current replacement list price of the Equipment.
- 7.14. On the return of the Equipment, all data on the memory devices, including but not limited to hard drives, discs or tapes shall be deleted by the Supplier, unless the Company has specifically instructed the Supplier otherwise in writing prior to the return of the Equipment.
- 7.15. The Company shall pay delivery and collection charges at the Supplier's standard transport rates from time to time to the Supplier on demand as an extra cost.

## **8. REMUNERATION**

8.1. The amount payable by the Company to the Supplier for all services and goods as per this Agreement will be invoiced on a monthly basis and will be due without deduction or set off within 30 days from date of invoice.

8.2. The total contract amount is R\*  excluding VAT.

8.3. Invoices to be presented and paid as follows:

**8.3.1.[35% of the contract amount including VAT on signing of this document.]**

**8.3.2.[15% of the contract amount including VAT on \_\_\_\_\_.]**

**8.3.3.[25% the contract amount including VAT on \_\_\_\_\_.]**

**8.3.4.[15% of the contract amount including VAT on \_\_\_\_\_.]**

**8.3.5.10% of the contract amount including VAT on \_\_\_\_\_].**

## **9. TITLE**

9.1. Notwithstanding anything herein contained, the Supplier shall remain the sole and absolute owner of the Equipment.

## **10. TERMINATION**

10.1. Without prejudice to any right or remedy of the Supplier, this Agreement may be terminated by the Supplier forthwith by notice in writing to the Company:-

10.1.1. upon breach of the terms and conditions of this Agreement by the Company, in which event the Supplier may demand the immediate return of the Equipment, together with compensation for any damages or loss suffered as a result of such breach;

10.1.2. if the Company enters into liquidation (other than for the purposes of bona fide amalgamation or reconstruction) whether voluntary or otherwise or a receiver, business rescue practitioner or administrator is appointed over all or part of its assets or enters into a voluntary arrangement with its creditors or suffers any insolvency event or suffers any process analogous to the above under foreign laws; or

10.1.3. if the Company comes under the control of any third party or parties other than that by which it is controlled at the date hereof or other than by an affiliate of it for the purposes of a bona fide reorganization. For the purposes of this paragraph, control shall mean either the ownership of fifty percent (50%) or more of the ordinary share capital of the company carrying the right to vote at general meetings of either party or the power to nominate a majority of the board of directors of either party.

10.2. This Agreement may be terminated by the Company forthwith by notice in writing to the Supplier :-

10.2.1.in the event of the Supplier failing to perform the services set out in this Agreement after having provided a fair and reasonable opportunity for the Supplier to attend to any problem; or

10.2.2.if the Supplier enters into liquidation (other than for the purposes of bona fide amalgamation or reconstruction) whether voluntary or otherwise or a receiver, business rescue practitioner or administrator is appointed over all or part of its assets or enters into a voluntary arrangement with its creditors or suffers any insolvency event or suffers any process analogous to the above under foreign laws.

**11. LIMITATION OF LIABILITY**

11.1. Subject to applicable law, and save for gross negligence on the part of the Supplier or conduct within the control of the Supplier, the Supplier shall not be liable for any direct, indirect, consequential or incidental damages.

**12. NON-ASSIGNMENT**

The Company shall not assign this Agreement without the Supplier’s written consent.

**13. GOVERNING LAW AND JURISDICTION**

The laws of the Republic of South Africa shall govern this Agreement, its implementation and interpretation and any arbitration or litigation arising out of or in relation to this Contract shall be conducted in Cape Town, South Africa.

SIGNED AT \_\_\_\_\_ ON THIS THE \_\_\_\_\_ DAY OF \_\_\_\_\_ 2018.

**VISUAL IMPACT BROADCAST SOLUTIONS (PTY) LTD**

.....  
FULL NAME (who warrants that he/she is duly authorised hereto)

.....  
DESIGNATION

.....  
DATE

THUS DONE AND SIGNED AT \_\_\_\_\_ ON THE \_\_\_\_\_ DAY OF \_\_\_\_\_ 2018

**[INSERT NAME OF COMPANY]**

.....  
FULL NAME (who warrants that he/she is duly authorised hereto)

.....  
DESIGNATION

.....  
DATE