

Memorandum of Agreement entered into between:

**(Name of Client)**

The company represented by the client signature on this quotation – herein called “the client”

and

**IMAGINE CREATIVE SERVICES & DIGITAL (Pty) Ltd**

The company represented on the quotation letterhead – herein called “the agency”

**WHEREAS** the client requires creative concepts and productions pertaining to services in advertising, consultations, promotions, photography, design, online digital media, video, programmatic media, ATL media, or other, and project management thereof.

**AND** desires to commission the agency to create such creative concepts and consult on the production of the *(title mentioned on this quotation)* with respect to services in the creation and implementation of advertising, promotions, photography, design, online digital media and videography and the project management thereof.

***It is hereby agreed as follows:***

**THE AGENCY’S CORE SERVICE OFFERING**

1. Creative concepts and productions (executions) in advertising, creative strategy, creative & marketing campaigns & media, photography, video productions and the project management thereof
2. Promotional strategy and campaigns, and the project management thereof
3. Design strategy, production and the project management thereof
4. Online (digital) strategy, productions including; websites, social media, banners, e-booklets, e-newsletters, e-commerce, search engine optimisation, online media and digital project management thereof
5. Photography
6. Videography
7. Media strategy, purchasing, booking, productions and reportings

**COMMENCEMENT AND DURATION**

This agreement shall commence upon verbal, or written, or on the date of last signature upon a quotation and or cost estimate, and endure indefinitely or until receipt of payment from the client for creative concepts and production executed as commissioned. The agency’s cost estimate price shall always be the net amount exclusive of 15% VAT. Payment from clients will be the net amount plus 15% VAT.

With ongoing Advertising Campaigns, or Digital Marketing Campaigns, a Service Level Agreement (SLA) between the two parties will be signed and reviewed annually between the parties.

**1 PAYMENT**

- 1.1 A minimum amount of **50%** of the agreed (verbal or signed, or email agreement) quotation amount (incl VAT) is payable upon thereof into the bank account of the agency of which the details follow:

**Standard Bank of South Africa Limited  
Thibault Square Branch  
Branch code: 02090900  
Account Number: 070 839 115**

**VAT: 4950198582** *(Must appear on all client or supplier invoices)*

- 1.2. Confirmation of payment must take place by way of sending such confirmation by fax to the following number:

**Fax: 021 418 4155** or email to: **info@imagine-creatives.com**

- 1.3 The balance is payable fully upon completion COD.
- 1.4 All once-off projects are to be completed within a 30 day cycle unless agreed upon in writing.
- 1.6 If projects period extend beyond 30 days, the work generated to date is to be settled in full with immediate effect.

- 1.5 If client commits to ongoing budget with the agency, then a contract with terms can be arranged and agreed upon in writing.
- 1.6 All Digital work including Digital Media is to be paid in advance per cycle period.

## **2. 30-DAY PAYMENT TERMS**

- 2.1 30 day payment from date of statement may be granted on condition that the client has agreed to ongoing services from the agency by committing to an annual budget, and successfully filled in an agency credit application form and that it is not the client's first project with the agency.
- 2.2 Should the 30 days lapse without payment, the agency will add 7% compounding interest per month to the amount still outstanding
- 2.3 All Digital work including Digital Media is to be paid in advance per cycle period.

## **3. COST ESTIMATES**

- 3.1 Cost estimates will indicate amounts to be paid for services creative concepts, design-time, production-time, cost of sales & project management.
- 3.2 The agency's cost estimate price shall always be the net amount exclusive of 15% VAT. Payment from clients will be the net amount plus 15% VAT.
- 3.3 The amount quoted on production costs may include a concept fee, a project management fee and commission added to any outside costs purchased or rented or leased or aquired for the completion of the project.
- 3.4 Quotations are only valid for a period of 30 days – and subject to change dependant upon market factors, or supplier changes, or unforeseen circumstances.
- 3.5 The agency is not responsible for possible variations in the cost estimate due to currency fluctuations, supplier-related disruptions due to labour issue or power outages or any other unforeseen circumstances. Should there be a cost increase, the the agency reserves the right to re-present a quotation for approval, for the increase over and above the quotation agreed upon.

## **4. BRIEFS AND SUBJECTIVE REASONING:**

- 3.0 A written brief must be agreed upon prior to commencement of any project. Should one not exists then the minutes of the meeting will constitute a brief.
- 3.1 Creative work may not be rejected on the basis of subjective reasoning. Such work will incur a rejection fee of up to 70% of the original signed quotation.
- 3.2 Creative work will not be produced to determine a client's brief. The brief needs to be fully explored by client and understood by the agency before work can commence. Within the written quotation the agency may include several different executions at its discretion.
- 3.3 The agency does not do 'pitch' work - all work briefed verbally, or in writing, is subject to a fee payable by client at current agency rates. Or the rejection fee thereof. Cost estimate will be provided and agreed upon before any work commences.

## **5. MATERIALS SUPPLIED BY CLIENT**

- 5.1 Materials provided from the client for execution of production must be in a program and format compatible with agency program and in good quality for final finished art material and will include but not be limited to logo's, artistic works, photography, videography and complete edited spell checked copy.
- 5.2 If quality is deemed too poor quality for usage, and the agency is required to retouch, amend, enhance, re-write copy or edit, or re-create, it will be charged to client as an additional cost not exceeding R1,200 per hour. Agency will pre-quote these and will require client authorisation before proceeding.

## **6. PRODUCTIONS**

- 6.1 All productions will be executed by the agency or agency's appointed supplier, or unless agreed to in the agency's brief as per Point 4. Agency will pre-quote these and will require client authorisation before proceeding.
- 6.2 Should a client insist upon using their appointed supplier, then the agency is not responsible to the final quality of the output nor the securities or timings surround the finalisation of the project.

## **7. AMENDMENTS, CORRECTIONS AND ADDITIONS (MANAGING 'SCOPE CREEP')**

Any amendments or additions that is outside the agreed cost estimate may result in further fees and 3<sup>rd</sup> party costs and or any additional hard costs. Agency will pre-quote these and will require client authorisation before proceeding. Emailed status reports will be provided by the agency to client is notified and kept informed at all times.

## **8. PRODUCTION MATERIAL**

- 8.1 Agency creative production material including print, digital, or any other media may be stored or fixated on compact disks or other backup devices, or stored online, or in cloud. These are created by the current computer programs of the agency, but the agency is not liable for any malfunction of such disks or devices resulting in the material so stored not being retrieved as stored or fixated in it's original form.
- 8.2 Should a client wish the agency to use one of it's own suppliers with regards any production and the client supplier requirements are in a different programme, or require additional agency time than pre-quoted for, then the agency reserves the right to charge the client for additional time plus any external or hard costs to which commission has been added.

## **9. FINAL MATERIAL DISCLAIMER**

- 9.1 The final creative work produced but not limited to, repro material to media publications, repro material to print or digital print companies, or website material and updates, which may be delivered via any 3<sup>rd</sup> party programme or other, or material of data sent to client, or any production house, or publication, or electronic, in which creative productions are completed will be deemed in perfect working condition unless any complaints pertaining to the material be made in writing to the agency and be in agency possession within 48 hours from delivery time.
- 9.2 The agency accepts no liability to final productions if they are incorrect and/or the possible costs resulting from such incorrect productions.

## **10. DATA STORAGE & ONLINE DISCLAIMER**

- 10.1 The agency will at it's own discretion backup all it's print and digital productions as well keep an archive of all original working documents for a period of 12 months.
- 10.2 The agency will not be held liable if such backup material is damaged through to include but not limited to things such as fire, computer failure, CD/DVD failure, power cuts, theft or malicious damage, websites and online 3<sup>rd</sup> party applications.
- 10.3 With regards websites & digital media hosted by the agency's appointed service provider/s or client's hosting companies, or third parties, the agency shall not be responsible for websites not functioning through website programmes & website applications, or website 3<sup>rd</sup> party applications, or hosting companies technical problems, or the resulting downtime cost to client.

## **11. INDEMNITY**

- 11.1 The agency accepts no liability for work produced and delivered by agency to appointed suppliers or to clients for projects that are deficient in any way possible i.e. damaged, or quantities found to be short of specified or other. The delivery agent of the supplier / and / or client's responsibility is to examine and make sure they sign with the agency appointed supplier that the delivery is in perfect order.
- 11.2 The agency accepts no liability in terms of work delivered to suppliers on compact discs if they are not checked by the supplier with the agency. In terms of print production and match prints, unless the supplier produces a match print at their cost, and submits it to the agency for approval, the match print supplied by the agency will be used as colour guide and the results produced will need to be within accepted specs of the print supplied.

- 11.3 The agency accepts no liability for any claim made by any of its client's products or services.
- 11.4 The agency is not liable in any way, should any of its services 'not work' or produce less than expected results in any way whatsoever, for any of its clients or other.
- 11.5 The agency accepts no liability for comments, copy, artwork, creative work, that may or may not be an actual verified fact.
- 11.6 The agency shall not be liable to any loss of business should client websites or 3<sup>rd</sup> party web servers not function properly for any period of time and for any reason whatsoever
- 11.7 The agency shall not be liable for any online claims, content, prices, terms and conditions of clients and their suppliers, or links, or associates whatsoever. Clients responsibility rests in ensuring all online content is correct according to their term of service and sales.

## **12. COPYRIGHT**

- 12.1 Under South African common law the agency will be, and remain the 'creator and owner' of copyright in the creative and production works eligible for copyright protection under the Copyright Act.
- 12.2 Delivery of the creative and production work will not constitute assignment of the agency's right, title and interest in and to the copyright work.
- 12.3 The client's fee is for services rendered, and not for ownership of copyright.
- 12.4 Copyright will constitute ownership of all original master files and artwork.
- 12.5 All materials purchased, produced, sourced and created for the production of a briefed project by the agency, will remain copyright to the agency.
- 12.6 Should a client enter into a contract with the agency, copyright can be transferred to the client in writing.

## **13. AGENCY CONTACT REPORTS**

When agency takes minutes and writes a contact report to a client – the content may be amended by the client within 24hours if the contents are either incorrect or misinterpreted. Thereafter they will form a contract that is legally binding to their contents and agreements. A contact report will come in the form of an email to client.

## **14. OVERSIGHTS**

The Agency will insist on a final signed off proof / or in writing in an e-mail / or documented verbal go-ahead before proceeding to production. If changes are made thereafter, the agency reserves the right to charged to client not exceeding R1,200 per hour plus any external or hard costs to which commission has been added.

## **15. BREACH**

Non compliance by the client of any of the stipulations set out above will constitute a fundamental breach of the contract and will entitle the agency to cancel the agreement and pursue all it's available remedies under Contract Law.

## **16. RECOVERY COSTS**

In the event of the agency having to institute legal action against the client due to breach of these terms the client will be liable for the agency's full legal cost so incurred to recover the full costs plus interest.

## **17. DOMICILIUM**

For the purposes of this Agreement, the parties hereby choose *domicilium citandi et executandi* at their respective addresses as stipulated on the quotation signed by the client.