



## MATT BROWN SHOW TERMS OF SERVICE

### 1 APPOINTMENT

- 1.1 The Client hereby appoints Matt Brown Show to render the Services and to make available, where relevant, the Products, the resources, skills and expertise with effect from the Commencement Date and Matt Brown Show accepts such appointment on the terms and conditions contained in this Agreement.

### 2 STRUCTURE OF THE AGREEMENT

- 2.1 This Main Agreement is intended to operate as a master or framework agreement applicable to all Services rendered and all Products provided by Matt Brown Show and recorded in the relevant Campaign Document. All Campaign Documents shall be governed by this Main Agreement and the provisions of this Main Agreement shall apply in respect of each Campaign Document as if fully included within the body of the Campaign Document.
- 2.2 This Main Agreement shall apply to all Services rendered and Products provided by Matt Brown Show to the Client or to an Affiliate of the Client, and where applicable, to Services rendered and Products provided by an Affiliate of Matt Brown Show to the Client or an Affiliate of the Client, in each instance where the Parties have concluded a Campaign Document. Where appropriate, all references to “**the Client**” or “**Matt Brown Show**” in this Main Agreement shall be a reference to the Client Affiliate or Matt Brown Show Affiliate, as the case may be, which has concluded a Campaign Document.
- 2.3 Each Campaign Document read with this Main Agreement shall become “**the Agreement**” between Matt Brown Show or Matt Brown Show Affiliate and the Client or the Client Affiliate, as the case may be, in respect of the Services as described in that Campaign Documents.
- 2.4 Where the Parties enter a Campaign Document which has varying terms to any of the terms of the Agreement, then the varying terms of that Campaign Document shall prevail and shall be binding, but only with respect to the particular Campaign Document. The varying terms in the Campaign Document will however not otherwise result in the terms in the Agreement being amended in general and the equivalent terms in the Agreement shall continue to apply outside of the aforesaid varying Campaign Document.
- 2.4.1 Notwithstanding any contrary provision the Parties shall be responsible for the acts and omissions of any of their Affiliates or for the failure of an Affiliate to comply with a Campaign Documents.
- 2.5 As at the Commencement Date, the following Annexures form part of this Agreement:
- 2.5.1 **Annexure “A”**: Definitions; and
- 2.5.2 **Campaign Documents**.



### 3 DEFINITIONS AND INTERPRETATION

- 3.1 In this Agreement, unless otherwise specified or inconsistent with the context, the definitions set out in **Annexure "A"** shall apply.
- 3.2 Subject to clause 2.4, the Parties shall be entitled to insert additional definitions in Campaign Document.
- 3.3 If any provision in **Annexure "A"** or any definition inserted in a Campaign Document is a substantive provision conferring rights or imposing obligations on any Party, effect shall be given to it as if it were a substantive provision in this Agreement.
- 3.4 References to:
- 3.4.1 the masculine includes the feminine and the neuter;
- 3.4.2 the singular includes the plural and vice versa;
- 3.4.3 **"persons"** are to natural persons and juristic persons, including bodies corporate, firms, other unincorporated associations and governmental or supra-national authorities;
- 3.4.4 the words **"include"**, **"includes"**, **"including"** and any derivations of them shall be construed to include the words **"but not limited to"** after them;
- 3.4.5 statutory provisions shall be construed as references to those provisions as respectively amended, consolidated, extended or re-enacted from time to time and shall be construed as including references to the corresponding provisions of any earlier legislation directly or indirectly amended, consolidated, extended or replaced by those statutory provisions or re-enacted and shall include any orders, ordinance, regulations, instruments or other subordinate legislation made under the relevant statute; and
- 3.4.6 **"days"** are references to normal calendar days unless specifically stipulated as being Business Days.
- 3.4.7 **"Guest"** shall mean the nominated representative of the Client interviewed on the podcast;
- 3.4.8 **"Podcaster"** shall mean The Matt Brown Show (Pty) Ltd.
- 3.4.9 **"Program"** shall mean The Matt Brown Show.
- 3.5 When any number of days is prescribed in this Agreement, same shall be reckoned exclusively of the first and inclusively of the last day, unless the last day falls on a day which is not a Business Day, in which case the last day shall be the next Business Day.
- 3.6 Where figures are referred to in numerals and in words, if there is any conflict between the two, the words shall prevail.



- 3.7 Where the approval or consent of any Party is required in terms of this Agreement, the Parties hereby agree that such approval or consent shall not, unless expressly provided to the contrary, be unreasonably withheld or delayed by the Party who is required to give same.
- 3.8 Any Party shall, where relevant, be deemed to be references to, or to include, as appropriate, their respective successors in title or permitted assigns.
- 3.9 The rule of construction that the Agreement shall be interpreted against the Party responsible for the drafting or preparation of the agreement shall not apply.
- 3.10 Terms other than those defined within the Agreement will be given their plain English meaning and those terms, acronyms and phrases known in general commercial or industry-specific practice will be interpreted in accordance with their generally accepted commercial or industry-specific meanings.

#### **4 COMMENCEMENT AND DURATION**

- 4.1 This Main Agreement shall commence on the Commencement Date and shall, subject to clause **Error! Reference source not found.** and 23, endure indefinitely.
- 4.2 All retained / subscription services and or Products are terminable on 30 days notice from the subscription service renewal date and subject to same being received prior to the end of the then current term of the subscription service or as otherwise agreed and recorded in the relevant Campaign Document.
- 4.3 Each Campaign Document shall, irrespective of the Commencement Date, commence on the Commencement Date stipulated on the relevant Campaign Document and shall, subject to clause 23, endure for the Duration stipulated therein.

#### **5 NATURE OF RELATIONSHIP**

- 5.1 The relationship between the Parties shall be that of independent contractors and nothing in this Agreement shall be interpreted as constituting a partnership, employment or an agency relationship between the Parties or between either Party and any of the the other Party's Staff.
- 5.2 Neither Party shall have any authority to bind the other in any way whatsoever, including, but not limited to:
- 5.2.1 entering into contractual obligations on behalf of the other Party;
  - 5.2.2 incurring any liability on behalf of the other Party;
  - 5.2.3 settling or waiving any claim against or by the other Party;
  - 5.2.4 entering into any oral arrangements, thereby binding either Party to such arrangements; or



5.2.5 making any promises, representations, warranties or guarantees in respect of the Services other than those contained in this Agreement.

## **6 RELATIONSHIP MANAGEMENT**

6.1 The Parties shall each nominate a Relationship Manager who shall be accessible, contactable and authorised to resolve issues and assigned with the duty to ensure that the obligations in terms of the Agreement are properly fulfilled.

6.2 A Party may change its Relationship Manager at any time by notifying the other Party thereof in Writing.

6.3 Matt Brown Show's Relationship Manager and the Client's Relationship Manager will meet at intervals as agreed between the Parties from time to time, or as recoded in the relevant Campaign Document. Unless otherwise agreed by Matt Brown Show's Relationship Manager and the Client's Relationship Manager, meetings shall take place at a location agreed to by both Parties. Such meetings may be held by conference call between them, if they are in different places.

6.4 The Parties acknowledge that further provisions may be agreed in a Campaign Document regarding reporting, meetings and other general governance matters relating to the particular Services being rendered by Matt Brown Show.

## **7 GOOD FAITH**

7.1 The Parties undertake in favour of each other to do all such things, perform all such acts and take all steps to procure the doing of all such things and the performance of all such acts, as may be necessary or incidental to give or be conducive to the giving of effect to the terms, conditions and import of this Agreement.

7.2 The Parties shall at all times during the continuance of this Agreement observe the principles of good faith towards one another in the performance of their obligations in terms of this Agreement. This implies, without limiting the generality of the foregoing, that they –

7.2.1 shall at all times during the term of this Agreement act reasonably, honestly and in good faith;

7.2.2 shall perform their obligations arising from this Agreement diligently and with reasonable care, skill and expertise; and

7.2.3 shall make full disclosure to each other of any matter that may affect the execution of this Agreement.

## **8 PROCESS TO REQUEST SERVICES**

8.1 The Parties shall negotiate the details of the Products and/or Services in good faith with the aim of reaching consensus on the material terms of a binding Campaign Document.



## 9 SERVICES AND PERFORMANCE MANAGEMENT

- 9.1 Matt Brown Show shall perform the Services and/or provide the Products in accordance with the terms of the relevant Campaign Documents from time to time.
- 9.2 In the discharge of its duties, Matt Brown Show shall comply with all reasonable directions of the Client as may be notified to Matt Brown Show in Writing from time to time as to the nature and scope of the Services and/or Products to be provided.
- 9.3 Nothing in this clause 9 shall affect Matt Brown Show's right to exercise its own judgment and to utilise its skill as it considers most appropriate in order to achieve compliance with the said directions or otherwise to comply with its obligations under this Agreement.
- 9.4 The Parties agree that the Services and/or Products will be subject to amendments from time to time to meet the specific requirements of the Client, provided that such amendments shall only be effective once recorded in Writing.
- 9.5 Matt Brown Show shall render the Services and provide the Products in a professional manner with due care, skill and diligence.

## 10 VARIATION PROCEDURES

- 10.1 **No Variation.** Subject to the provisions of this clause 10, no variation, addition or consensual cancellation of this Agreement or any Campaign Documents shall be of any force or effect unless reduced to Writing and signed by the Parties or their duly authorised representatives. For the purposes of clarity, no amendment or variation to this Agreement may be concluded via email.
- 10.2 **Amendments to Services.** Further, post any campaign Services go-live but during the currency of this Agreement and/or any Campaign Documents, events may occur which require an amendment to the nature or scope of Services provided by Matt Brown Show to the Client. Matt Brown Show will accordingly make variations, which it considers, in its sole discretion, to be essential to meet Services objectives, during the currency of the Services.
- 10.3 In the event that lead generation or awareness targets projected in the proposal or subsequent Campaign Documents prove unattainable due to circumstances not envisaged by Matt Brown Show and or the Client, Matt Brown Show shall inform the Client of same and the Parties shall agree on revised targets. Should the Parties be unable to agree, Matt Brown Show shall be entitled to terminate this Agreement and/or the Campaign Documents and refund a portion of the unused Media Budget.
- 10.4 In the event that a material variation of the Services is required, such amendments shall be implemented on the following basis:



- 10.4.1 **Party desiring amendment.** Should either Party wish to propose any amendment to the nature or scope of Services, such amendment shall be requested in the formal manner by way of a written proposal to the other Party, detailing the desired amendments.
- 10.4.2 **Proposal.** Should such proposal be made by: -
- 10.4.2.1 the Client, it shall specify the reasons for that amendment and describe the amendment in sufficient detail to enable Matt Brown Show to formulate a response. Matt Brown Show shall investigate the likely impact of any proposed amendments upon the Services and the provision thereof and shall provide the Client with a document setting out such impact, including amended pricing and timeframes, on the relevant services and campaign targets, in respect thereof (a “**Variation Note**”); or
- 10.4.2.2 Matt Brown Show, it shall detail in a Variation Note the reasons for and impact of the amendment, if such amendment is material and falls outside of the realm of agile methodology applied to the Services as agreed in the Campaign Documents, the services required to implement the amendment and the effect that the amendments on the relevant services and campaign targets, if implemented, will have on the relevant Services, setting out sufficient detail to enable the Client to formulate a response.
- 10.4.3 **Sign-off.** The Parties shall discuss the proposed amendments and shall affect such amendments to Matt Brown Show Variation Notes as may be agreed. The Variation Notes shall then be considered by the Client and approved or rejected in its discretion, provided that if a Variation Note: -
- 10.4.3.1 is accepted by the Client, it shall be signed off by duly authorised representatives of the Parties and incorporated into this Agreement; or
- 10.4.3.2 is rejected by the Client, the Services shall continue to be provided by Matt Brown Show on the existing terms of this Agreement and the relevant Campaign Documents, provided that, if Matt Brown Show recommends a variation, which it considers in its sole discretion, to be essential to meet Services and campaign objectives, the Client shall not be entitled to reject the variation without the Parties agreeing to amended Services and campaign deliverables and targets.
- 10.4.4 **No amendment effective until sign-off.** Neither Matt Brown Show nor the Client shall be entitled to proceed or require the implementation of any amendment to the Services pursuant to this clause 10 until such amendment and all matters relating thereto have been agreed in Writing between the Parties in accordance with the provisions of this clause 10. Pending sign-off as aforesaid, the Parties will continue to perform their obligations without taking account of the proposed amendments. Neither Party shall be obliged to agree to any amendment proposed by the other Party, but the Parties will not unreasonably delay or withhold their agreement to a proposed amendment.



## **11 GENERAL OBLIGATIONS OF MATT BROWN SHOW**

- 11.1 In addition to the specific responsibilities and obligations of Matt Brown Show set out in the Campaign Documents and elsewhere in the Agreement, Matt Brown Show shall:
- 11.1.1 have all material licences, approvals, certificates, authorisations and consents required for the provision of the Services;
  - 11.1.2 comply with Data Protection laws;
  - 11.1.3 promptly consider and respond within a reasonable time to all communications, proposals, documents and other information relating to the Services and/or Products submitted to Matt Brown Show by the Client;
  - 11.1.4 advise the Client Relationship Manager should (i) the Client Relationship Manager fail to provide information that is necessary for the fulfilment of the Services and/or provision of the Products; or (ii) the non-compliance by the Client or the Client Relationship Manager with its duties and responsibilities be likely to result in a situation where the Fees payable by the Client may need to be increased;
  - 11.1.5 as soon as reasonably possible, inform and advise the Client in Writing of any information or circumstances of whatsoever nature that may affect the Services to be delivered and/or the Products to be provided, or have been provided, or the feasibility of a Project.
  - 11.1.6 Any target commitments are subject to the market conditions present at the time of entering into a Campaign Document prevailing as well as the the Client's continued standard operation, for the course of the term agreed to in the Campaign Documents.

## **12 FEES AND PAYMENT TERMS**

- 12.1 In consideration for the Services to be rendered, and/or Products to be provided, and/or the Projects to be conducted by Matt Brown Show for the Client, the Client shall pay Matt Brown Show the Fees, disbursements and costs in the manner and frequency as set out in the relevant Campaign Documents.
- 12.2 Matt Brown Show shall forward a valid Written tax invoice to the Client Relationship Manager in the format required by the Value Added Tax Act 1991.
- 12.3 All amounts shall separately reflect VAT. Matt Brown Show shall indicate on each tax invoice all amounts as follows:
- 12.3.1 net of VAT;
  - 12.3.2 VAT; and



- 12.3.3 total inclusive of VAT.
- 12.4 Unless stated to the contrary in the relevant Campaign Documents, and subject to the terms of this Agreement, Services shall be invoiced on acceptance of quotation or the Commencement date recorded in the relevant Campaign Document. Unless otherwise agreed in the relevant Campaign Document, full payment will be required upfront and prior to commencement of the Services, Production and campaign launch.
- 12.5 The Client shall be liable for any incidental expenses incurred by Matt Brown Show in the rendering of the Services, subject to Matt Brown Show obtaining the Client's prior written consent.
- 12.6 The Fees due in respect of any Products provided shall be paid monthly in advance, in accordance with the terms agreed in the relevant Campaign Document.
- 12.7 The Client shall make payment to Matt Brown Show by means of electronically based payment on the bank information supplied to **the Client** by Matt Brown Show from time to time.
- 12.8 The Client shall not be entitled to set-off any amount due to it by Matt Brown Show against any amount due to Matt Brown Show by the Client, unless it is in possession of a valid court order requiring an amount equal to such set-off to be paid by Matt Brown Show to the Client.
- 12.9 Should the Client dispute any amount appearing on an invoice submitted to the Client pursuant to this Agreement ("**the affected invoice**"), the Client shall, within 5 (five) Business Days of receipt of the affected invoice, notify Matt Brown Show, in Writing, of such dispute, specifying:
- 12.9.1 the affected invoice;
- 12.9.2 the specific amount in dispute; and
- 12.9.3 the reasons or grounds for such dispute.
- 12.10 Any amount so disputed shall be regarded as "due and payable" as contemplated above, despite the dispute. The affected invoice shall be resolved between the Parties' respective Relationship Managers and Relationship Managers (or their duly authorised representatives) within 10 (ten) Business Days of such dispute being notified by the Client to Matt Brown Show. Failing resolution, the provisions of clause 22.1 shall apply.

## 13 REPORTING

- 13.1 The Parties agree that reporting requirements shall be addressed in each Campaign Document.





## **14 GENERAL OBLIGATIONS OF THE CLIENT**

- 14.1 In addition to the specific responsibilities and obligations of the Client set out in the Campaign Documents and elsewhere in this Agreement, the Client shall:
- 14.1.1 act in all respects with due care and diligence and in good faith towards Matt Brown Show;
  - 14.1.2 comply with all Data Protection Laws and treat the Personal Information that comes to their knowledge or into their possession as confidential and not disclose it without the prior Written consent of Matt Brown Show;
  - 14.1.3 ensure that all necessary information that is relevant for the purposes of rendering the Services is provided to Matt Brown Show, and the Client hereby agrees that Matt Brown Show shall not be liable for any delay in providing, or failure to provide, the Services as a result of the Client failing to provide such necessary information;
  - 14.1.4 promptly consider and respond to all communications, proposals, requests, documents and other information relating to the Services and/or Products submitted by Matt Brown Show to the Client;
  - 14.1.5 notify Matt Brown Show, in Writing, of any performance concerns and allow sufficient time for Matt Brown Show to respond and correct areas of concerns;
  - 14.1.6 inform Matt Brown Show of any information or developments which may come to the Client's attention while this Agreement remains in force, which might have a bearing on or be relevant to the Services and/or Products; and
  - 14.1.7 procure that Matt Brown Show's Staff are afforded reasonable access to the Client website domain where necessary and to such other amenities, resources and infrastructure as are reasonably necessary to enable Matt Brown Show to provide the Services and/or Products and/or conduct the Projects in accordance with the terms of the Campaign Documents.

## **15 SUB-CONTRACTING**

- 15.1 Matt Brown Show shall be entitled to subcontract the performance of the Services and/or Products.
- 15.2 Matt Brown Show shall remain fully responsible for the proper performance of the Services and/or products in accordance with the terms of this Agreement and Matt Brown Show shall ensure that all parties engaged in the provision of the Services and/or Products render such Services and provide such Products in accordance with the terms of this Agreement.

## **16 PROTECTION OF PERSONAL INFORMATION**

- 16.1 Both Parties warrant that they will abide the provisions of the Data Protection Legislation in the execution of



this Agreement.

16.2 The Parties warrant that they shall:

16.2.1 only Process Personal Information in accordance with applicable laws, in terms of this Agreement and in accordance with any instructions, requirements or specific directions of the Data Subjects;

16.2.2 only Process the Personal Information of Data Subjects obtained in compliance with the provisions of the Acts;

16.2.3 obtain and maintain all necessary Data Subject consents;

16.2.4 ensure that the Personal Information Processed is up to date;

16.3 shall not conduct any further Processing activities for any other reason whatsoever (including any related processing functions or processing which would otherwise be a normal extension of the Processing which the Processor is entitled to undertake in accordance with this Agreement) without the express prior written consent of the Data Subject, save that the Processor may carry out reasonable further Processing strictly in order to comply with an obligation which is imposed on them by law.

## 17 PERSONAL INFORMATION INDEMNITY

17.1 The Client hereby indemnifies and holds Matt Brown Show, its Affiliates and their respective staff, successors, cessionaries, delegates and assigns, harmless from any and all Losses of both a patrimonial and non-patrimonial nature, all costs, expenses and damage, including consequential Losses and damage as well as penalties and fines arising from the Client's non-compliance with the provisions of this Agreement and any relevant data protection legislation regardless of whether any such loss or damage occurred as a result of a *force majeure* event. The aforementioned indemnity shall also extend to, without limitation –

17.1.1 any reputational damage to Matt Brown Show;

17.1.2 any costs, fines and expenses directed by the Data Protection Regulator or any court of law; and/or

17.1.3 all Losses and damage relating to the publication of any Personal Information security breach and related call centre and other costs incurred to support the affected Data Subjects.

## 18 INTELLECTUAL PROPERTY RIGHTS

18.1 Ownership and title of all Intellectual Property rights in all works either first developed or created by Matt Brown Show prior to the Commencement Date, except those developed or created by Matt Brown Show in terms of a predecessor to this Agreement or a Campaign Document executed in terms of such predecessor to this Agreement, and ownership and title of all Intellectual Property rights in all works developed by Matt Brown Show independently from or not directly in relation to the performance of its obligations under this



Agreement, shall remain vested in Matt Brown Show.

- 18.2 Notwithstanding clause 18.3, ownership and title of all Intellectual Property rights in all works developed or created by Matt Brown Show during the term of this Agreement but not directly pursuant to performing its obligations under this Agreement (e.g. such as part of Matt Brown Show's own research and development activities), shall remain vested in Matt Brown Show even if handed to the Client pursuant to this Agreement.
- 18.3 Ownership and title of all Intellectual Property rights in all trademarks, present and future rights of copyright, developed or created during the term of this Agreement as an agreed deliverable in terms of a Campaign Document, shall vest in the Client once fully paid for by the Client. This does not include stock images licensed to Matt Brown Show. The provisions of this clause 18.3 shall apply whether or not such works are used by the Client. Insofar as may be necessary, and subject to the Client having paid all Fees and other amounts and not otherwise being in material breach of this Agreement or any applicable Campaign Documents, Matt Brown Show shall provide the Client with high resolution pngs and where applicable pdf's. The Client grants Matt Brown Show a non-exclusive, non-transferable, non-sublicensable, royalty free and perpetual licence to use such Intellectual Property for the purposes of performing its obligations under this Agreement and any Campaign Documents.
- 18.4 The assignment of Intellectual Property rights by Matt Brown Show to the Client as envisaged in clause 18.3 shall be deemed to take place on full payment of all Fees due to Matt Brown Show in respect of such work and shall not include the assignable moral rights in the Intellectual Property so as to allow Matt Brown Show to show case any work created for the Client. Such assignment shall be free of any additional consideration of whatsoever nature except for all Fees, disbursements and costs incurred, it being recorded that the Fees paid to Matt Brown Show by the Client for the Services in this Agreement constitute a fair and reasonable consideration for such assignment.
- 18.5 Matt Brown Show shall procure that all Intellectual Property rights in all materials and works that are commissioned by Matt Brown Show from any third party shall vest in Matt Brown Show, so that Matt Brown Show, in turn, will be placed in a position to assign such rights to the Client. To the extent that Matt Brown Show is unable to ensure that third party Intellectual Property rights vest in Matt Brown Show, it shall ensure that such rights vest in the Client. The foregoing shall not preclude Matt Brown Show from acquiring Intellectual Property rights that are in any way limited due to commercial reasons to be agreed with the Client.
- 18.6 Intellectual Property rights in all works developed or created solely by **the Client** or its Staff and imparted to or handed over by the Client or its Staff to Matt Brown Show, whether prior to or after the Commencement Date, shall remain vested in the Client. Matt Brown Show shall use the Client Intellectual Property imparted to or handed over by the Client or its Staff to Matt Brown Show strictly in accordance with the terms of this Agreement and only for the purposes of providing the Services, and shall specifically not be permitted to use the Client Intellectual Property for the benefit of any person outside the the Client Group or without the prior



Written consent of the Client, which may be withheld at the Client's sole discretion.

- 18.7 Subject to this clause 18 and clause 19.9, neither Party shall acquire any rights, title or interest of any kind in any Intellectual Property owned by the other Party.
- 18.8 Each Party shall:
- 18.8.1 not do or permit any acts to be done which are calculated to prejudice, affect, impair or destroy the right, or interest of the other Party's Intellectual Property rights; and
- 18.8.2 forthwith notify the other Party in Writing of any actual or threatened infringement of the other Party's Intellectual Property rights which may come to its attention, and it shall, at the request and cost of the other Party, take all steps as the other Party shall from time to time consider necessary for the protection of the other Party's Intellectual Property rights.
- 18.9 Subject to each Party's compliance with clause 18.10, each Party ("**the Indemnifying Party**") indemnifies the other Party ("**the Indemnified Party**") against all claims for Losses instituted by a third party against such Indemnified Party and pay the amounts finally awarded against such other Party by a court of law (or similar forum) or agreed in settlement negotiations between the third party and the Indemnifying Party, to the extent that such claims arise out of any infringement of a third party's Intellectual Property supplied by the Indemnifying Party to the Indemnified Party (each a "**Third Party IP Claim**"), unless such claim arose as a result of the Intellectual Property being used other than in accordance with this Agreement and/or any Campaign Documents and/or the Indemnifying Party's reasonable instructions and unless the Intellectual Property has been modified in any way by anyone other than the Indemnifying Party or its Staff.
- 18.10 The Indemnified Party shall as soon as is reasonably possible give the Indemnifying Party notice of receipt of a Third Party IP Claim and shall provide the Indemnifying Party and its professional advisers with all reasonable assistance and information that may be required by them in relation to such Third Party IP Claim. The Indemnified Party shall not make any admission of liability, agreement or compromise in relation to the Third Party IP Claim without the prior written consent of the Indemnifying Party (such consent not to be unreasonably conditioned, withheld or delayed).
- 18.11 The Indemnified Party shall have the right, at its own cost and expense, to participate in the settlement negotiations to protect its interests. Any settlement of the Third Party IP Claim reached between the Indemnifying Party and the third party shall not, without the prior Written approval of Indemnified Party (which approval shall not be unreasonably withheld or delayed), obligate or impose liability of any kind on Indemnified Party.
- 18.12 Once a Third Party IP Claim is brought against the Indemnified Party, or if in the Indemnifying Party's reasonable opinion a Third Party IP Claim is likely to be brought, the Indemnifying Party shall, with the Written approval of Indemnified Party (which shall not be unreasonably withheld), promptly:



- 18.12.1 procure for Indemnifying Party the right to continue using the infringing Intellectual Property;
- 18.12.2 modify the infringing Intellectual Property so as to render the same non-infringing; or
- 18.12.3 replace it with Intellectual Property which is functionally equivalent to the infringing Intellectual Property so as to render the same non-infringing.

## **19 CONFIDENTIALITY**

- 19.1 The Receiving Party acknowledges the importance of the Confidential Information to the Disclosing Party and, where applicable, third party proprietors of such information, and recognises that the Disclosing Party and/or third party proprietors may suffer irreparable harm or loss in the event of such information being disclosed or used otherwise than in accordance with this Agreement.
- 19.2 The Receiving Party agrees and undertakes:
  - 19.2.1 except as permitted by this Agreement, not to disclose or publish any Confidential Information in any manner, for any reason or purpose whatsoever without the prior Written consent of the Disclosing Party and provided that in the event of the Confidential Information being proprietary to a third party, it shall also be incumbent on the Receiving Party to obtain the consent of such third party;
  - 19.2.2 except as permitted by this Agreement, not to utilise, employ, exploit or in any other manner whatsoever use the Confidential Information for any purpose whatsoever without the prior Written consent of the Disclosing Party and provided that in the event of the Confidential Information being proprietary to a third party, it shall also be incumbent on the Receiving Party to obtain the consent of such third party; and
  - 19.2.3 to take all practical steps, both before and after disclosure, to impress upon the Staff that are given access to Confidential Information the secret and confidential nature thereof.
- 19.3 All Confidential Information disclosed by the Disclosing Party to the Receiving Party or which otherwise comes to the knowledge of the Receiving Party, is acknowledged by the Receiving Party:
  - 19.3.1 to be proprietary to the Disclosing Party or where applicable, the relevant third party proprietor; and
  - 19.3.2 not to confer any rights of whatsoever nature in such Confidential Information on the Receiving Party.
- 19.4 The Receiving Party shall protect the Confidential Information in the manner, and with the endeavour, of a reasonable person protecting his/her own Confidential Information. In no event shall the Receiving Party use less than reasonable efforts to protect the confidentiality of the Confidential Information.
- 19.5 The Disclosing Party may at any time on Written request to the Receiving Party, require that the Receiving Party immediately returns to the Disclosing Party any Confidential Information and may, in addition, require that the Receiving Party furnish a Written and Signed statement to the effect that upon such return, it has



not retained in its possession or under its control, either directly or indirectly, any such Confidential Information or material. Alternatively, the Receiving Party shall, as and when required by the Disclosing Party on Written request to the Receiving Party, destroy all such Confidential Information and furnish the Disclosing Party with a Written and Signed statement to the effect that the same has been destroyed. The Receiving Party shall comply with any request in terms of this clause 19.5 within 7 (seven) days of receipt of such request.

- 19.6 Matt Brown Show may retain Confidential Information to the extent required by, and for the duration of any Services performed in terms of this Agreement, subject to the right of **the Client** to recover the Confidential Information at any time in terms of clause 19.5.
- 19.7 Each Party shall ensure that its Staff who have access to the other Party's Confidential Information sign a confidentiality undertaking containing substantially the same terms and conditions as those set out above, unless Staff has Signed a confidentiality undertaking as part of their employment contract.
- 19.8 The Parties record that this clause 19 shall not prevent the Receiving Party from disclosing Confidential Information to its Affiliates, attorneys, professional advisers or auditors, provided that such:
- 19.8.1 disclosure is reasonably required by the Receiving Party for the purposes of conducting its business activities or rendering the Services; and
- 19.8.2 Affiliates, attorneys, professional advisers or auditors are obliged to maintain the confidentiality of the Confidential Information.
- 19.9 Nothing contained in this Agreement will restrict the Receiving Party from the use of any generic ideas, concepts, know-how, or techniques developed or learned by such Party in the course of performing any Services under this Agreement, provided that in doing so the Receiving Party does not disclose the Disclosing Party's Confidential Information to third parties or infringe the Intellectual Property rights of the other Party or third parties who have licensed or provided materials to the other Party.
- 19.10 Each Party agrees not to make any public announcements or any disclosures in respect of this Agreement or the contents thereof without the other Party's prior Written approval, except to the extent required by law or by order of any court or tribunal of competent jurisdiction, provided that:
- 19.10.1 reasonable Written notice is given to the other Party prior to such disclosure to enable the affected Party to take whatever steps it deems necessary to protect its interests in this regard; and
- 19.10.2 a Party discloses only that portion of the Agreement which it is legally required to disclose.
- 19.11 The provisions of this clause 19 shall survive the expiration or termination of this Agreement.



## 20 REPRESENTATIONS AND WARRANTIES

20.1 Each Party represents and warrants that:

20.1.1 by Signing this Agreement it is acting as principal and not as agent for an undisclosed principal;

20.1.2 the execution and performance of this Agreement has been duly authorised by the requisite corporate action on the part of such Party; and

20.1.3 it has not violated any Applicable Law or policies of the other Party of which it has been given Written notice, regarding the offering of unlawful inducements in connection with this Agreement.

20.2 Each of the warranties and undertakings set out in this clause 20 shall be read separately from and without prejudice to and without derogation from the others.

20.3 **Disclaimer of warranties.** Matt Brown Show hereby excludes and disclaims all warranties, whether express or implied, statutory or otherwise, except those warranties expressly made in this clause 20. Without limiting the a foregoing Matt Brown Show hereby disclaims all warranties of fitness for purpose and any guarantee for a particular result or set of results. The Parties hereby specifically agree that Matt Brown Show cannot and is not required to guarantee any such result pursuant to this Agreement.

20.4 The Client warrants that it has not been induced to enter into this Agreement by any prior representations, warranties or guarantees, whether oral or in Writing, except as expressly contained in this clause 20.

## 21 LIMITATION OF LIABILITY

21.1 Notwithstanding anything to the contrary in this Agreement, the maximum aggregate amount that either Party shall be entitled to recover from the other Party for any and all claims under or in relation to this Agreement (other than in respect of a claim relating to payment of monies owed by the Client to Matt Brown Show, which shall be unlimited) shall be equal to the Fees (excluding all third party or other costs) that have become due and payable within the previous 12 (twelve) months.

21.2 Subject to the provisions of this clause 21, in the event of a Party being in breach of any provision of this Agreement, that Party (“**the Defaulting Party**”) shall be liable to the other Party (“**the Aggrieved Party**”) for any actual and proven Losses incurred by the Aggrieved Party as a result of the Defaulting Party’s failure to perform its obligations as described in this Agreement.

21.3 Subject to the provisions of clause 21.4:

21.3.1 should the Defaulting Party be in breach of any provision of this Agreement, the Defaulting Party shall be liable to the Aggrieved Party for the payment of all Losses arising out of such breach which are regarded in Applicable Law as being Losses of a direct nature.



- 21.3.2 neither Party shall be liable to the other Party for any consequential damages, punitive damages, loss of income, loss of profit, loss of goodwill, loss of reputation or business or business opportunity, irrespective of cause of action and howsoever arising.
- 21.4 Nothing in this Agreement shall exclude or in any way limit the Defaulting Party's liability to the Aggrieved Party for direct or indirect Losses suffered by the Aggrieved Party in respect of:
- 21.4.1 fraud, theft, death or personal injury caused by the Defaulting Party's wilful misconduct or gross negligence; or
- 21.4.2 any liability to the extent that it may not be excluded or limited as a matter of Applicable Law.
- 21.5 The limitation of liability set out in clause 21.1 shall not apply to a breach of clauses 18 and 19.

## **22 DISPUTE RESOLUTION**

- 22.1 The Parties shall initially attempt in good faith to promptly resolve any dispute arising out of or relating to this Agreement through negotiations between the respective Relationship Managers and Relationship Managers (or their duly authorised representatives) within 10 (ten) Business Days after the dispute was notified in Writing by one to the other.
- 22.2 If the dispute is not resolved through negotiations as described in clause 22.1, within the aforementioned 10 (ten) Business Day period, either Party may elect on Written notice to the other Party to have the dispute finally resolved in accordance with the Rules of the Arbitration Foundation of Southern Africa ("AFSA") by an arbitrator appointed by AFSA, provided that there shall be no right of appeal.
- 22.3 The arbitration shall be held -
- 22.3.1 with only the Parties and their representatives present thereat; and
- 22.3.2 at Sandton, South Africa, unless specifically provided otherwise in a Campaign Document.
- 22.4 The decision of the arbitrator shall be final and binding on the Parties, who shall summarily carry out that decision and either of the Parties shall be entitled to have the decision made an order of any court with competent jurisdiction.
- 22.5 This clause 22 shall not be interpreted to mean that either of the Parties shall be precluded from obtaining interim relief on an urgent basis from a court of competent jurisdiction pending the decision of the arbitrator. In such event, the Parties consent to the jurisdiction of the High Court of South Africa Gauteng Local Division, Johannesburg.





## 23 BREACH AND TERMINATION

- 23.1 Any Party shall be entitled to cancel this Agreement by written notice if the other Party commits a material breach of its obligations and, provided the breach is capable of being remedied, fails to remedy the breach within 10 (ten) Business Days of receiving written notice to do so.
- 23.2 For the avoidance of doubt it is specifically recorded that should any Party breach any of its obligations in terms of any of the Campaign Documents, such breach shall constitute a material breach of its obligations in terms of this Agreement.
- 23.3 The remedies in clause 23.1 shall not be exhaustive and each such remedy shall be in addition and without prejudice to any of the remedies which that Party may have whether or not expressly provided for in this Agreement.
- 23.4 The cancellation or termination of this Agreement for any reason shall be without prejudice to any obligation by either party to the other which shall have accrued and become owing at the time of the cancellation or termination.
- 23.5 Once the Services have been ordered and a Campaign Documents has been concluded they are not cancellable and are only terminable in accordance with this clause 23.

## 24 CONSEQUENCES OF TERMINATION

- 24.1 Any termination of this Agreement shall not affect the rights of either of the Parties:
- 24.1.1 that accrued before the termination of this Agreement; or
- 24.1.2 which specifically or by their nature survive the termination thereof.
- 24.2 Upon termination of this Agreement, and subject to the provisions of clause 16, each Party shall return all Confidential Information in its possession, as well as any materials containing, pertaining or relating to the Personal Information disclosed pursuant to this Agreement and all documents, storage media, drawings and any other medium containing the Confidential Information (as well as all copies, notes or reproductions thereof) of the other Party, to the other Party and, if requested, shall delete and remove the Confidential Information from its electronic data bases.

## 25 AUDIT RIGHTS

- 25.1 Matt Brown Show shall keep and maintain complete and accurate records of such financial and non-financial Campaigns, records and information relating to the performance of the Services, the Fees, information technology, infrastructure, security, and any other information relating to this Main Agreement and the relevant Campaign Documents (“**Audit Records**”) during the term of this Agreement and until the later of:



- 25.1.1 5 (five) years after the date of expiry and/or termination of a Campaign Documents and any Termination/Expiration Assistance as described in clause; or
- 25.1.2 the date when any such Audit Records are no longer required to comply with any Applicable Law.
- 25.2 The Audit Records shall be maintained in an orderly, reasonably auditable and accessible manner.
- 25.3 Upon expiry of the period referred to in clause 25.1, any destruction of Audit Records by Matt Brown Show shall be carried out in a controlled and secure manner and in accordance with Applicable Law.

## 26 PROHIBITION AGAINST SOLICITATION OF STAFF

- 26.1 The Parties agree that they shall not during the Duration and for a period of 12 (twelve) months after the termination or expiration of the Duration of a specific Campaign Document in any capacity, whether directly or indirectly, without the Written consent of the other Party offer employment to or cause employment to be offered to or cause to be employed any person employed or contracted by the other Party and engaged by the last-mentioned Party in the provision or receipt of the Services and/or Products.
- 26.2 In the event that of a breach of this clause, the breaching Party shall be liable for a penalty equal to the annual cost to company of the solicited employee. A statement provided by the first employer, evidencing the annual cost to company of the solicited employee, shall be *prima facie* proof of the penalty amount owed by the Client.
- 26.3 The Parties further agree that the aforesaid provisions are fair and reasonable and go no further than is necessary to protect the interests of the Parties in respect of their Staff.

## 27 FORCE MAJEURE

- 27.1 Neither Party shall have any claim against the other Party ("**the Affected Party**") for any delay or failure of the Affected Party to carry out any of its obligations under this Agreement, other than a payment obligation, arising from or attributable to acts of God, war, terrorism, government, labour action or unrest, failure of third party suppliers or any other cause whatsoever beyond the reasonable control of the Affected Party ("**force majeure**").
- 27.2 The performance of the obligations of the Affected Party shall be suspended for the duration of the force majeure, which shall be deemed to commence only upon the date of written notice by the Affected Party to the other Party. Upon cessation of the force majeure, this Agreement shall again become fully operative and the Affected Party shall immediately resume its performance.

## 28 EXCUSING CAUSES

- 28.1 In the event of an Excusing Cause arising:



- 28.1.1 Matt Brown Show will notify the Client, in Writing, of the Excusing Cause within a reasonable period of becoming aware of such Excusing Cause;
- 28.1.2 the time for Matt Brown Show performance shall be extended on a reasonable basis in proportion to the prejudice caused by the Excusing Cause and Matt Brown Show may charge for any additional hours required to execute the Services or remedy the Excusing Cause;
- 28.1.3 any deliverables affected by the Excusing Cause (hereinafter referred to as "**the Affected Service Deliverable**"), as well as all other service deliverables on the affected critical path of the Affected Service Deliverable, if any, shall be extended by a period equal to the period by which the Affected Service Deliverable is de facto impacted as agreed by the Parties in Writing, or, failing agreement as determined in terms of the Dispute Resolution Procedure;
- 28.1.4 if an amount would have been payable to Matt Brown Show by the Client had it not been due to an Excusing Cause, Matt Brown Show shall be entitled to invoice the Client for work actually completed at an Affected Service Deliverable date, notwithstanding the fact that a milestone has not been achieved; and
- 28.1.5 Matt Brown Show shall not be liable for any failure to provide any Services in terms of this Agreement where such failure is a result of any Excusing Cause.

## **29 ANTIBRIBERY AND CORRUPTION**

- 29.1 Matt Brown Show agrees to comply with such anti-bribery and corruption policies as the Client may communicate to Matt Brown Show from time to time as well as all relevant laws applicable to the prevention and combating of bribery and corruption. In addition, Matt Brown Show shall ensure that it shall not:
- 29.1.1 engage in bribery or corrupt activities;
- 29.1.2 offer gifts to any of the Client Staff, whether directly or indirectly through third parties, in an attempt to influence the person receiving the gift;
- 29.1.3 make improper payments to governments or regulatory authorities with the view to facilitating or expediting the performance of governmental or regulatory action which are in any way related to the Services; or
- 29.1.4 accept from the Client, its Third Party suppliers, Affiliates, or Staff, gifts/hospitality, whether directly or indirectly, that are aimed at influencing the person receiving the gifts/hospitality.

## **30 NOTICES**

- 30.1 The Parties select as their respective domicile address the physical addresses set out in the Campaign



Documents. Likewise, the Parties choose all the addresses and contact details set in the Campaign Documents for the purposes of giving or sending any notice or communication provided for or required in terms of this Agreement, or such other addressor email address as may be substituted by Written notice given as herein allowed.

- 30.2 Any notice or communication to be given by a Party to the other shall be deemed to have been duly received, unless the contrary is proved, by the other Party:
- 30.2.1 if addressed to the addressee at its domicile or postal address and posted by prepaid registered post, on the 7th (seventh) Business Day after the date of posting thereof; or
  - 30.2.2 if delivered to the addressee's domicile address by hand, on the date of delivery thereof, provided such date is a Business Day or otherwise on the next Business Day; or
  - 30.2.3 if sent by email to the addressee, on the 1st (first) Business Day following the date of sending thereof, in the absence of any administrator or mail server error messages.
- 30.3 Each Party shall be entitled to change its address and contact details by giving 7 (seven) Business Days' Written notice to the other Party's Relationship Manager.

## **31 GUEST RELEASE**

- 31.1 The party accepting this Campaign Document/proposal, hereby unconditionally confirms that he/she has the requisite authority to accept this Campaign Document/proposal and the obligations and undertakings contained herein and in the Main Agreement, for and on behalf of the Client.
- 31.2 The Parties acknowledge that the Guest's participation in the Program is recorded and hereby irrevocably consents to and specifically permits the use of the podcast, incorporating the Guest's voice and performance, and the distribution of reproduction(s) thereof as part of the Program.
- 31.3 The Client hereby acknowledges that the Podcaster is the sole owner of all rights in and to the Program, and the content thereof, for all purposes; and that the Podcaster has the unfettered right, among other things, to use, exploit and distribute the Program, incorporating the Guest's performance in any and all media or formats, throughout the world, in perpetuity.
- 31.4 Any audio visual and/or photographic materials used in the production and distribution of the Program ("Materials") are/become the property of the Podcaster, and the Podcaster shall have the sole and exclusive right to use, exploit and distribute such Materials, throughout the world, in perpetuity. Nothing contained in this Campaign Document/proposal shall be construed to obligate the Podcaster to use or exploit any of the rights granted or acquired by the Podcaster, or to make, sell, license, distribute or otherwise exploit the Program or Materials whatsoever.



31.5 The Client understands and agrees that they shall receive no compensation for appearances on and participation in the Program. The Client's and/or the Guest's name and likeness may be used in advertising and promotional material for the Program, but not as an endorsement of any product or service.

31.6 The Client and/or the Guest hereby release and discharge the Podcaster from any and all liability arising out of or in connection with the making, producing, reproducing, processing, exhibiting, distributing, publishing, transmitting by any means or otherwise using the Client's and/or Guest's podcast.

## **32 CESSION OR DELEGATION**

32.1 Neither Party may cede its rights or delegate its obligations in terms of this Agreement, without the prior Written consent of the other Party which consent shall not be unreasonably withheld.

## **33 WAIVER**

33.1 No indulgence which either Party may grant the other shall constitute a waiver of or prejudice the rights of the Party granting the indulgence.

## **34 WHOLE AGREEMENT**

34.1 This Agreement constitutes the entire Agreement between the Parties with regard to the subject matter hereof.

34.2 No addition to, variation, deletion, consensual termination or novation of this Agreement (including this clause 34.2), and no waiver of any right arising from this Agreement or its breach or termination shall be valid or enforceable unless it is in Writing and Signed on behalf of both Parties.

## **35 SEVERABILITY**

35.1 In the event that any of the terms of this Agreement are found to be invalid, unlawful or unenforceable, such terms will be severable from the remaining provisions, which shall remain of full force and effect as if such invalid provisions had not been included herein.

35.2 If any invalid term is capable of amendment to render it valid, the Parties agree to negotiate in good faith an amendment to remove the invalidity.

## **36 COSTS**

36.1 The Parties shall each pay their own costs of negotiating, drafting, preparing and implementing this Agreement.



### **37 APPLICABLE LAW**

37.1 This Agreement is governed by and shall be construed in accordance with the laws of the Republic of South Africa.

### **38 SURVIVAL**

38.1 Any provision of the Agreement, which contemplates performance or observance subsequent to any termination or expiration of the Agreement, shall survive any termination or expiration of the Agreement and continue in full force and effect.

38.2 Without limiting the generality of the aforesaid, the provisions of clauses 16 (Intellectual Property Rights), 19 (Confidentiality), 16 (Protection of Personal Information), 17 (Representations and Warranties), 17 (Personal Identity Indemnities), 21 (Limitation of Liability), 22 (Dispute Resolution), 23 (Termination and Breach), 24 (Consequences of Termination), 25 (Audit Rights) and 26 (Prohibition against Solicitation of Staff) as well as this clause 38.2 shall survive any termination, cancellation or expiration of this Agreement.

### **39 STIPULATIO ALTERI**

Any provision in this Agreement which is stipulated for the benefit of any Affiliate of a Party shall be capable of acceptance by such Party or any of its Affiliates at any time without notice to any person.

**40 ACCEPTANCE OF THESE TERMS AND CONDITIONS SHALL BE DEEMED TO HAVE TAKEN PLACE IN THE EVENT THAT THE CLIENT ENGAGES WITH MATT BROWN SHOW FOR THE RECEIPT OF ANY SERVICES. EVERY INSTANCE OF THE SERVICES SHALL BE SUBJECT TO THE ABOVE TERMS AND CONDITIONS.**



## ANNEXURE "A" - DEFINITIONS

- 1 In this Agreement, unless clearly inconsistent with or otherwise indicated by the context, the following terms shall have the meaning assigned to them hereunder:
- 1.1 **"Affiliates"** mean any person, partnership, joint venture, corporation or other form of enterprise, domestic or foreign, including but not limited to Subsidiaries and associates that directly or indirectly, Control, are Controlled by, or are under common Control with a Party. For purposes of this Agreement, the term **"Subsidiaries"** shall have the meaning ascribed thereto in the Companies Act 71 of 2008, as amended;
- 1.2 **"Agreement"** means each Campaign Documents read with the Agreement, as each may be amended in Writing by both Parties from time to time;
- 1.3 **"Annexure"** means an annexure attached to the Agreement;
- 1.4 **"Applicable Law"** means all law, as amended from time to time and applicable in the Republic of South Africa, and includes, if applicable, Data Protection Laws;
- 1.5 **"Business Day"** means any day, except a Saturday, Sunday or official South African public holiday;
- 1.6 **"Business Hours"** means the hours between 08h00 (eight hundred hours) and 17h00 (seventeen hundred hours) on any Business Day;
- 1.7 **"Call Down"** means a direct telephonic presales engagement with a Market Qualified Lead or Enriched Stakeholder by a Matt Brown Show Pre-Sales Agent, which may result in a Sales Qualified Lead;
- 1.8 **"Campaign Documents"** means accepted proposals, quotations, sales orders, invoices, story brands and or Variation Notes together with any appendices thereto entered into between Matt Brown Show and **the Client** in accordance with the terms of this Agreement. A Campaign Documents may specify, *inter alia* –
- 1.8.1 the contracting parties to the specific campaign / Services;
- 1.8.2 the Relationship Managers' details;
- 1.8.3 the description and objectives of the Project;
- 1.8.4 the particulars of any subscription product purchased
- 1.8.5 the scope and description of the Services to be rendered by Matt Brown Show (including, where relevant, the approach, activities and Lead Vetting Criteria with associated target dates and outcomes) and any agreed performance measurement standards described in this Agreement;
- 1.8.6 the Commencement Date and Duration thereof,



- 1.8.7 the termination or expiration provisions; and
- 1.8.8 any other content which the Parties agree is relevant to the specific Campaign Documents being executed, including any legal terms specific to that Campaign Documents or terms varying the terms of this Agreement.
- 1.9 "**Commencement Date**" means the date of first engagement between the Client and Matt Brown Show and subsequently the start date or acceptance of proposal Campaign Documents whichever comes first;
- 1.10 "**Confidential Information**" means Personal Information and any information or data which by its nature or content is identifiable as sensitive, confidential and/or proprietary to the Disclosing Party and/or any third party and/or any Third Party supplier, or which is provided or disclosed in confidence and which the Disclosing Party or any person acting on its behalf may disclose or provide to the Receiving Party or which may come to the knowledge of the Receiving Party by whatsoever means. Disclosing Party's Confidential Information shall include (i) information relating to strategic objectives and planning for both its existing and future needs; (ii) information relating to either Party's business activities, business relationships, products, services, clients and Staff; (iii) technical, scientific, commercial, financial and market information and trade secrets; (iv) Intellectual Property that is proprietary to a Party or that is proprietary to a third party and in respect of which the Disclosing Party has rights of use or possession; (v) Disclosing Party's plans, designs, drawings, functional and technical requirements and specifications; (vi) information concerning faults or defects in either Party's systems, hardware and/or software or the incidence of such faults or defects; (vii) agreements to which either Party is a party;
- Confidential Information excludes information or data which (a) is lawfully in the public domain or already in the possession of the Receiving Party from a source other than the Disclosing Party at the time of disclosure to the Receiving Party; or (b) subsequently becomes lawfully part of the public domain by publication or otherwise; or (c) subsequently becomes available to the Receiving Party from a source other than the Disclosing Party which is lawfully entitled, without any restriction on disclosure, to disclose such Confidential Information; or (d) is disclosed pursuant to a requirement or request by operation of law, regulation or court order; provided that the onus shall at all times rest on the Receiving Party to establish that such information falls within such exclusions and provided further that the information disclosed in terms of this Agreement will not be deemed to be within the foregoing exclusions merely because such information is embraced by more general information in the public domain or in a Party's possession. The determination of whether information is Confidential Information shall not be affected by whether or not such information is subject to, or protected by, common law or statute related to copyright, patent, trade or otherwise;
- 1.11 "**The Client**" means the Party receiving the Services and described in the Campaign Documents,
- 1.12 "**Control**" means in relation to a Party:





- 1.12.1 having, directly or indirectly, the power to direct, or cause the direction of, the management and policies of that party, whether through the ownership of voting securities in that or any other Party, by contract or otherwise; or
- 1.12.2 holding, directly or indirectly, such securities (or other rights) as confers on the holder thereof the right to exercise more than 50% (fifty percent) of all votes exercisable in a general meeting of the members of such Party;
- 1.13 "**Data Protection Laws**" means any and all laws relating to the protection of data or of Personal Information relevant to a Party and shall include the protection of Personal Information principles agreed to in this Agreement, including POPI and ECTA;
- 1.14 "**Data Subject**" means any living individual who is the subject of personal data whether in a personal or business capacity;
- 1.15 "**Matt Brown Show**" means Matt Brown Media t/a Matt Brown Show (Proprietary) Limited, a company with registration number 2016/490938/07 its holding company (Black Swan Technology Holdings (Proprietary) Limited (registration number: 2020/571449/07)), subsidiaries, affiliated companies and successors in title, with its registered address at 2 Addo Road, Morningside Manor, Sandton, 2196, South Africa;
- 1.16 "**Disclosing Party**" means the Party who discloses Confidential Information to the other Party in terms of this Agreement;
- 1.17 "**Duration**" means the period between the Commencement Date and the completion or expiry of the Project or the Services rendered as stated in each Campaign Document;
- 1.18 "**ECTA**" means means the Electronic Communications and Campaigns Act No. 25 of 2002;
- 1.19 "**Excusing Cause**" means:
  - 1.19.1 a force majeure event as contemplated in clause 27 hereof; or
  - 1.19.2 a failure by the Client, or its Staff, to provide Input to Matt Brown Show:
    - 1.19.2.1 within the timeframes contemplated in this Agreement, or failing such contemplation within a reasonable period stipulated by Matt Brown Show in any written request for such Client Input or within any period agreed by the Parties in Writing; or
    - 1.19.2.2 which is not of the required accuracy, standard or quality, including, without limitation, where such Client Input is defective, corrupted (in the case of data) or inaccurate;
  - 1.19.3 where the Client breaches any term of this Agreement; or
  - 1.19.4 where any bona fide dispute arises between the Parties;



- 1.20 "**Fees**" means the fees and/or costs as specified in the relevant Campaign Documents payable by the Client to Matt Brown Show;
- 1.21 "**Intellectual Property**" includes all current and future intellectual property rights of any kind whatsoever and however embodied which may subsist or be capable of protection wheresoever in the world, including (without limitation) patents, trademarks, present and future rights of copyright, rights in and to designs, rights in and to inventions, topography rights, rights in and to trade secrets, rights in and to trade names, business names, domain names and logos, the right to keep information confidential and private, rights in and to know-how, rights in and to databases (including rights of extraction), and all rights and forms of protection of a similar nature or having equivalent effect to any of them which may subsist or be capable of protection as at the Commencement Date or thereafter wheresoever in the world, whether or not any of these is registered and including applications for any such rights or registration thereof and any goodwill related to or arising from such rights;
- 1.22 "**Losses**" means all losses, liabilities, penalties, fines, damages and claims, and related costs and expenses (including legal fees on the scale as between attorney and client, tracing and collection charges, costs of investigation, and interest and penalties), but excludes any consequential damages, punitive damages, loss of income, loss of profit, loss of goodwill, loss of reputation or business or business opportunity;
- 1.23 "**Main Agreement**" means the main body of this Master Services Agreement (its terms and conditions), including all Annexures, but excluding the Campaign Documents;
- 1.24 "**Market Qualified Lead (MQL)**" (or "**Enriched Stakeholder**") means a lead deemed more likely to become a customer compared to other leads, by virtue of firmographics and or demographics, and or activities/behaviours;
- 1.25 "**Media Budget**" means any portion of project cost allocated to the purchase of media for the purposes of generating Market Qualified Leads and awareness;
- 1.26 "**Parties**" means the Client and Matt Brown Show, and "Party" shall mean either one of them. Where appropriate, "Party" shall mean a reference to an Affiliate of the Client or an Affiliate of Matt Brown Show, as the case may be, which is the contracting Party in a Campaign Documents and "Parties" shall in such instance have a corresponding meaning;
- 1.27 "**Personal Information**" means information defined from time to time as personal information in any Data Protection Laws, including information relating to an identifiable, living, natural person, and where it is applicable, an identifiable, existing juristic person, including:
- 1.27.1 information relating to the race, gender, sex, pregnancy, marital status, national, ethnic or social origin, colour, sexual orientation, age, physical or mental health, well-being, disability, religion, conscience, belief, culture, language and birth of the person



- 1.27.2 information relating to the education or the medical, financial, criminal or employment history of the person;
- 1.27.3 any identifying number, symbol, e-mail address, physical address, telephone number, location information, online identifier or other particular assignment to the person;
- 1.27.4 the biometric information of the person;
- 1.27.5 the personal opinions, views or preferences of the person;
- 1.27.6 correspondence sent by the person that is implicitly or explicitly of a private or confidential nature or further correspondence that would reveal the contents of the original correspondence;
- 1.27.7 the views or opinions of another individual about the person; and
- 1.27.8 the name of the person if it appears with other personal information relating to the person or if the disclosure of the name itself would reveal information about the person;
- 1.28 **“Pipeline Generation Budget”** means any portion of project cost allocated to the generation of Market Qualified Leads – whether inbound through paid digital marketing, or outbound through research and direct engagement;
- 1.29 **“POPI”** means means the Protection of Personal Information Act No. 4 of 2013;
- 1.30 **“Processing”** means any operation or activity or any set of operations, whether or not by automatic means, concerning Personal Information, including—
  - 1.30.1 the collection, receipt, recording, organisation, collation, storage, updating or modification, testing of, retrieval, alteration, consultation or use;
  - 1.30.2 dissemination by means of transmission, distribution or making available in any other form by electronic communications or other means; or
  - 1.30.3 merging, linking, blocking, degradation, erasure or destruction;
  - 1.30.4 and ‘Process’ has a corresponding meaning
- 1.31 **“Production”** means the conceptualising, copywriting, design and rendering of assets by Matt Brown Show;
- 1.32 **“Product/s”** means Leads Royale and any other products provided by Matt Brown Show either in tandem with any Service or as a standalone Product;
- 1.33 **“Project”** means a project on which Matt Brown Show may be engaged by the Client and in respect of which skills and roles will be made available by Matt Brown Show to render the Services to the Client, as set out in the Campaign Documents, and includes defined initiatives, engagements and/or Services;



- 1.34 "**Rand**" or "**R**" or "**ZAR**" means South African Rand, the lawful currency of the Republic of South Africa;
- 1.35 "**Receiving Party**" means the Party, other than the Disclosing Party, to the extent that it receives disclosure of any of the Confidential Information from the Disclosing Party in terms of this Agreement;
- 1.36 "**Relationship Manager**" means the designated representative of each Party
- 1.37 "**Sales Qualified Lead (SQL)**" means a MQL whose contact information has been verified and who has met additional minimum qualifying requirements ("**Lead Vetting Criteria**") as agreed by the Client and Matt Brown Show;
- 1.38 "**Services**" means the service provided to the Client, including any or all of the following: campaigns for the creation of awareness and/or Market Qualified Leads (MQLs) or Enriched Stakeholders and/or Call Downs and/or Sales Qualified Leads (SQL) from digital marketing content creation services (Production) via targeted sponsored social media / Google advertisements, website development and content creation, or from data enrichment and direct outbound telephonic engagement as described in Campaign Documents, subscription services in respect of any Matt Brown Show Products;
- 1.39 "**Signed**" or "**Signature**" means a hand-written signature, excluding any type-written signature or signature appended by electronic communication. "**Electronic communication**" has the meaning assigned to it in the Electronic Communications and Transactions Act 25 of 2002;
- 1.40 "**Staff**" means any employee, Subcontractor, agent, consultant or other representative of either Party;
- 1.41 "**Subcontractor**" means a person other than Matt Brown Show or its Staff who is contracted or appointed by Matt Brown Show to perform any part of the Services or obligations undertaken by Matt Brown Show in terms of this Agreement;
- 1.42 "**Third Party** " means a person who is appointed by the Client and/or any Affiliate of the Client as an independent contractor;
- 1.43 "**VAT**" means value added tax in terms of the Value Added Tax Act 89 of 1991 or any similar tax or impact of a similar nature on the supply or sale of goods and/or services; and
- 1.44 "**Writing**" means a written document and includes e-mail, and "**Written**" shall have a corresponding meaning.