



SERVICES AGREEMENT

between

**THE TRUSTEES FOR THE TIME BEING OF THE BRAND SOUTH AFRICA TRUST, IN THEIR
CAPACITIES AS SUCH**
(a trust registered in accordance with the laws of the Republic of South Africa under masters reference
number IT 1986/02)
("Brand South Africa")

and

AVATAR DIGITAL AGENCY PROPRIETARY LIMITED
(a private company registered and incorporated in terms of the company laws of the Republic of South
Africa under registration number 2004/016465/07)
("Supplier")

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1. INTRODUCTION:

- 1.1 Brand South Africa is a Schedule 3A national public entity established by the South African Government and registered as a Trust, whose mandate is to build South Africa's nation brand reputation in order to improve South Africa's global competitiveness.
- 1.2 Brand South Africa sought proposals for the provision of digital strategy and management services by means of a public tender exercise.
- 1.3 Brand South Africa has, through a competitive process, selected the Supplier to provide these services and the Supplier is willing and able to provide the services in accordance with the terms and conditions of this Agreement.

THE PARTIES AGREE AS FOLLOWS:

2. DEFINITIONS

In this Agreement (which expression includes the introduction), the Parties defined in the heading shall retain such definitions and the following words and phrases shall, save as otherwise defined in the schedules annexed hereto or unless the context otherwise requires, have the following meanings:

- 2.1 "Achieved Service Levels" in respect of any Service in any measurement period means the standard of performance actually achieved by the Supplier in the provision of that Service in the measurement period in question (calculated and expressed in the same way as the Service Level for that Service is calculated and expressed in the Service Levels Schedule);
- 2.2 "Affiliate" means, with respect to a Party, any other person directly or indirectly Controlling, Controlled by, or under common Control with, such Party;
- 2.3 "Agreement" means this agreement, including its schedules and the Introduction;
- 2.4 "Applicable Law" means any national (or provincial) legislation, statutes, ordinances and other laws and regulations and any by-laws of any legally constituted public authority;

goods or services to a person,
which might:

- (i) reasonably cause Brand South Africa to doubt that the Supplier will satisfactorily perform its obligations under this Agreement;
- (ii) adversely affect the ability of Brand South Africa to obtain the Services;
- (iii) prejudice or be likely to prejudice the confidentiality or privacy of any Confidential Information of Brand South Africa; or
- (iv) attract public attention that is likely to damage the reputation of Brand South Africa;

- 2.15 "Contract Price" shall have the meaning given to such term in clause 5.1;
- 2.16 "Control" means the power to direct or cause the direction of the management and policies of an entity whether through the ownership of voting securities, by contract or otherwise, and "Controlled" and "Controlling" shall have a similar meaning;
- 2.17 "Cost" means all expenditure reasonably incurred (or to be incurred) by the Supplier, whether on or off Brand South Africa's site, including overhead and similar charges, but does not include profit;
- 2.18 "Deliverables" means all tasks to be completed for and items to be provided to Brand South Africa and Documents and materials developed by the Supplier in relation to the provision of Services in any form, including computer programs, data, reports and specifications (including drafts);
- 2.19 "Dispute Resolution Procedure" means the procedure set out in clause 23;
- 2.20 "Document" means and includes any document in writing, any drawing, map, plan, diagram, design, picture or other image, tape, disk or other device or record embodying information in any form;

- each case whether registered or unregistered and including all applications for and renewals or extensions of such rights, and all similar or equivalent rights or forms of protection in any part of the world;
- 2.27 "Key Personnel" means key members of the Supplier's Team as represented by the Supplier or identified by Brand South Africa and agreed with the Supplier;
- 2.28 "Materials" means material in any form, including documents, reports, products, equipment, information, data, software, software tools and software development methodologies;
- 2.29 "Misconduct" shall have the meaning given to such term in clause 7.2;
- 2.30 "Parties" means Brand South Africa and the Supplier; and "Party" means either of them as the context may require;
- 2.31 "Prime Rate" means the publicly quoted prime rate of interest (calculated on a 365 day year) charged by The Standard Bank of South Africa Limited, from time to time, as certified, in the event of any dispute, by any manager of such bank, whose appointment it shall not be necessary to prove;
- 2.32 "Project" means the project detailed in the Project Plan;
- 2.33 "Project Plan" means the detailed plan for the project describing in detail the work (by task and by whom it is to be done, timescales and key milestones);
- 2.34 "Rand or ZAR" means the official currency of the Republic of South Africa;
- 2.35 "Schedule" means a schedule to this Agreement and such schedules may be as defined in the list of Schedules after the Table of Contents (for e.g. Service Charges Schedule);
- 2.36 "Service Levels" means the performance standards set out in the Service Levels Schedule in accordance with which the Supplier is to provide the Services;

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3. APPOINTMENT

3.1 Brand South Africa wishes to obtain Services from the Supplier in response to the Bid.

3.2 In the circumstances, Brand South Africa hereby appoints the Supplier, on a non-exclusive basis, in accordance with the provisions, subject to the conditions and for the duration of this Agreement, to provide the Services to Brand South Africa and the Supplier accepts such appointment and warrants that it possesses the necessary expertise to perform its duties and carry out the Services diligently, with due care and skill and on the terms of this Agreement.

3.3 This appointment is made on the basis of the information provided and the representations and warranties made and given by the Supplier to Brand South Africa during the bid/tender process and should it transpire that any information provided or representations or warranties made or given was false or misleading Brand South Africa may summarily terminate this appointment and this Agreement and claim such damages as it has suffered or may suffer.

3.4 The Supplier must use its best endeavours to ensure that if it provides services similar to the Services to any other person then:

3.4.1 Brand South Africa gets priority or at least equivalent priority to that given to the Supplier's best customers;

3.4.2 no Conflict of Interest or impact on Brand South Africa's access to the Services will occur; and

3.4.3 no breach of the confidentiality or intellectual property provisions of this Agreement will occur.

4. COMMENCEMENT AND DURATION

4.1 This Agreement shall commence on the Commencement Date and shall continue, unless terminated earlier in accordance with this Agreement or extended pursuant to the provisions of clause 4.2, until 23h59 on 31 August 2017 when it shall terminate automatically without notice.

4.2 Brand South Africa shall have the option, exercisable by written notice to the Supplier, to extend this Agreement, provided that such written notice is given to the Supplier by not later than [31 May 2017]. *The extended contract price subject to Supply Chain procedures to be negotiated and agreed.*

6.1.2 A Change Request shall become a "Change Order" when the requirements of the Change Control Procedure have been satisfied and the Change Request is signed by both Parties to signify their approval to the Change Request.

6.2 Origin of Change Requests

6.2.1 Change Requests may be originated either by Brand South Africa or by the Supplier.

6.2.2 Where the Supplier originates a Change Request it shall, at its sole cost, provide, with the Change Request, details of the impact which the proposed change will have upon the Services; any systems or operations of Brand South Africa which communicate with, or are otherwise affected by, the Services; the Contract Price; and the other terms of this Agreement.

6.2.3 Where Brand South Africa originates a Change Request, the Supplier shall provide Brand South Africa, within 5 (five) days of receiving the Change Request (or within such other period as may be agreed), details of the impact which the proposed change will have upon the Services; any systems or operations of Brand South Africa which communicate with, or are otherwise affected by, the Services; the Contract Price; and the other terms of this Agreement.

6.3 Agreement of Change Orders

6.3.1 Save where otherwise stated herein, neither Party shall be obliged to agree a Change Request originated by the other. However, the Supplier shall, in the event that it refuses to agree a Change Request, show good cause for such refusal including, without limitation, in all cases, proof that a Change Request will have a material adverse impact on the Supplier.

6.3.2 Subject to clause 6.3.1, if either Party is unwilling to accept a Change Request suggested by the other (or any term of any proposed Change Order) then the other Party may require the disagreement to be dealt with in accordance with the Dispute Resolution Procedure.

6.4 Implementation costs

The costs of implementing a Change Order shall be borne as set out therein.

7. **SUPPLIER'S OBLIGATIONS**

7.1 The Supplier shall provide the Services to Brand South Africa or as Brand South Africa



- 7.2.7 not make any changes in the Supplier's Manager or any Key Personnel without the prior written approval of Brand South Africa not to be unreasonably withheld or delayed; and
- 7.2.8 ensure that the Supplier's Team use reasonable skill and care in the performance of the Services.
- 7.3 The Supplier shall:
 - 7.3.1 observe, and ensure that the Supplier's Team observe, all health and safety rules and regulations and any other security requirements that apply at any of Brand South Africa's premises and any unusual Brand South Africa specific health and safety rules and regulations and any other security requirements that have been communicated to it under clause 8.4. Brand South Africa reserves the right to refuse the Supplier's Team access to Brand South Africa's premises, which will only be given to the extent necessary for the supply of the Services;
 - 7.3.2 notify Brand South Africa as soon as it becomes aware of any health and safety hazards or issues which arise in relation to the Services; and
 - 7.3.3 observe and ensure that the Supplier's Team observe the policies, requirements and procedures of Brand South Africa [**as set out in the Policies and Procedures Schedule**] as amended, updated and supplemented from time to time.
 - 7.3.4 before the date on which the supply of the Services are to start, obtain and at all times maintain all necessary licenses and consents and comply with all relevant legislation in relation to:
 - 7.3.4.1 the supply of the Services;
 - 7.3.4.2 the installation of the Supplier's Equipment (if any);
 - 7.3.4.3 the use of In-put Material;
 - 7.3.4.4 the use of all Documents, information and materials provided by the Supplier relating to the Services which existed prior to the commencement of this Agreement including computer programs, data, reports and specifications; and

8.4 inform the Supplier of all unusual Brand South Africa health and safety rules and regulations and any other security requirements that apply at any of Brand South Africa's premises.

9. SUBCONTRACTING

9.1 The Supplier may only subcontract the supply of Services with the prior written consent of Brand South Africa.

9.2 Where the Supplier engages a subcontractor to perform the Services or any of them under the terms of this Agreement, the following provisions shall apply to such engagement:

9.2.1 the subcontractor shall be engaged by the Supplier on substantially the same terms and provisions as those on which the Supplier has been engaged under this Agreement; and

9.2.2 the Supplier shall remain fully responsible for:

9.2.2.1 the performance of the Services in accordance with this Agreement notwithstanding the engagement of the subcontractor; and

9.2.2.2 the acts and/or omissions of the subcontractor and the subcontractors employees (including any work performed or failed to have been performed by the subcontractor and the subcontractor's employees), as if such acts or omissions were the acts or omissions of the Supplier itself.

10. NON-SOLICITATION

10.1 Neither Party shall (except with the prior written consent of the other) during the term of this Agreement, and for a period of 6 (six) months thereafter, solicit the services of any senior staff of the other Party who have been engaged in the provision of the Services or the management of this Agreement or any significant part thereof either as principal, agent, employee, independent contractor or any other form of employment or engagement other than by means of a national advertising campaign open to all-comers and not specifically targeted at such staff of the other Party.

10.2 The aforementioned restraint shall not be applicable: (i) where the prior written approval to make such an offer has been obtained from the Party, who is or has been the employer of such staff member; or (ii) where an offer is made to a staff member of a

- 12.1.1 it has full power and authority to enter into, perform and observe its obligations under this Agreement;
- 12.1.2 it has taken all necessary action to authorise the execution, delivery and performance of this Agreement in accordance with its terms;
- 12.1.3 the execution, delivery and performance by it of this Agreement do not and will not violate:
 - 12.1.3.1 any Applicable Laws;
 - 12.1.3.2 its constitution or other constituent documents; or
 - 12.1.3.3 any encumbrance, undertaking or document which is binding upon it or on any of its assets.
- 12.2 Supplier's representations and warranties.

In addition to the representations and warranties set out in clauses 12.1, 12.3 and 14.5, the Supplier represents and warrants to Brand South Africa as at the Signature Date, Commencement Date and at all times during the term of the Agreement that:

 - 12.2.1 where the Specification has not been prepared by or with the assistance of the Supplier, the Supplier has examined the Specification and has determined that the Specification is viable and sufficiently detailed to enable the supply of the Services in accordance with this Agreement;
 - 12.2.2 where the Specification has been prepared by or with the assistance of the Supplier, the Specification is viable and sufficiently detailed to ensure the supply of the Services in accordance with this Agreement;
 - 12.2.3 it has the level of skill, knowledge, experience and ability which may be expected of a professional organisation experienced in providing services of the type and complexity of the Services;
 - 12.2.4 each of the Supplier Team has the level of skill, knowledge, experience and ability which may be expected of an individual experienced in performing a role of the type and complexity which has been given to that person in relation to the Services;
 - 12.2.5 to the best of its knowledge, each of the Supplier Team will, subject to illness or incapacity, be available to perform the Services in accordance with this



- 12.3.2 any information furnished to Brand South Africa regarding or in relation to the items mentioned in clause 12.3.1 and the shareholding in, or ownership of, the Supplier is accurate and not misleading in any way.

13. DOCUMENTATION, REPORTING AND RECORDS

- 13.1 Reporting
The Supplier will provide Brand South Africa with all reports reasonably required by Brand South Africa. The format, content and frequency of such reports shall be as reasonably required by Brand South Africa from time to time.
- 13.2 Supplier to keep proper records
The Supplier must keep full and proper books of accounts and records relating to the performance of the Services during the term and for 7 years after the termination or expiry of this Agreement.
- 13.3 Access to the Supplier's premises
- 13.3.1 Brand South Africa or its nominee may enter any premises occupied by the Supplier with 24 hours' notice at all reasonable times to inspect, audit and take copies of the books, accounts, records and documents of the Supplier's business relating to the Services.
- 13.3.2 The Supplier must give Brand South Africa reasonable assistance in any activities conducted under clause 13.3.1.
- 13.3.3 Where Services are being undertaken on the Supplier's premises, the Supplier must at all reasonable times give to Brand South Africa or its nominee access to those premises and permit that person to inspect the performance of the Services and any Material relevant to the Services held on those premises.
- 13.4 Supplier to provide access
The Supplier must ensure that all local and overseas Affiliates of the Supplier or any other person involved in the provision of the Services retains and allows Brand South Africa or its nominee access to all books, accounts and documents.

14. INTELLECTUAL PROPERTY RIGHTS

- 14.1 The Supplier assigns, transfers and makes over to Brand South Africa, free from all third party rights, the Intellectual Property Rights and all other rights in the products of the



14.5.4.1 against or affecting the Supplier's ownership of the Intellectual Property Rights in the Deliverables;

14.5.4.2 that any rights of, or claimed or the subject of an application by, any other person may be, or may if granted be, infringed by the Deliverables, or their manufacture, importation, sale, hire, supply, offering for sale, hire or supply or other use; and

14.5.4.3 the Supplier will immediately notify Brand South Africa in writing when the Supplier becomes aware of any Infringement Claim referred to in this clause 14.5.

14.6 Intellectual Property Rights Indemnity

The Supplier shall indemnify and hold Brand South Africa harmless from all claims and all liabilities, costs, proceedings, damages and expenses (including legal and other professional fees and expenses) awarded against, or incurred or paid by, Brand South Africa as a result of or in connection with:

14.6.1 any alleged or actual infringement, whether or not under South African law, of any third party's Intellectual Property Rights or other rights arising out of the use or supply of products of the Services (including the Deliverables), unless material supplied by Brand South Africa ; or

14.6.2 any claim made against Brand South Africa in respect of any liability, loss, damage, injury, cost or expense sustained by Brand South Africa's employees or agents or by any Brand South Africa or third party to the extent that such liability, loss, damage, injury, cost or expense was caused by, relates to or arises from the provision of the Services or the Deliverables as a consequence of a direct or indirect breach or negligent performance or failure or delay in performance of this Agreement by the Supplier, unless material supplied by Brand South Africa.

15. **TRADE MARK LICENCE**

15.1 Brand South Africa grants the Supplier a non-exclusive, non-transferable, royalty-free licence for the term of this Agreement to use, and permit its subcontractors to use, the Trade Marks in the creation of the Deliverables and performance of the Services [in **South Africa**] in accordance with this Agreement.

15.2 The Supplier shall only use the Trade Marks in accordance with [Brand South Africa's guidelines for the use of the Trade Marks, as they may be amended by Brand South

any acts or omissions on the part of the Supplier or the Supplier's Team.

18. INSURANCE

18.1 The Supplier undertakes and agrees to take out and maintain adequate insurance cover including professional indemnity insurance in an amount not less than R4 million with an insurance office of repute to cover the liability accepted by it under this Agreement and at Brand South Africa's request agrees to produce the insurance certificate giving details of cover and the receipt for the current year's premium.

18.2 The Supplier shall, during the term of this Agreement, and for a period of three years thereafter:

18.2.1 administer the insurance policies and the Supplier's relationship with its insurers at all times to preserve the benefits for Brand South Africa set out in this Agreement;

18.2.2 do nothing to invalidate any such insurance policy or to prejudice Brand South Africa's entitlement thereunder; and

18.2.3 procure that the terms of such policies shall not be altered in such a way as to diminish the benefit to Brand South Africa of the policies as provided at the Commencement Date.

19. TERMINATION

19.1 Supplier's Right to Terminate.

The Supplier shall have the right at any time by giving notice in writing to Brand South Africa to terminate this Agreement forthwith if:

19.1.1 Brand South Africa commits a material breach of any of the terms and conditions of this Agreement and fails to remedy the breach within 30 (thirty) days of a notice requiring it to do so; or

19.1.2 an Insolvency Event occurs in relation to Brand South Africa.

19.2 Brand South Africa's Right to Terminate for Cause.

Brand South Africa shall have the right at any time by giving notice in writing to the Supplier to terminate this Agreement forthwith if:

19.2.1 the Supplier commits a material breach of any of the terms and conditions of this

21. CONSEQUENCES OF TERMINATION

21.1 Following the termination of this Agreement and on satisfactory completion of the Exit Management Plan (or where reasonably so required by Brand South Africa prior to such completion) the Supplier must immediately return to Brand South Africa or destroy at Brand South Africa's request:

21.1.1 all the property in its possession or under its control that belongs to Brand South Africa; and

21.1.2 all copies of any materials and records of any kind that are in its possession or under its control (and in any medium) that contain any part of Brand South Africa's confidential information;

in all cases which relates to this Agreement terminated.

21.2 Subject to paying the Contract Price (or the portion of the Contract Price applicable to the Services not rejected pursuant to this Agreement), Brand South Africa may retain any or all Services delivered up to the date of termination of this Agreement.

21.3 Following the termination of this Agreement (as a whole or in relation to a particular part) the Supplier shall give to Brand South Africa any and all assistance reasonably required by Brand South Africa in connection with the transferring of the purchasing of the Services to an alternative supplier.

21.4 Termination of this Agreement for whatever reason shall not affect any of its provisions which are intended to continue to have effect after it has come to an end (including clauses 2, 5.3, 5.4, 9.2.2, 10, 11.2, 11.3, 12, 13, 14, 14.6, 16, 17, 18, 20, 21, 22, 23, 24, 25, 26 and 27).

22. CONFIDENTIALITY

22.1 Each Party agrees and undertakes that during the term of this Agreement and thereafter it shall keep confidential and shall not use for its own purposes, nor without the prior written consent of the other Party disclose to any third party, all information of a confidential nature (including, without limitation, information relating to a Party's products, operations, processes, plans or intentions, product information, know-how, design rights, trade secrets and information of commercial value) which may become known to that Party from the other Party (Confidential Information), unless the information is public knowledge or already known to that Party at the time of disclosure or subsequently

but, failing agreement between them within a period of 14 (fourteen) days after the arbitration has been demanded, either of the Parties shall be entitled to request the Chairman for the time being of the Arbitration Foundation of Southern Africa to make the appointment who, in making his appointment, shall have due regard to the nature of the dispute.

23.3.3 The Parties may agree on the procedure to be followed prior to and during the arbitration, as well as the time and place of the arbitration hearing, provided that, failing such agreement, the arbitrator shall finally determine the procedure to be followed and shall fix the time and place for the arbitration hearing.

23.3.4 The arbitrator shall determine the Dispute in accordance with the laws of the Republic of South Africa and shall have the same remedial powers as a court of law would have were it adjudicating the Dispute.

23.3.5 Unless otherwise agreed in writing between the Parties, the arbitration shall be held in Sandton, Gauteng, in the Republic of South Africa.

23.3.6 The arbitrator shall render his or her award together with written reasons therefore within a period of 2 (two) months from the date upon which the arbitration ends, and the award of the arbitrator shall be final and binding on the Parties.

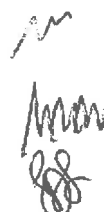
23.3.7 Subject to the other provisions of this clause 23, the arbitration shall be held in accordance with the provisions of the Arbitration Act, 1965 (as amended or replaced).

23.4 Nothing contained in this clause 23 shall preclude either Party from seeking any urgent interim relief from a court of competent jurisdiction.

24. EXPERT DETERMINATION

24.1 Any matter or dispute to be determined pursuant to Expert Determination shall be referred to an independent, suitably-qualified person ("the Expert") nominated by the Parties jointly or, failing agreement between the Parties as to such nomination within 5 (five) Business Days of the need to refer the dispute to the Expert having arisen, on the application of either Party, by the Chairman for the time being of the Arbitration Foundation of Southern Africa (or any relevant replacement body).

24.2 In all cases, the terms of the appointment of the Expert include:



- 25.1.4 references to a statutory provision include any subordinate legislation made from time to time under that provision and references to a statutory provision include that provision as from time to time modified or re-enacted as far as such modification or re-enactment applies, or is capable of applying, to this Agreement or any transaction entered into in accordance with this Agreement;
- 25.1.5 a "law" shall be construed as any law, common law, statute, constitution, decree, judgment, treaty, regulation, directive, by-law, order or any other legislative measure or enactment of any government, local government, statutory or regulatory body or court and shall be deemed to include the rules and other requirements of any applicable stock exchange;
- 25.1.6 any reference in this Agreement to this Agreement or any other agreement, document or instrument shall be construed as a reference to this Agreement or that other agreement, document or instrument as amended, varied, novated or substituted from time to time;
- 25.1.7 any word and expression defined in any clause shall, unless the application of the word or expression is specifically limited to the clause in question, bear the meaning ascribed to the word or expression throughout this Agreement;
- 25.1.8 no rule of construction shall be applied to the disadvantage of a Party to this Agreement because that Party was responsible for or participated in the preparation of this Agreement or any part of it;
- 25.1.9 unless otherwise provided, any number of days prescribed shall be determined by excluding the first and including the last day or, where the last day falls on a day that is not a Business Day, the next succeeding Business Day;
- 25.1.10 all the headings and sub-headings in this Agreement are for convenience only and are not to be taken into account for the purposes of interpreting it;
- 25.1.11 references to clauses and schedules are to the clauses and schedules of this Agreement; references to paragraphs are to paragraphs of the relevant schedule; and
- 25.1.12 where the words include(s), including or in particular are used in these terms and conditions, such words are deemed to have the words without limitation following them and where the context permits, the words other and otherwise are illustrative and shall not limit the sense of the words preceding them.

constitute a waiver by such Party of the right to pursue any other remedy.

- 26.7 Severance. If any provision of this Agreement, which is not material to its efficacy as a whole, is rendered void, illegal or unenforceable in any respect under any law, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired thereby and the Parties shall endeavour in good faith to agree an alternative provision to the void, illegal or unenforceable provision.
- 26.8 Survival of Rights, Duties and Obligations. Termination of this Agreement for any cause shall not release a Party from any liability which at the time of termination has already accrued to such Party or which thereafter may accrue in respect of any act or omission prior to such termination.
- 26.9 Entire Agreement. This Agreement contains the entire agreement between the Parties and supersedes any prior written or oral agreement between them in relation to the matters dealt with in this Agreement. Save as expressly provided for in this Agreement, none of the Parties shall have any claim or right arising from any undertaking, representation or warranty not included in this Agreement.
- 26.10 Non-variation. Save as otherwise expressly provided, no agreement to amend, add to or otherwise vary or waive any of the provisions of this Agreement or to cancel or terminate it shall be effective unless made in writing and duly signed by the Parties or on their behalf by their duly authorised agents.
- 26.11 Assignment. Save as otherwise expressly provided in this Agreement, neither of the Parties may cede or delegate this Agreement or any of its rights and obligations under it without the prior written consent of the other Party provided that Brand South Africa may at any time assign, cede and/or delegate any of its rights or obligations under this Agreement to any Affiliate(s) provided that Brand South Africa shall remain responsible for any obligations delegated to an Affiliate if the Affiliate ceases to be an Affiliate.
- 26.12 Costs. Each Party must pay its own costs and expenses in relation to the negotiation, preparation, execution, delivery, stamping, registration, completion, variation and discharge of this Agreement.
- 26.13 Conventional Penalties Act. In the event that there are any provisions in this Agreement which may qualify as a penalty in terms of the Conventional Penalties Act, 1962 (as amended) in relation to any act or omission by the Supplier or the Supplier's Team, such provisions shall not be deemed to preclude Brand South Africa from recovering damages in lieu of the relevant penalty.




		Manager Physical: 23 Winslow Road, Parkwood, 2193 Telefax No: +27 11 477 6375
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- 27.2 Any legal process to be served on the Parties may be served on it at the address specified for it in clause 27.1 and it chooses that address as its *domicilium citandi et executandi* for all purposes under this Agreement.
- 27.3 Any notice or other communication to be given to the Parties in terms of this Agreement shall be valid and effective only if it is given in writing, provided that any notice given by telefax shall be regarded for this purpose as having been given in writing.
- 27.4 A notice to any Party which is delivered to the Party by hand at that address shall be deemed to have been received on the day of delivery, provided it was delivered to a responsible person during ordinary business hours.
- 27.5 Each notice by telefax to a Party at the telefax number specified for it in clause 27.1 shall be deemed to have been received (unless the contrary is proved) within 4 (four) hours of transmission if it is transmitted during normal business hours of the receiving Party or within 4 (four) hours of the beginning of the next Business Day after it is transmitted, if it is transmitted outside those business hours.
- 27.6 Notwithstanding anything to the contrary in this clause 27, a written notice or other communication actually received by any Party (and for which written receipt has been obtained) shall be adequate written notice or communication to it notwithstanding that the notice was not sent to or delivered at its chosen address.
- 27.7 Any Party may by written notice to the other Parties change its address for the purposes of clause 27.1 to any other address (other than a post office box number) provided that the change shall become effective on the 7th (seventh) day after the receipt of the notice.

SIGNED at _____ on _____ 2014.

For: **AVATAR DIGITAL AGENCY
PROPRIETARY LIMITED**



 Signatory: Zibusisoethu Mkhwanazi
 Capacity: CEO
 Authority:



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Schedule 1: Scope of Services Services

[Note: In addition to describing the services in detail please also include reporting and meeting obligations and any other contract management responsibilities.]

Attached as annexure A

Date: 20 November 2014

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2.1.1.3

The Supplier shall ensure that the members of the Supplier's Team complete time sheets in order to accurately record the time spent by such members in providing the Services and, subject to the written approval of such completed time sheets by Brand South Africa's Manager (which approval shall not be unreasonably withheld), the Supplier shall use the time sheets to calculate the charges covered by each monthly invoice referred to in paragraph 2.1.1.4;

2.1.1.4

The Supplier shall invoice Brand South Africa monthly in arrears for its charges pertaining to time, expenses and materials (plus VAT where applicable) for the month concerned, calculated as provided in this paragraph 2.1 and in paragraph 2.2 (where applicable), provided that each invoice shall clearly set out the time spent by each member of the Supplier's Team and shall provide a detailed breakdown of any expenses incurred and materials used (where applicable).

2.1.2

Where the Services are supplied for a **fixed price**, the total price for the relevant Services shall be the price, as set out in the Service Charges Schedule. The price shall be paid to the Supplier in instalments as set out in the Service Charges Schedule, with the payment of each instalment by Brand South Africa being conditional on the Supplier having achieved the corresponding Project milestone. Upon achievement of a project milestone in respect of which an instalment is due by Brand South Africa, the Supplier shall invoice Brand South Africa for the proportion of the price as may then be payable, together with expenses and costs of materials (plus VAT, where applicable) as provided in clause 5.2 (where applicable).

2.2

The Parties expressly acknowledge and agree that, unless agreed otherwise between the Parties in writing, the charges, rates or the price include:

2.2.1

the cost of the hotel, subsistence, travelling and any other ancillary expenses that may be incurred by members of the Supplier's Team in connection with the Services; and

2.2.2

the cost of any materials or services provided by third parties required by the Supplier for the Supply of the Services,

provided that, where the Parties do agree otherwise for the purpose of this paragraph 2 then the costs and expenses reasonably and properly incurred by the Supplier or the Supplier's Team in connection with the provision of the Services and then only in respect of:

Schedule 4: Individual Confirmation Template
 (refer clause 14.3)
 [to be given by each member of the Supplier's Team]

Note: Prepare a second template for Supplier's subcontractors]

I of [Address].....

hereby confirm as follows:

1. I am a full time employee of [..... (Pty) Limited / approved subcontractor] of [Full registered office address.....] (“[Insert Name if not the Supplier]” **OR** “Supplier”) and shall inform you prior to termination of my employment with them;
2. any and all copyright or other intellectual property rights in any documentation and other material including computer programs and code provided or created by me as an employee of [[Insert Name] **OR** the Supplier] in the provision of services to or in respect of [.....] (“**Brand South Africa**”) shall be owned by Brand South Africa [pursuant to the contract for services between [Supplier and Brand South Africa and dated insert full date of contract with Supplier] (the “**Agreement**”);
3. I shall keep confidential (and shall only use for the purposes of fulfilling the services to be provided by the Supplier) all information of a confidential nature provided to me by or otherwise pertaining to Brand South Africa, its employees or its clients and I shall return all such information on termination of my employment or the Agreement, whichever occurs first.

.....
 [Name of individual]

.....
 Date

.....
 Signed at

Witness 1:
 (sign)

Witness 2:
 (sign)

Name:

Name:

Address:

Address:

.....

.....

ANNEXURE "A"

Scope of Service

No	Service	Frequency	Included in fee or CE?
1. ACCOUNT MANAGEMENT			
1	Attend client meetings, workshops, information gathering and brainstorming sessions	On request	Included in fee
2	Conduct reviews from a digital perspective	Quarterly	Included in fee
3	Obtain and verify client briefs	Ongoing	Included in fee
4	Provide advice and guidance on digital and new media strategies	Ongoing	Included in fee
5	Issue contact reports	Within 48 hours	Included in fee
6	Attend status meetings	Weekly or as	Included in fee
7	Issue status reports or a projects that include but are not limited to project number, description, current status, next steps, timeline and due date	Weekly	Included in fee
8	Screen work before presentation to client (on brief and strategy)	Per brief	Included in fee
9	Submit work for approval by client	Per brief	Included in fee
10	Prepare and submit campaign timing plans	Per brief	Included in fee
11	Obtain sign-off from authorised client representative	Ongoing	Included in fee
12	Manage all 3rd party digital suppliers, for example but not limited to hosting, adwords, social media	Ongoing	Included in fee
13	Coordinate and manage projects	Ongoing	Included in fee
14	Prepare and submit cost estimates	Ongoing	Included in fee
15	Provide three quotes for third party amounts exceeding USD40,000. Brand SA will provide written agreement to accept less than 3 quotes.	Ongoing	Included in fee
16	Issue invoices and statements	Per brief	Included in fee
17	Manage and resolve financial queries	Monthly	Included in fee
18	Issue financial reports highlighting projects completed and/or invoiced, out-of-pocket expenses, media expenditures and other costs and committed budgets	Monthly	Included in fee
2. STRATEGY			
1	Provide digital and new media input to Brand SA's integrated communication strategy	Quarterly	Included in fee
2	Interpret digital briefs and provide strategic direction to copywriters and rest of agency	Ongoing	Included in fee
3	Develop and review country specific strategies to position Brand SA	Per brief	Included in fee
4	Develop digital campaigns	Annually	Included in fee
5	Development of a three-year Online and Social Strategy which is reviewed annually	as required	Included in fee
6	Brand alerts and risk analysis advice and counsel	at commencement of contract	Included in fee
7	Develop key messages for Brand SA (as required by media plan and/or project /events calendar)	Ongoing	Included in fee
3. ISSUE / CRISIS MANAGEMENT			
1	Identify potential crisis situations and monitor the external environment to anticipate the occurrence of such situations	Ongoing	Included in fee.
2	Develop and implement crisis communication strategies	Ongoing	Included in fee.
3	Monitor and measure the response of stakeholders and target markets to the crisis communication interventions	Ongoing	Included in fee.
4. SOCIAL MEDIA			
1	Monitor Brand SA social media accounts and respond where necessary	Ongoing	Included in fee.
2	Provide relevant content for Brand SA's profiles on social networking sites	Ongoing	Included in fee - Based on a single language
2	Define ways to seed Brand SA content online (ongoing basis) - not just social networking sites, but all relevant electronic communications platforms	Ongoing	Included in fee
2	Manage promotional activities as agreed on social networking channels	Ongoing	Included in fee
3	Prepare reports on social media engagement and opportunities	Per brief	Included in fee, third party fees excluded
	Projects/Events	Monthly	Included in fee

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BRAND SA

AVATAR Team / Resources

RATE/HOUR	AVG % TIME SPENT	HOURS/M ONTH	MONTHLY TOTAL
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Account Management

Zibusiso Mkhwanazi	CEO	916	15%	20	39 273
Danai Mundeta	Account Director	262	58%	80	18 327
					20 945

Digital

Herman Degener	Digital Services Director	327	28%	39	14 236
ANO	Strategist / Researcher	109	10%	14	12 764
					1 473

Content & Community Managers

Anne Taylor	Senior Content Writer	32	20%	28	166 795
Mary Alexander	Content Editor	255	100%	138	880
Heinrich van den Worm	Content Strategist	131	40%	55	35 091
Mathiba Molefe	Content Writer	32	80%	110	7 200
Ray Maota	Content Writer	71	100%	138	3 538
Ndaba Dlamini	Deputy Content Editor	287	100%	138	9 700
Lorraine Kearney	Senior Content Writer	68	20%	28	39 510
Shamin Chibba	Senior Content Writer	160	100%	138	1 876
Sulaiman Philip	Senior Content Writer	182	100%	138	22 000
ANO	Sub - Editor	160	100%	138	25 000
					22 000

Creative

Monwabisi Mandobe	Designer/DTP Operator	95	10%	14	20 005
Ryan Savage	Creative Director	192	10%	14	1 324
Zwai Makgoba	Creative Director	291	40%	55	2 681
					16 000

Development

Mafika Mkhwanazi	Developer	58	30%	41	2 400
					2 400

Traffic

Lindiwe Hadebe	Traffic Manager	211	25%	35	7 382
					7 382

Total Salary Cost	250 091
Overhead rate (70%)	175 064
	425 155
Margin (15%)	75 040
TOTAL FEE	500 195

Handwritten signatures and initials.