

FILMING / PHOTOGRAPHY PRODUCTION TERMS AND CONDITIONS

1.1 OBLIGATIONS

Applicants are not permitted to:

- 1.1.1 engage in any shoots that will in any way damage the image, good name and/or reputation of the V&A;
 - 1.1.2 interview members of the public, unless permission is given in writing by the V&A and the individual concerned has agreed to conduct such interview;
 - 1.1.3 harass or interfere with members of the public or cause obstructions in public areas;
 - 1.1.4 have private security at the shoot, unless the V&A consents to same in writing, which security must be arranged with the V&A in advance and will be charged by the V&A for the security at an hourly rate;
 - 1.1.5 alter the V&A's property;
 - 1.1.6 park any vehicles on the V&A's property, other than in the V&A designated parking areas at the prescribed tariffs, unless otherwise agreed to in writing by the V&A;
 - 1.1.7 make use of any of the V&A tenants' premises as background for shoots without prior arrangement with the tenant or the owner themselves;
 - 1.1.8 make use of private yachts or boats, unless they are registered charter boats with the V&A;
 - 1.1.9 make use of charter boat jetties without prior written approval of the V&A;
 - 1.1.10 have any open fires or braais on the V&A's property; and
 - 1.1.11 do anything that will impair the V&A's good name and reputation.
- 1.2 The Applicant acknowledges and understands that the V&A only permits the Applicant to make use of the Location (as set out in the Application Form) for the

Production. The Applicant is not permitted to make use of any other location at the V&A Waterfront, without the prior written consent of the V&A. Further, should the Applicant wish to make use of any tenant's leased premises for the Production it is the responsibility of the Applicant to first obtain the written permission from such tenant.

2 PAYMENT

Once the Application has been approved the V&A will invoice the Applicant for the fee for the use of the Location. This fee must be paid in full before the commencement of the Production, failing which the Applicant shall not be permitted to make use of the Location.

3 BREACH

Should the Applicant commit a breach of this Agreement:

- 3.1 the V&A is entitled, without prejudice to any other rights it may have in law, to immediately stop all activities and cancel this Agreement, or
- 3.2 and fails to remedy the breach after being called upon to do so in writing by the V&A, within the time period given by the V&A (in its sole and absolute discretion) then, without prejudice to any rights which the V&A may have in law, the V&A may immediately cancel this Agreement, without further notice.

4 RULES AND REGULATIONS; LICENCES / PERMITS AND APPLICABLE LAWS

- 4.1 The Applicant (and its contractors) shall at all times comply with the provisions of all relevant legislation and regulations, including but not limited to, the provisions of the Occupational Health and Safety Act (as amended from time to time).
- 4.2 The Applicant shall be liable for obtaining all necessary licences and permits pertaining to the City of Cape Town Regulations.
- 4.3 The Applicant shall not contravene or permit the contravention of any applicable law or the conditions of any licences or permits.

5 INSURANCE

- 5.1 The Applicant shall obtain and maintain, at its sole cost and expense suitable and adequate insurance cover, including but not limited to Public Liability Insurance, in the amount of no less than R50,000,000.00 (fifty million rand) per incident and proof to be provided within 2 (two) days of the Filming Permit being granted by the V&A.
- 5.2 The Applicant shall on request from the V&A furnish the V&A with a certificate from its insurers confirming such insurance cover.
- 5.3 The Applicant shall not do anything that will detrimentally affect the V&A's own insurance cover. It is recorded that under no circumstances will the Applicant be

covered under the V&A's insurance.

5.4 It is agreed that:

5.4.1 any failure by the Applicant to procure or maintain the insurance cover referred to above in sub-clause 5.1; or

5.4.2 any failure by the Applicant to procure or maintain adequate insurance cover to cater for its liabilities and exposures in terms of this agreement; or

5.4.3 any repudiation (whether in whole or in part) by the insurer of a claim under the relevant insurance policy; or

5.4.4 any liability, loss or damage for which the Applicant is responsible and liable in terms of this agreement is not covered by the said insurance cover,

shall not release the Applicant from the full extent of its liability to the V&A or any third party for any loss, damage, injury or death arising out of or in any way related to or in connection with the service or the business being conducted by the Applicant and/or arising out of or in connection with any act or omission on the part of the Applicant, its employees or contractors and the Applicant agrees to indemnify the V&A from any claims in this regard.

6 INDEMNITY

6.1 The Applicant hereby indemnifies and holds harmless the V&A, their officers, employees and/or agents from and against any and all claims, actions, losses, damages, liabilities or expenses which they or their employees may suffer as a result of any occurrence in, upon, at or around the V&A Waterfront or any parts thereof, unless caused by the negligence of the V&A, its employees, officers or agents.

6.2 The Applicant hereby indemnifies and holds harmless the V&A, their officers, employees and/or agents from and against any and all claims, actions, losses, damages, liabilities or expenses arising out of or in any way related to or in connection with the Production by the Applicant and/or arising out of or in connection with any act or omission on the part of the Applicant, its employees or contractors, unless caused by the negligence of the V&A, their employees or agents.

6.3 In the event that the V&A shall, without fault on their part, be made a Party to any litigation commenced by or against the Applicant, then the Applicant shall indemnify the V&A and hold it harmless against all claims and (without prejudice to any other rights the V&A may have in law) shall pay all costs, expenses and legal fees (including without limitation attorney and client fees) incurred or paid by the V&A in connection with such litigation.

7 **DAMAGE TO V&A'S PROPERTY**

The Applicant shall be liable for any and all damage caused to the V&A's property howsoever arising from or out of any occurrence connected with the Production, whether occasioned wholly or in part by any act or omission, or the negligence or gross negligence of the Applicant, their officers, employees, agents, suppliers, or contractors.

8 **DISPUTE RESOLUTION**

- 8.1 Any dispute arising out of or in connection with this Agreement will be referred to arbitration in Cape Town in accordance with the rules of commercial arbitration of the Arbitration Foundation of South Africa ("**AFSA**"), which arbitration shall be administered by AFSA.
- 8.2 Any Party to the arbitration may appeal the decision of the arbitrator or arbitrators in terms of the AFSA rules for commercial arbitration.
- 8.3 Nothing herein contained shall be deemed to prevent or prohibit a Party to this Agreement from access to an appropriate court of law for –
- 8.3.1 interim or urgent relief in form of an interdict mandamus or order for specific performance pending the outcome of an arbitration in terms of this clause or in respect of such an arbitration;
- 8.3.2 any other form of relief on the basis of facts which are not disputed;
- 8.3.3 payment of any amount due in terms of this Agreement; or
- 8.3.4 an order for payment of a liquidated amount in money on the basis of facts which are not bona fide in dispute at the commencement of such proceedings.
- 8.4 This provision will continue to be binding on the Parties notwithstanding any termination or cancellation of this Agreement.
- 8.5 Should the V&A consult their attorneys, or institute action against the Applicant, in order to enforce any terms of this Agreement, then without prejudice to any other right which the V&A may have, the V&A shall be entitled to recover from the Applicant all legal costs reasonably incurred by them, including but not limited to their attorneys fees as between attorney and own client, tracing fees and such collection commission as the V&A may be obliged to pay to their attorneys, and the Applicant waives taxation thereof according to any prescribed tariff.

9 JURISDICTION

The Parties hereto consent to the jurisdiction of the Magistrate's Court in respect of any dispute or claim arising out of this Agreement. Notwithstanding the aforementioned nothing herein shall be so interpreted as to preclude a Party from instituting proceedings in the appropriate High Court.

10 CONTRACTORS

Should the Applicant appoint any contractor in respect of the Production in terms of this Agreement, the Applicant shall take responsibility for all acts and omissions of such contractors, shall ensure that such contractors comply with all the provisions of this Agreement and the obligations and responsibilities in terms hereof and shall indemnify the V&A from any loss or liability arising from any acts or omissions of such contractors unless caused by the V&A's negligence or wilful misconduct.

11 STRUCTURES, SET UP AND BREAKDOWN

Should the Applicant erect any structures in respect of the Event they must adhere to all safety processes and procedures set out in the Safety Requirements attached hereto as Annexure "B".

12 DOMICILIUM AND NOTICES

12.1 The Parties choose their *domicilium citandi et executandi* ("**domicilium**") for the purposes of the giving of any notice, the payment of any sum, the serving of any process and for any other purpose arising from this Agreement as follows –

The V&A:

V&A Waterfront Head Office
19 Dock Road
V&A Waterfront
Cape Town
8001
Fax No: 021 – 408 7505
Email: prandall@waterfront.co.za

The Applicant – as per Application Form

12.2 Each of the Parties shall be entitled from time to time by written notice to the other to vary its domicilium to any other physical address within the Republic of South Africa; its email address and/or its telefacsimile number.

12.3 Any notice given by either Party to the other ("**addressee**") which –

12.3.1 is delivered by hand during the normal business hours of the addressee at the addressee's domicilium for the time being shall be presumed, until the contrary is proved by the addressee, to have been received by the addressee at the time

of delivery;

- 12.3.2 is posted by prepaid registered post from an address within the Republic of South Africa to the addressee at the addressee's domicilium for the time being shall be presumed, until the contrary is proved by the addressee to have been received by the addressee on the 4th (fourth) day after the date of posting;
- 12.3.3 is sent by facsimile or email to the particular addressee's domicilium for the time being shall be rebuttably presumed to have been received by the addressee on transmission thereof.

13 **CONFIDENTIALITY**

All Parties shall keep confidential all information entrusted to them and which may come into its possession in the course of negotiations, and as contained in this Agreement and none of the Parties shall disclose it to any third party without the prior written consent of the other Parties, unless such information has come into the public domain as a result of litigation.

14 **ANNOUNCEMENTS**

Neither Party shall disclose or publish any part of the details related to the services or the object of this Agreement to a third party, without the prior written consent of the other Party. Any public announcement or press release should be subject to a prior written approval of both Parties.

15 **UNCONTROLLABLE EVENT (FORCE MAJEURE)**

- 15.1 In the event that either Party shall be delayed, hindered in or prevented from doing or performing any act or thing required hereunder by reason of an Uncontrollable Event, then that Party shall not be responsible for such delays and the doing or performing of such act or thing shall be excused for the period of delay, and the period for the performance of any such act or thing shall be extended for a period equivalent to the period of such delay.
- 15.2 The purposes of this provision an "**Uncontrollable Event**" means any circumstance beyond the reasonable control of either Party including (without limitation) flood, fire, earthquake, war, restrictions by any relevant authority, acts of God, strikes, lockouts, casualties, labour difficulties, inability to procure materials, failure of power, applicable laws, riots, insurrection, accidents against which reasonable prudence could not have provided, or any act or omission on the part of a third party.

16 **INTELLECTUAL PROPERTY**

- 16.1 The contents of the Agreement shall not be construed as permitting the Applicant to use any of the intellectual property or branding of any one of the V&A in a manner other than those and under the conditions envisaged in this Agreement. No provision in this Agreement shall be construed as any member of the V&A

waiving any of its intellectual property rights. The Applicant shall not have the right or permission to continue using the V&A's intellectual property or branding after the termination of the Agreement.

- 16.2 The V&A confirms that it shall have no claim, right and/or interest in or to the Production. All rights to the Production shall rest wholly in the Applicant.

17 SPECIAL NATURE OF V&A WATERFRONT

- 17.1 The Applicant acknowledges that –
- 17.2 the location is situated upon the V&A Waterfront which includes a working harbour, canal network, dry dock, synchrolift, bridges and lock, all of which activities and operations necessarily involve, inter alia, certain noise, smell and traffic nuisance;
- 17.3 the V&A Waterfront is a popular tourist destination which attracts a significant number of local and international visitors and tourists and from time to time hosts public events, which necessarily involves, inter alia, certain levels of noise and pedestrian and vehicular traffic and access at the V&A Waterfront including the immediate surrounds of the Premises; and
- 17.4 the V&A Waterfront is situated in close proximity to the Cape Town Stadium which hosts large public events from time to time which necessarily involves, inter alia, certain levels of noise and pedestrian and vehicular traffic and access at the V&A Waterfront including the immediate surrounds of the Premises.

18 DEVELOPMENT AT THE V&A WATERFRONT

- 18.1 The Applicant acknowledges that ongoing development works are being undertaken at the V&A Waterfront and the Location may be situated in close proximity to some of these developments.
- 18.2 The Applicant agrees to hire the Location notwithstanding such works.
- 18.3 It is recorded that the Applicant shall not have any claim against the V&A for damages due to any nuisance or inconvenience occasioned to the Production or damages suffered by the Applicant on account of any construction or development activity undertaken at the V&A Waterfront, including but not limited to, any noise, dust, smell or any other nuisance of whatever kind accompanying such activity, unless such damages are due to the negligence or wilful misconduct of the V&A its employees, agents or contractors.

19 PROTECTION OF PERSONAL INFORMATION

- 19.1 It is recorded that during the course of this Agreement, the Parties will be processing Personal Information for each other as specified in this Agreement. The Parties agree that in processing such Personal Information, to comply with

the provisions of the Protection of Personal Information Act 4 of 2013.

- 19.2 The Parties may with the knowledge and consent of the other Party process and use such Personal Information for the purpose of fulfilling its obligations under this Agreement.
- 19.3 The Parties must treat the Personal Information that comes to its knowledge as confidential and must not disclose it unless required by law or in the course of the proper performance of its obligations and then only with the prior written consent of the other Party.
- 19.4 The Parties shall limit access to the Personal Information only to those employees who need to know in order to enable it to perform its obligations under this Agreement.
- 19.5 Upon termination of this Agreement or upon request a Party shall return to the other Party any record containing, pertaining or relating to the Personal Information disclosed pursuant to this Agreement. Alternatively, a Party shall, at the instance of the other Party, destroy such material and shall satisfy that Party that it has done so.
- 19.6 The Parties agree that it shall be accountable at all times to the other Party in processing Personal Information.
- 19.7 The Parties indemnifies each other and holds each other harmless against any loss, liability, damage or expense of any nature suffered or incurred by a Party (and all costs incurred by it in connection therewith, including legal costs on an attorney and own client scale) which may accrue against or be charged to or be recovered from or sought to be recovered from that Party arising from the other Party's breach of its obligations to such Party in terms of this Agreement and/or the other Party's negligent or intentional conduct in relation to the it's processing of the Personal Information.

20 GENERAL

- 20.1 This Agreement constitutes the sole record of the Agreement between the Parties in regard to the subject matter thereof.
- 20.2 No Party shall be bound by any representations, express or implied term, warranty, promise or the like not recorded herein or reduced to writing and signed by the Parties or their representatives.
- 20.3 No addition to, variation, or agreed cancellation of this Agreement shall be of any force or effect unless recorded in a written document and signed by or on behalf of the duly authorized representatives of the parties. For the purposes of this clause, a "written document" shall exclude any written document that is in the form, either wholly or partly, of a data message as defined in the Electronic Communications and Transactions Act 25 of 2002, and "signed" shall mean a signature executed by hand with a pen and without any electronic process or

intervention.

- 20.4 No indulgence that any Party may grant to any other shall constitute a waiver of the rights of the grantor.
- 20.5 All provisions and the various clauses of this Agreement are, notwithstanding the manner in which they have been grouped together or linked grammatically, severable from each other. Any provision or clause of this Agreement that is or becomes unenforceable in any jurisdiction, whether due to voidness, invalidity, illegally, unlawfulness or for any other reason whatever, shall in such jurisdiction only and only to the extent that it is so unenforceable, be treated as pro non scripto and the remaining provisions and clauses of this Agreement shall remain of full force and effect. The Parties declare that it is their intention that this Agreement would be executed without such unenforceable provision if they were aware of such unenforceability at the time of execution hereof.
- 20.6 The Applicant shall not be entitled to cede any of their rights or to delegate any of their obligations under the Agreement without the prior written consent of the V&A.
- 20.7 This Agreement shall be governed by, and interpreted under the laws of the Republic of South Africa.
- 20.8 The Parties agree that in the event that the V&A determines, in its sole and absolute discretion, that there is a serious threat to the V&A Waterfront and/or the Applicant or any other persons, the V&A shall be entitled to immediately stop all filming for as long as the threat persists. It is agreed that the Applicant shall not be entitled to any compensation or damages of whatsoever nature in such event, provided that the V&A was not negligent in stopping the filming.

SAFETY REQUIREMENTS

The Applicant (and its contractors) shall, ensure that all relevant and applicable legislation are complied with, including but not limited to, the City of Cape Town Events By-Laws, Safety at Sports and Recreational Events Act, Tobacco Products Control Act, Occupational Health & Safety Act and Disaster Management (as amended or updated from time to time).

Without limiting the generality of the foregoing the Applicant shall ensure that the following are complied with:

1. Set Up and Breakdown in public spaces may only commence within the following times: 00h00 - 08h00 or as otherwise specified by the V&A. A full production schedule for the set up and breakdown to be provided for the written approval of the V&A.
2. Set Up and Breakdown in the mall may only commence within the following times: 22h00 - 09h00 or as otherwise specified by the V&A. A full production schedule for the set up and breakdown to be provided for the written approval of the V&A.
3. All areas to be adequately cordoned off during set-up and breakdown, so as to ensure no access of unauthorized personnel and safety of public. All plans to be provided detailing areas to be cordoned off and marshaled must be included in the production schedule.
4. A qualified Safety Officer to be appointed by the Applicant for the duration of the film / photographic shoot, including the buildup and breakdown of the film / photographic shoot.
5. The Safety Officer to ensure he/she is in possession of a safety file with all relevant documentation throughout the film / photographic shoot. A copy of all documentation in the file to be provided to the V&A.
6. The Safety File must include:
 - Fire Plan;
 - Safety Training;
 - Scaffolding Certificate;
 - Scaffolding Training First Aid Requirements;
 - Certificates of Competent Person/s;
 - Letter of Good Standing by the Department of Labour;
 - Public Liability Insurance;
 - Registration with the Department of Labour;
 - Events Permit; and
 - Such additional documentation as may be required.

7. Copies of all licenses, permits and certificates, such as but not limited to City Permit, BDM Certificate, and Structural Engineer's Certificate, are to be provided to the V&A.
8. The erection of any Temporary Structure will require the appointment of a Registered Person.
9. A site and layout to be provided and plans must indicate the position of all proposed structures, the positions of tables, chairs, stage fire escapes and fire equipment details.
10. Where the population of a structure exceeds 25 (twenty five) persons at least 2 (two) emergency exits are required.
11. Full details of cooking and wash up facilities to be provided.
12. All structures shall be fire resistant or shall be treated with a fire resistant solution. A copy of a fire retardant certificate must be signed by a competent person and shall be provided to the V&A.
13. No Structure may be erected closer than 4.5m to any boundary, existing building or any combustible material. There must be a clear space of at least 4.5m around each Structure to allow for free means of egress to and access of emergency services.
14. Open flame or fire will not be permitted without prior written consent by the V&A.
15. Fire extinguishers are to be provided at a rate of 1 per 100 square meters and fire extinguishers are to be placed in easily accessible and visible positions and shall be properly indicated with signage.
16. All emergency signage shall be SABS approved .
17. Wherever documentation must be submitted to the V&A for approval or otherwise, same must be submitted to the V&A at least 14 (fourteen) days prior to the commencement of the film / photographic shoot or such shorter period as may be specifically agreed to by the V&A in writing.

CRISIS COMMUNICATION PLAN

If required for the Event, the Event Organiser must submit to the V&A at least 1 (one) month (unless otherwise agreed to in writing by the Parties) prior to the Event taking place, a Crisis Communication Plan for the Event for written approval by the V&A