

MEMORANDUM OF UNDERSTANDING

ENTERED INTO BETWEEN

BETWEEN

**THE INDEPENDENT COMMUNICATIONS AUTHORITY OF SOUTH AFRICA
(Hereinafter referred to as "ICASA")**

AND

**THE ADVERTISING REGULATORY BOARD
(Hereinafter referred to as "ARB")**

(Both hereafter collectively referred to as "the Parties")

WHEREAS ICASA is a juristic person established in terms of the Independent Communications Authority of South Africa Act, 2000 (Act No. 13 of 2000), as amended, to regulate the electronic communications, broadcasting and postal services in the public interest;

WHEREAS ARB is an independent body established and paid for by the marketing communications industry to ensure that its system of self-regulation works in the public interest;

WHEREAS ARB is the entity which regulates the content of advertising which replaced Advertising Standards Authority of South Africa;

CONGNISANT of the role played by the Parties in regulating advertising in South Africa in terms of the provisions of the Electronic Communications Act, 2005, as amended (ECA) and the Code of Advertising Practice (Code);

WISHING to enhance and collaborate with each other in fulfilling their respective roles and responsibilities in term of section 55 of the ECA and the Code.

THEREFORE, ICASA and ARB agree as follows:

1. THE PURPOSE OF THE MEMORANDUM OF UNDERSTANDING

This Memorandum of Understanding (MoU) provides for a framework and mechanisms for cooperation between the parties on matters related to advertising in South Africa in terms of the provisions of the ECA and the Code.

2. COOPERATION BETWEEN THE PARTIES

The cooperation referred to above under clause 1 shall focus on the following, *inter alia*:

2.1 Consultation on the draft Code;

2.2 Escalation and referral procedures;

Handwritten signature and initials, including a large 'G' and 'WU'.

2.3 The exchange of information; and

2.4 Awareness Campaigns.

3 AREAS OF COOPERATION

3.1 Consultation on the draft Code:

3.1.1 The parties agree that when ARB drafts and/or reviews the Code it will afford ICASA an opportunity to make written representations/comments on the draft proposed Code within reasonable timelines.

3.1.2 ARB will furnish ICASA with a copy of the final Code for ensuring compliance by all broadcasting service licensees.

3.1.3 ARB will offer an induction process to the members of the Complaints and Compliance Committee (CCC) of ICASA, on the revised and/or new Code at no cost to ICASA, as and when required.

3.2 Escalation or Referral Procedure:

3.2.1 The parties agree, in line with section 55 (3) of the ECA, that ARB will within seven (7) working days of making a finding that a broadcasting service licensee has breached the Code, wherein the ARB appeals process has been exhausted, where applicable, escalate the matter to ICASA to be dealt with in accordance with applicable provisions of section 17A to section 17H of the ICASA Act.

3.2.2 ARB will submit all records relating to the broadcasting service licensees who have breached the Code to ICASA, only after the appeals process of ARB has been exhausted, where applicable.

3.2.3 The contact persons for the referral of the breach of the Code are indicated in clause 3.3.2.1 below.

3.3 **Engagement and Exchange of Information:**

3.3.1 The parties will endeavor to exchange information necessary to give effect to this MOU.

3.3.2 The preferred procedure for the exchange of information between ARB and ICASA is as follows:

3.3.2.1 Where the ARB requires information from ICASA, ARB will address a written request for information to the **Chief Executive Officer** of ICASA;

3.3.2.2 Where ICASA requires information from ARB, ICASA will address a written request for information to the **Chief Executive Officer** of ARB.

3.3.3 ARB and ICASA will keep records of the information exchanged between them.

3.4 **Awareness Campaigns:**

The parties agree to conduct educational workshops, inter alia, to educate consumers and interested parties on the complaints and adjudication procedure regarding the breach of the Code by the broadcasting service licensees and the role played by both parties in this regard.

4 **RESPONSIBILITIES OF THE PARTIES**

Each party shall take all necessary measures for the effective implementation of this MoU.

5 DURATION

This MoU will commence on the date of signature of the last signing party and will remain in force until it is terminated by either party in terms of clause 17.

6 REVIEW

The terms of this MOU and the performance of the parties in terms thereof will be reviewed quarterly at a scheduled meeting between the parties.

7 CONFIDENTIALITY

Both parties warrant that all information made available to them by the other party, including but not limited to any contracts signed, materials developed, trade secrets, financial and other details, assistance or advice given or requested, operating methods and costs, must be kept as strictly confidential and must not be divulged to any third parties without prior written consent of the other party. Each party and their employees, contractors or service providers, must maintain the utmost secrecy in respect of all such information.

8 FORCE MAJEURE

- 8.1 If any party is unable to perform any obligation under this MOU due to circumstances beyond its control, then the party concerned will be excused from the timeous performance of the obligation(s) for the duration that the circumstances rendering the performance impossible still prevail.
- 8.2 Any party unable to perform its obligations due to circumstances in terms of clause 8.1, must inform the other party in writing of the circumstances within 5 (five) days of the occurrence thereof.
- 8.3 The parties will do everything reasonably possible to prevent, avoid or limit the duration or effects of any circumstance in terms of clause 8.1. Upon removal of the circumstances giving rise to impossibility of

Page | 4



performance, the party so prevented or delayed will forthwith give written notice to the other party.

- 8.4 For the purpose of this MoU "*Force Majeure*" means any circumstances beyond the reasonable control of the party concerned and includes but is not limited to war, revolution, riot, mob violence, sabotage, epidemic, accident, breakdown of machinery or facilities where such are not part of equipment or under control of either party.
- 8.5 The mere shortage of labour, materials or utilities will not constitute Force Majeure unless caused by circumstances which may be deemed to constitute Force Majeure.

9 MEDIATION

- 9.1 In the event of a dispute or a difference between the parties with regard to the interpretation and/or implementation of any one or more of the provisions of this MoU, the dispute or difference must be resolved in a manner other than to resort to judicial proceedings.
- 9.2 In the event that the parties fail to resolve a dispute within fourteen (14) business days of their first meeting or such longer period as the Parties may agree in writing, any party may refer such dispute or difference to mediation in accordance with the rules and regulations of the Arbitration Foundation of Southern Africa .
- 9.3 Any party may demand that a dispute be referred to mediation by giving a written notice to that effect to the other party.
- 9.4 The mediation must be held:
- 9.4.1 in Johannesburg and conducted in the English language;
 - 9.4.2 immediately in an informal manner on such basis as the mediator may determine with a view to it being completed within ninety (90) days after it is demanded.
- 9.5 In the event mediation fails, either party may elect to terminate this agreement in terms of clause 17 of this agreement.

10 DOMICILUM CITANDI ET EXECUTANDI

- 10.1 The Parties choose as their *domicilium citandi et executandi* for all purposes under this MoU, whether in respect of court processes, notices or other documents or communication of whatsoever nature (including the exercise of any option) the following addresses:

Independent Communications Authority of South Africa

Physical address: 350 Witch-Hazel Avenue, Eco Point Office
Park Eco Park, Centurion.

Postal address: Private Bag X10, Highveld Park 0169
Telephone: (012) 568 3000/1
Email: ceo@icasa.org.za

The Advertising Regulatory Board

Physical address: Block 4, Albury Office Park, 1
Magalieszicht Ave, Dunkeld West

Postal address: As above
Telephone: (011) 593 3104
Email: gail@arb.org.za / info@arb.org.za

- 10.2 Any notice or communication required or permitted to be given in terms of this MoU will be valid and effective only in writing. It will be competent to give such notice by email.
- 10.3 Either party may give notice to the other party to change the physical address chosen as its *domicilium citandi et executandi* to another physical address in South Africa, provided that such change will become effective on the 7th (seventh) business day from the deemed date of receipt of the notice by the other party.

- 10.4 Any notice sent by email to the email address stipulated in the *domicilium citandi et executandi*, will be deemed to have been received on the date of dispatch (unless the contrary is proved).
- 10.5 Any notice sent by prepaid registered post in a correctly addressed envelope sent to the address stipulated in the *domicilium citandi et executandi* , will be deemed to have been received on the 7th(seventh) business day after posting (unless the contrary is proved).

11 SEVERABILITY

Each of the provisions of this MoU will be considered as separate terms and conditions and in the event that this MoU is affected by legislation or any amendment thereto, or if the provisions herein contained are by virtue of that legislation or otherwise, held to be illegal, invalid, prohibited or unenforceable, then any such provisions may be ineffective only to the extent of the illegality, prohibition or unenforceability and each of the remaining provisions thereof will remain in full force and effect as if the illegal, invalid, prohibited or unenforceable provision was not part thereof.

12 ENTIRE AGREEMENT

This MoU constitutes the entire agreement between the parties with regard to the matters dealt with in this MoU and no representations, terms conditions or warranties not contained in the MoU will be binding on the Parties.

13 VARIATION AND CANCELLATION

No agreement varying, adding to, or deleting from or canceling this MoU will be effective unless reduced to writing and signed by or on behalf of the Parties.

14 INDULGENCES

No indulgences granted by the parties may constitute a waiver of any of its rights under this MoU. Accordingly, no party may be precluded as a consequence of having granted such indulgence, from exercising any rights against the other which may have arisen in the past or which may arise in the future.

15 GOVERNING LAW

The MoU will be construed in accordance with the laws prevailing in the Republic of South Africa.

16 CESSION AND ASSIGNMENT

The parties will not be entitled to cede and/or assign their rights and obligations in terms of this MoU without the prior written consent of the other.

17 TERMINATION

17.1 Notwithstanding the provisions of clause 5 above, either party has the right to cancel this MoU at any time by giving the other party six (6) months written notice in advance to the other party of its intention to terminate.

17.2 The termination referred to in clause 17.1 of this MoU shall not affect the obligations under any project and/or program already in force at the time of notification of such termination, unless agreed upon differently by the parties.

18 ENTRY INTO FORCE

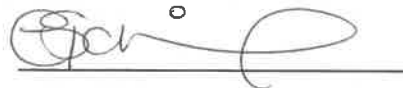
This MoU shall enter into force upon signature by the two (2) parties.

IN WITNESS WHEREOF the undersigned, being duly authorized thereto by the respective parties, have signed and sealed this Memorandum of Understanding.

SIGNED AT Johannesburg ON THE 30th DAY OF March 2021

WITNESSES:

1.



For ARB

2.



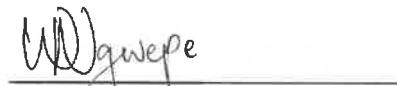
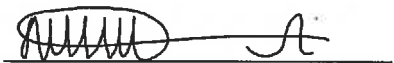
CEO

Designation

SIGNED AT FOURWAYS ON THE 29th DAY OF MARCH 2021

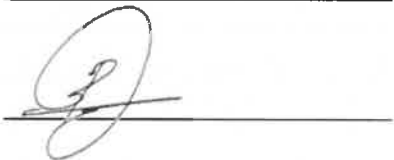
WITNESSES:

1.



For ICASA

2.



CEO

Designation