

## **DOMINIQUE & JULIAN'S AGENCY CC T/A DJ'S TERMS AND CONDITIONS**

This agreement constitutes the whole agreement between the parties and sets out herein all rights and obligations arising from the legal relationship created.

### **DEFINITIONS AND INTERPRETATION**

1.1 In this agreement, unless the context indicates otherwise, the following terms shall have the following meanings:

1.1.1 "DJ's means Dominique and Julian's Agency CC (registration number 96 0469423) t/a DJ's with their principal place of business situated at 1 Westbeach village 1 Drummond Close cnr Drummond Road Westbeach;

1.1.2 "agreement" means this agreement and the annexures headed "Performer Input Form" and "DJ's Rules";

1.1.3 "assignment" means any job, obligation, responsibility, job task, work that has been assigned to the performer by the agent from any source or cause whatsoever.

1.1.4 "multimedia" means any computer program, cinematograph film or stills photography, or combination thereof that involves an audio-visual output and includes (without limitation) a computer game, whether performed on a personal computer, television, mobile phone, mp4 player or any other output device known now or in the future.

1.1.5 "performance" means the performance or other services for which the performer is engaged in terms of this agreement including but not limited to presenting, acting, commercial and in-house contracts.

1.1.6 "performer" means the details of the person recorded in the performer input form, in their capacity as actors, presenters, voice artists, models and characters.

1.1.7 "Agent" means the clients of DJ's who employ the performer.

1.1.8 "term" means a period of 3 (three) consecutive years, commencing on date of signature. (you may remove yourself from database, DJ's system at any time – work started my DJ's must be invoiced by DJ's – as well as any continuing from that contact)

1.2 Any reference to one gender shall include a reference to the other.

1.3 Any reference to the singular shall include a reference to the plural and *vice versa*.

1.4 References to natural persons include legal person and associations of persons.

1.5 If there is any discrepancy between these terms and conditions and DJ's rules, then these terms and conditions shall prevail.

1.6 Words or phrases not defined in this agreement will have their ordinary acceptance meaning, with due regard for meanings customarily attributed to such word or phrases in the advertising industry.

1.7 Clause headings are for convenience only and do not affect interpretation.

### **2 PURPOSE**

2.1 The performer hereby engages DJ's professional services in the field of the entertainment industry in general and appoints DJ's as his sole agent to promote the performer's image in the entertainment industry with a view to securing bookings and securing employment contracts for the performer in the fields specified in clause 3.1.

2.2 DJ's shall, at its discretion, from time to time, train and groom the performer to perfect their acting and presentation skills.

### **3 Performer's rights and obligations**

3.1 The performer engages DJ's solely and exclusively, as his agent for the following fields, and the agent accepts such engagement:

- theatrical motion pictures;
- television motion pictures;
- television programs/series;
- video motion pictures;
- internet productions;
- multimedia productions;
- stage performance productions;

- advertisement productions in all media formats.

3.2 DJ's will endeavor to use all reasonable and professional resources available within the entertainment industry to procure and secure employment on behalf of the performer.

3.3 DJ's makes no representations or furnishes no guarantees of any kind that employment will be secured on behalf of the performer.

3.4 If during the term of this agreement the performer enters into a series of contracts or employment contract/s or renewal thereof, for performance services in the entertainment industry, this agreement shall include the representation by DJ's of the performer in connection with his employment in said series of contracts.

3.5 So long as DJ's receives commissions from the performer, DJ's shall be obliged to service the performer and perform the obligations of this agreement with respect to the services of the performer on which such commissions are based.

#### 4 COMMISSION AND PAYMENT

Commission deemed to have been earned

4.1 The performer agrees to pay to DJ's the commission at the percentages recorded hereunder on the gross daily/monthly fee (whichever is applicable) earned by the performer either directly or indirectly, under contracts of employment (or in connection with his employment under said employment contracts) entered during the term, which contracts were secured by DJ's.

4.2 All payments due to the performer arising from any employment secured by DJ's shall be made by the Agent directly to DJ's.

4.3 Where the performer does not actually render his services for which he has been employed but nevertheless is compensated therefor, the same shall be considered as employment hereunder and shall entitle DJ's to commission in respect thereof.

4.4 Moneys or other consideration received by the performer, or by anyone for or on his behalf, in connection with any termination of any contract of the performer by virtue of which DJ's would otherwise be entitled to receive commission, or in connection with the settlement of any such contract, or any litigation arising out of any such contract, shall also be moneys in connection with which DJ's is entitled to the aforesaid commission.

4.5 Commission shall be payable by the performer to DJ's during the term of this contract after the expiration of the term specified for so long a period thereafter as the performer continues to receive moneys or other consideration under or upon employment contracts secured by DJ's and entered into by the performer during the term, including moneys or other consideration received by the performer under the extended term of any such employment contract, resulting from the exercise of an option or options under such an employment contract, extending the term of such employment contract, whether such options be exercised prior to or after the expiration of the term.

4.6 DJ's will act as the performer's administrator on all assignments. The performer hereby authorizes DJ's to inter alia invoice the Agent for services rendered, sign off on the performer's behalf contracts concluded and or any release forms as and when required by the Agent.

4.7 DJ's is hereby appointed with authority to demand, collect and receive on behalf of the performer any and all payments which may become due to the performer.

#### COMMISSION and PAYMENT

4.8 DJ's standard commission on all assignments is 25% of the total fee earned unless otherwise agreed to and recorded in writing.

#### PAYMENT

4.9 Only once payment of the full fee is received by DJ's from the Agent for the assignment, the balance less commission earned and income tax deducted becomes due and payable to the performer, IRP 5 to be issued by client, DJ's does not deduct tax.

4.10 Payment to the performer of the balance, which is dependent on 4.12 below, will usually be affected within 60 to 90 days of the assignment.

4.11 Fees earned for assignments can be for daily performance and a percentage for usage. These fees earned are separate and will be paid on separate dates.

4.12 The onus is on the advertising agency or production house to issue an IRP 5 certificate in favor of the performer and not DJ's.

4.13 If money has not been requested by artiste and every effort has been made to contact artiste within a year of invoice, it will be cancelled as a payment. (null and void)

## 5 ASSIGNMENTS

The performer:

5.1 Shall, on being allocated and accepting an assignment, verify all relevant details, including the Agent's name and event, venue, dates, and times as well as any special instructions relating to language, dress and product knowledge.

5.2 Will perform the assignment to the very best of his ability.

5.3 Will be advised upon confirmation of a booking by DJ's of the fee (Please be reminded commission and tax to be deducted) that will be paid for the assignment;

5.4 Will uphold DJ's high standard of professionalism and always conduct himself professionally.

5.5 Will ensure that he is available for the required period before accepting an assignment.

5.6 Is not permitted to join another casting agency or to do any work in the entertainment industry independently, unless told to DJ's

5.7 Warrants that he is in possession of a valid work permit in the event of the performer being a non-resident of the Republic of South Africa.

5.8 Warrants that he is not subject to any investigation, civil litigation, or criminal proceedings for which, on conviction, he will be sentenced to a jail term without the option of a fine, nor has he been convicted of serious crimes.

5.9 Warrants that, to the best of his knowledge, he will be able to do the assignment and that there is no health or personal impediment, which might or is likely to cause him to be unable to perform.

## 6 RIGHTS OF RENEWAL

DJ's will be entitled to renew the agreement by notice in writing to the performer given by not later than thirty (30) days prior to the expiry date to the current exposure of renewal period, failing which such rights shall cause subject to the provisions clause 7.

## 7 TERMINATION OF THE AGREEMENT

7.1 No termination hereunder shall deprive DJ's of the right to receive commission or compensation on moneys earned or received by the performer prior to the date of termination, or earned or received by the performer after the date of termination of DJ's engagement, on contracts for the performer's services entered into by the performer prior to the effective date of any such termination.

7.2 No termination or resignation will be accepted as contract is three years from date of signed contract website and receipt of copy id, unless both parties agree at any time wanted by either party – DJ's and performer.

7.3 If the performer is under an employment contract which provides that any part of the performer's guaranteed compensation shall be deferred or if said compensation is spread over a period prior or subsequent to the time of the actual performance of the performer's services under said employment contract, then for the purpose of determining the performer's right to terminate under the provisions of clause 7.1 hereof, the guaranteed compensation shall be deemed to have been paid to the performer during the period of the actual performance of the performer's services under said employment contract.

## 8 INDEMNITY

The performer hereby indemnifies DJ's from any harm, loss or damages of any nature, whether bodily harm, trauma or damages to property resulting from the employment of the performer by an Agent.

## 9 BREACH OF AGREEMENT AND REMEDIES

9.1 All terms and conditions recorded in this agreement are deemed to be material terms of the agreement and should any party at any stage wish to prove the contrary, the onus of such proof shall rest on such party.

9.2 DJ's at its sole and absolute discretion may elect to cancel this agreement immediately should the performer fail to comply with any of the terms and conditions recorded herein.

9.3 Alternative to the above, DJ's may elect to levy the following penalties on the performer:

9.3.1 Failing to attend to an assignment R500.00.

9.3.2 R100.00 for every 15 (fifteen) minutes that the performer arrives late to an assignment.

9.4 Should the performer leave the assignment before being allowed to do so shall result in the performer forfeiting his entire earnings (fees) to DJ's.

9.5 The performer acknowledges that his failure to arrive on time or at all at an assignment or specific appointment could result in the Agent electing to hold the performer liable for the full production costs which could easily exceed R100 000.00.

9.6 Without waiving any rights or remedies under this agreement or otherwise, DJ's and the performer may from time to time recover, any damages arising out of any breach of this agreement by the other party.

9.7 Failure by the performer to arrive at auditions after agreeing to attend will result in a fine as another performer could attend same audition, our data base which is national has a section which agent and casting agents are able to type in a specific category reliable or not reliable, this will definitely affect your ability to attend auditions, if not reliable is ticked – this will entitle DJ's to cancel this agreement and remove the performer from its books.

9.8 Failure by the performer to arrive at a specific appointment, for example, (a closed audition) which appointment the performer has specifically been requested to attend will result in DJ's charging the performer a penalty levy in the amount of up to R500 -00 (five hundred rands).(unless told to DJ's timeously)

10. If artist does attend audition or meeting on behalf of DJ's and another job is confirmed via the client, or person (company) at audition or after the audition (meeting) – DJ's must be informed and is entitled to full commission of those jobs, productions.

#### 10 RELATIONSHIP BETWEEN PARTIES

10.1 Nothing in this agreement can be construed to create an employer / employee relationship between DJ's and the performer.

10.2 The performer acknowledges that:

10.2.1 He is not entitled to any of the benefits payable by DJ's to its employees including but not limited to medical aid, leave pay, sick leave and pension;

10.2.2 This agreement records the relationship between DJ's and the performer re commission earned by the agent securing an assignment for the performer with the Agent, which is dependent on the Agent making payment.

10.3 This agreement does not constitute a partnership of any kind between the respective parties.

10.4 The performer shall have no right to claim payment for an assignment from DJ's in the event of the Agent failing to pay for such assignment.

#### 11 PROPRIETARY CONSEQUENCES

11.1 All photographs and portfolios prepared by DJ's during the agreement to market the performer remain the property of DJ's.

11.2 The performer acknowledges and consents to DJ's distributing the aforesaid documents and information disclosed in the performer input form via any multimedia forum for the purposes of marketing the performer in connection with its representation of the performer.

#### 12 GENERAL

12.1 The performer chooses as his *domicilium citandi et executandi* at his residential address recorded in the performer input form for all purposes with respect to all court processes, notices, documents or communication, of whatsoever nature.

12.2 If there shall exist any conflict between any provision contained herein and any such law or policy, the latter shall prevail, and the provision or provisions herein affected shall be curtailed, limited or eliminated to the extent (but only to the extent) necessary to remove such conflict, and as so modified the remaining provisions of this agreement shall continue in full force and effect.

12.3 No amendment or consensual cancellation of this agreement or any provision or term thereof shall be binding unless recorded in a written document signed by the parties.

#### 13 CESSION AND ASSIGNMENT

The Performer may not cede, assign or otherwise dispose of his rights or obligations in terms of this agreement

#### 14 BREACH

14.1 Should any of the parties hereto breach any term of this agreement and fail to remedy such breach within fourteen (14) days of receipt of notice in writing calling upon it to remedy same, the aggrieved party shall be entitled, but not obliged to, terminate the agreement, without prejudice to any right to damages.

14.2 Should DJ's, on reasonable grounds, make any charge of intemperance or concerning the use of dependence producing substances against the performer, then such charge shall be made at the time of the offence, provided that the performer shall be entitled to produce a certificate issued by a medical doctor, obtained at his own expense, within three (3) hours of such allegation being made in order to disprove the charge. In the event of such allegation being made, the (14) day notice period in 14.1 will not apply.

14.3 If DJ's is provisionally or finally liquidated, wound up or declared insolvent the agreement shall be deemed to be cancelled.

## 15 ARBITRATION

Any dispute between the parties for a monetary value of less than R15 000.00 in regard to any matter arising out of this agreement, or its interpretation of their respective rights and obligations under this agreement or its cancellation or any matter arising out of its cancellation shall be decided in the following manner;

15.1 If the dispute has not been resolved between the parties within seven (7) days of it having arisen, either party may declare a dispute by giving the other party written notice of the declaration of the dispute and in that notice the party declaring the dispute shall set out the nature of the dispute.

15.2 The parties shall meet within three (3) days of receipt of the notice of declaration and shall, at this meeting, consider the application of any other form or forms of dispute resolution, other than litigation.

15.3 If both parties cannot agree on the form of dispute resolution, then the dispute shall be submitted to expedited arbitration conducted under the auspices of ADRASA (The Alternative Dispute Resolution Association of South Africa) or similar dispute resolution body agreed by the parties in accordance with the rules currently in force and in the context of this agreement any reference to "ADRASA" would include a reference to such similar body as agreed between the parties.

15.4 There shall be one arbitrator who shall be selected from the Register of Arbitrators of ADRASA.

15.5 The process of expedited arbitration shall include, inter alia, the following: -

15.5.1 each party shall be required to submit a brief statement of its case to the other party.

15.5.2 no other pleading shall be required.

15.5.3 Prior to the expedited arbitration, a meeting between the parties and their representatives will be held in order to: -

15.5.3.1 agree to the terms of reference and powers of the arbitrator.

15.5.3.2 arrange for an exchange of documents.

15.5.3.3 limit the issues between the parties.

15.5.4 The said terms of reference and powers of the arbitrator shall include a clause which states: -  
"The Arbitrator is hereby empowered to take all steps as may, in his discretion, be necessary to expedite the proceedings and shall be entitled to make an order of orders."

15.6 The expedited arbitration shall be conducted in the City of Johannesburg, unless otherwise agreed between the parties.

15.7 The parties shall take all reasonable steps to ensure that the said arbitration is completed within thirty (30) days after the arbitration has been requested.

15.8 The arbitrator's award shall be final and binding on all parties.

15.9 The parties' consent to the procedure of expedited arbitration or any other forms of mediation and / or arbitration that may from time-to-time form part of the rules of ADRASA.

15.10 The parties' consent to the jurisdiction of the Magistrate's Court and the South Gauteng High Court of South Africa for the enforcement of any award as contemplated herein.

15.11 The arbitrator shall be entitled to make an order as to which party or parties bear the costs of arbitration.

## 16 DISPUTES NOT SUBJECT TO ARBITRATION

16.1 All disputes not subject to the provisions of clause 15 above may be referred to legal action.

16.2 The parties hereby consent, in terms of Section 45 of the Magistrate's Court Act No. 32 of 1944 as amended, to the jurisdiction of the Magistrate's Court having territorial jurisdiction in respect of any action instituted against the performer by DJ's for the recovery of monies or for legal action in terms hereof. It shall nevertheless be entirely within the discretion of DJ's as to whether to proceed against the performer in any other court having jurisdiction.

16.3 In the event of DJ's having to instruct a tracing agent, collecting agent and/or attorneys to enforce its rights in terms of this agreement, the performer shall be liable for all attorney and client costs, tracer's costs and other costs incidental to such proceedings, including collection commission.

#### 17 GOVERNING LAW

The agreement shall be interpreted in accordance with the laws of the Republic of South Africa, irrespective of where the Performer renders service and notwithstanding the place of signature.

#### 18 NOTICES

18.1 The parties choose as their *domicilium citandi et executandi* for all purposes under this agreement"

18.1.1 The Performer:

18.1.2 DJ's:

18.2 Any notice or communication required or permitted to be given in terms of the agreement shall be valid and effective only if in writing.

18.3 Any party may, by notice to the other parties, change his *domicilium citandi et executandi* to another physical address, provided that the change shall become effective on the fourteenth (14<sup>th</sup>) day after receipt of the notice by the addressee.

18.4 Any notice to a party contained in a correctly addressed shall be deemed to have been given: -

18.4.1 if posted by prepaid registered post to that party's postal address ten (10) days after the posting thereof or.

18.4.2 if delivered by hand to a responsible person during ordinary business hours at that party's *domicilium citandi et executandi*, on the day of delivery or.

18.4.3 if emailed, on the business day immediately following the business day on which the notice was emailed.

18.5 Notwithstanding anything to the contrary herein contained, a written notice or communication received by a party shall be an adequate written notice or communication to it, notwithstanding that it was not sent to or delivered as provided above.