

AGREEMENT

Between

PTN 113 WELTEVREDEN (PTY) LTD

Registration No.: 1997/012636/07

(“PTN 113”)

And

(Name) _____

Identity No.: _____

Marital Status: _____

(“the Participant”)

And

Jointly referred to as **“the Parties”**

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1. Interpretation

The headings of the clauses in this Agreement are for the purpose of convenience and reference only and shall not be used in the interpretation of nor modify nor amplify its terms nor any clause hereof. Unless a contrary intention clearly appears –

- 1.1. words importing –
 - 1.1.1. any one gender includes the other two genders;
 - 1.1.2. the singular includes the plural and *vice versa*; and
 - 1.1.3. natural persons include created entities (corporate or unincorporate) and the state and *vice versa*;
- 1.2. when any number of days is prescribed in this Agreement, they shall be calculated exclusively of the first and inclusively of the last day unless the last day falls on a Saturday, Sunday or public holiday, in which case the last day shall be the next succeeding day which is not a Saturday, Sunday or public holiday;
- 1.3. where figures are referred to in numerals and in words, if there is any conflict between the two, the words shall prevail;
- 1.4. where any term is defined within the context of any particular clause in this Agreement, the term so defined, unless it is clear from the clause in question that the term so defined has limited application to the relevant clause, shall bear the meaning ascribed to it for all purposes in terms of this Agreement, notwithstanding that that term has not been defined in this interpretation clause;
- 1.5. the expiration or termination of this Agreement shall not affect such of the provisions of this Agreement as expressly provided that they will operate after any such expiration or termination or which of necessity must continue to have effect after such expiration or termination, even though the clauses themselves do not expressly provide for this;
- 1.6. general words preceded or followed by words such as “other” or “including” or “particularly” shall not be given a restrictive meaning and the *eiusdem generis* rule

shall not apply; and

1.7. the parties agree that the *contra proferentum* rule shall not apply.

2. Introduction

2.1 PTN 113 has organised and will conduct a “Kids Winter Play Area” event (“**the Event Area**”) at Wonderboom Junction (“**the Mall**”) from 24 June 2019 until 4 July 2019 between 09:00 and 16:00 (“**Event Period**”), where patrons below the age of 18 (eighteen) accompanied by their legal guardian and/or parent, can use the Event Area for playing and leisure purposes (**the “Event”**).

2.2 The Event is open to patrons of the Mall below the age of eighteen (“**Participant**”) accompanied by their parent(s) and/or legal guardian, subject to the terms and conditions annexed hereto (**T’s & C’s**).

2.3 In terms of the Event, the Participant is required to:

- I. Visit the Mall at the Centre Court in front of Foschini during the Event Period, with their parent and/or legal guardian and complete the indemnity agreement and thereafter proceed to use the Event Area as per clause 2.1 above.

2.4 The following activities and/or equipment (without limitation) will be available during the Event, and will be facilitated by an independent event service provider:

2.4.1 Face painting and balloon modelling;

2.4.2 Colouring in activities;

2.4.3 Use of various event equipment; and

2.4.4 The provision of sweets, popcorn or candy floss for the Participant (“**the Event Activities**”)

2.5 Subject to the T’s & C’s, the Event is free of charge and there are no prizes or giveaways.

2.6 The Participant by his/her signature hereto acknowledges, warrants and confirms that:

- 2.6.1 Participating in the Event is in full and final settlement of the PTN 113’s obligations to the Participant in terms of the Event, and the Participant have no claim in whatsoever nature against PTN 113 in respect of the Event; and

2.6.2 PTN 113 has complied with and has fully discharged all obligations owed to the Participant in terms of the Event and the T's & C's hereof.

3. Indemnity

3.1. **PTN 113 requires the Participant to indemnify PTN 113 against all and any occurrences set out at clause 3.2 below and the Parties are willing to give such indemnity.**

3.2. **The Participant hereby irrevocably indemnifies and in perpetuity discharges and holds harmless PTN 113 together with its shareholders, members, parent companies, subsidiaries, affiliated and related entities, and the officers, directors, employees, agents, representatives, subcontractors and volunteers of all or any of them (all of the foregoing are individually and collectively referred to as the "Indemnified Parties") against and from all and any claims and losses directly or indirectly related to or arising from the Event including (without limitation):**

3.2.1. **any loss suffered and/or costs and/or injuries incurred by the Participant from participating in the Event by PTN 113 to the Participant;**

3.2.2. **any negligence, action or inaction, of any of the Indemnified Parties which results in damage to and/or loss of goods or the inability to participate in any manner whatsoever; and**

3.2.3. **incorrect details being provided to PTN 113, resulting in the Giveaway being transferred to the incorrect recipient.**

3.3 For purposes of this clause 3:

3.3.1 **the word "Claims" shall mean all claims, actions, suits, demands, investigations and proceedings of whatever nature and however arising (including, without limitation, from negligence), including (without limitation) any and all claims actions, suits, demands, investigations and proceedings from or by or on behalf of the Winner, its representatives, insurers, or any governmental authority, or any other person or entity; and**

3.3.2 the word “Losses” shall mean all losses, damages, fines, expenses, penalties and harm of any nature and however arising (including, without limitation, from negligence), including (without limitation) attorneys’ and advocates fees and disbursements.

3.4 Notwithstanding anything else contained in this Agreement, and without limiting or derogating from the scope of the provisions of clause 3.2, PTN 113 and the other Indemnified Parties shall not be liable to the Parties or any third parties for:

3.4.1 any indirect or consequential losses whether arising from negligence, gross

negligence, breach of contract or otherwise.

3.5 The provisions of this clause 3 shall only apply to the extent allowed by law.

4. Notices

4.1. For the purposes of this Agreement, including the giving of notices and the serving of legal process, the parties choose *domicilium citandi et executandi* ("domicilium") as follows:

4.1.1. in the case of:

PTN 113 (Pty) Ltd

Address: 19 Biermann Avenue, Rosebank, Johannesburg

Attention: Marli Strauss

Email: ElsabeK@redefine.co.za

4.1.2. In the case of the **Participant** _____, to:

Address: _____

Email: _____

A party may at any time change that party's domicile by notice in writing, provided that the new domicile consists of, or includes, a physical address at which process can be served.

4.2. Any notice given in connection with this Agreement shall –

4.2.1. be delivered by hand; or

4.2.2. be sent by prepaid registered post; or

4.2.3. be sent by telefax (if the domicile includes a telefax number),

to the *domicilium* chosen by the party concerned.

4.3. A notice given as set out above shall be deemed to have been duly given –

4.3.1. if delivered by hand or email, on the date of delivery; or

4.3.2. if sent by post, 7 (seven) days after posting; or

4.3.3. if sent by telefax, on the day that the telefax is transmitted.

5. Confidentiality and Non-Disclosure

- 5.1. Each Party may in the execution of this Agreement come into possession of Confidential Information. Each Party agrees to treat all Confidential Information irrespective of the source or the manner, in which it was obtained, as well as the existence and contents of this Agreement, as confidential and to use and divulge it only as far as is necessary for compliance with this Agreement.
- 5.2. Each Party acknowledges that the other Party has a proprietary interest in the confidentiality of the Confidential Information being maintained.
- 5.3. If it is uncertain whether any information is to be treated as confidential, each Party shall treat it as such until written clearance is obtained from the other Party.
- 5.4. Except with the prior written consent of the other Party, neither Party will make any copy, reproduction, facsimile or duplicate of Confidential Information by any means or for any purpose whatsoever, other than to the extent necessary to provide the services or to fulfil the purpose for which the Confidential Information was disclosed or furnished to him.
- 5.5. The obligations set out in this clause shall not apply to information which –
 - 5.5.1 at the time of its disclosure had already been published or was otherwise publicly available; or
 - 5.5.2 at the time of its disclosure can be shown by a Party to have been in its possession prior to the disclosure thereof.
- 5.6. The Participant hereby acknowledges the serious nature of this Agreement and shall not divulge the contents of this Agreement to any third party, release any statement to the press, or make any other public statement of any nature regarding the relationship or the subject matter of this Agreement, without the prior written

consent of the other Party, which consent shall not be unreasonably withheld.

6. Severability

Notwithstanding that the whole or any part of any provision of this Agreement may prove to be illegal or unenforceable, the other provisions of this Agreement and the remainder of the provision in question shall remain in full force and effect.

7. Waiver of remedies

No forbearance, delay or indulgence by PTN 113 in enforcing the provisions of this Agreement shall prejudice or restrict its rights nor shall any waiver of its rights operate as a waiver of any subsequent breach by the Parties.

8. Assignment

Save as expressly provided in this Agreement, the Parties shall not assign nor otherwise transfer this Agreement or any of its rights and obligations hereunder whether in whole or in part without the prior written consent of PTN 113.

9. Authority to bind

9.1 Each party warrants and represents to the other party that it has taken or caused to be taken all steps, actions and corporate procedures necessary to cause this Agreement to be binding upon it and that it has the full right and authority to enter into this Agreement and to perform all of its obligations hereunder, and shall, where requested, provide proof of such authority.

9.2 **The Participant warrants that he/she has obtained independent legal advice to ensure that they understand the contents of this Agreement and acknowledges that his/her signature hereto warrants confirmation of this.**

10. Entire agreement

10.1. This Agreement supersedes all prior agreements, arrangements and understandings between the parties and constitutes the entire agreement between the parties relating to the subject matter hereof (save that neither party seeks to exclude liability for any fraudulent pre-contractual misrepresentation upon which the other party can be shown to have relied). In the event of any conflict between this Agreement and the Event T's & C's, this Agreement shall take precedence.

- 10.2. No addition to or modification of any provision of this Agreement shall be binding upon the parties unless made by a written instrument signed by a duly authorised representative of each of the parties.

11. Dispute resolution and law

- 11.1. Any disputes arising out of this Agreement shall be resolved in the South African High Court having jurisdiction.
- 11.2. This Agreement shall be governed by and construed in accordance with the law of South Africa.

WITNESS

NAME

WITNESS

NAME

PTN 113 (Pty) Ltd

Name:

who warrants that s/he is duly authorised to
sign this Agreement.

Date: _____

Place: _____

Name:

who warrants that s/he is duly authorised to
sign this Agreement.

Date: _____

Place: _____