

## Service Level Agreement

### 1. INTRODUCTION

- 1.1. The Client appoints Persuade to render the Services, as set out in the Scope of Work(s) annexed hereto, on the basis set out in this Agreement.
- 1.2. Persuade and the Client have reached agreement on the terms and conditions regulating the provisions of the Services, and wish to reduce the terms of this consensus to writing in the form of this Agreement.

### 2. INTERPRETING THIS AGREEMENT

- 2.1. This Agreement contains a number of words and phrases which have specific meanings denoted by such words being capitalised.
- 2.2. In this Agreement, headings are for convenience only and are not intended to be used to interpret the Agreement.
- 2.3. If the Agreement refers to a party who is liquidated or sequestrated (or has been through a comparable process under a different legal system), then the Agreement will also be applicable to, and binding on, that party's liquidator or trustee, as the case may be.
- 2.4. Unless this Agreement indicates to the contrary, any references to any gender includes the other gender, a natural person includes an artificial person and vice versa, the singular includes the plural and vice versa.
- 2.5. The *contra proferentem* rule, or rule of construction that this Agreement shall be interpreted against the Party responsible for the drafting or preparation of this Agreement, shall not apply.
- 2.6. Where in this Agreement, provision is made for the Parties (or either of them) to agree on or grant approval in respect of any matter, such agreement or approval shall only be valid and binding on the Parties thereto if reduced to writing and Signed by the duly authorised representative of such Parties.
- 2.7. The use of the word "including" followed by a specific example shall not be construed as limiting the meaning of the general wording preceding it and the *eiusdem generis* rule shall not be applied in the interpretation of such general wording or such specific example.
- 2.8. Where this Agreement specifies any number of days, the number of days excludes the first day and includes the last day, unless the last day falls on a Saturday, Sunday or gazetted public holiday in the Republic of South Africa, in which case the last day shall be the next succeeding day which is not a Saturday, Sunday or gazetted public holiday in the Republic

of South Africa. Generally speaking, references to a "day" are references to typical business days.

- 2.9. Any reference to "business hours" shall be construed as being the hours between 09h00 (nine hours) and 17h00 (sixteen hours, thirty minutes) on any day. Any reference to time shall be based upon South African Standard Time;
- 2.10. All annexures, addenda and amendments to this Service Level Agreement form an integral part of this Agreement and, therefore, Persuade's contract with the Client.
- 2.11. The words and phrases in the definitions sections, below, bear the meanings assigned to them and related expressions bear corresponding meanings.

### **3. DEFINITIONS**

- 3.1. "Agreement" means these terms and conditions as well as any annexures, amendments, schedules, scope of works, or addenda to these terms and conditions from time to time;
- 3.2. "Client" means the Party which has consented to this Agreement as stipulated on page 1, or where appropriate, the entity on behalf of which a duly authorised representative has bound by virtue of consenting to the terms of this Agreement on behalf of such entity;
- 3.3. "Confidential Information" means any information or data of any nature, tangible or intangible, oral or in writing and in any format or medium, which by its nature or content is, or ought reasonably to be, identifiable as confidential and/or proprietary to the Disclosing Party or which is provided or disclosed in confidence, and which the Disclosing Party or any person acting on behalf of the Disclosing Party may disclose or provide to the Receiving Party or which may come to the knowledge of the Receiving Party by whatsoever means. Without limitation, the Confidential Information of the Disclosing Party shall include the following even if it is not marked as being "confidential", "restricted" or "proprietary" (or any similar designation) –
  - 3.3.1. information relating to the Disclosing Party's business activities, business relationships, clients, products, services, processes, data, and Staff, including agreements to which the Disclosing Party is a party;
  - 3.3.2. the Disclosing Party's technical, scientific, commercial, financial and market information, methodologies, formulae and trade secrets;
  - 3.3.3. the Disclosing Party's architectural information, demonstrations, plans, designs, drawings, processes, process maps, functional and technical requirements and specifications, and the data relating thereto;
  - 3.3.4. Intellectual Property that is proprietary to the Disclosing Party or that is proprietary to an External Party, and data relating to the Clients of the Disclosing Party; and
  - 3.3.5. where the Disclosing Party is the Client, demographic and other data relating to any staff or potential staff member of the Client, which data may be disclosed to

Persuade by the Client in order for Persuade to perform the Services for the Client in terms of this Agreement.

3.3.6. Confidential Information excludes information or data which;

3.3.6.1. is lawfully in the public domain at the time of disclosure thereof to the Receiving Party;

3.3.6.2. subsequently becomes lawfully part of the public domain by publication or otherwise;

3.3.6.3. is or becomes available to the Receiving Party from a source other than the Disclosing Party which is lawfully entitled without any restriction on disclosure to disclose such Confidential Information to the Receiving Party; or

3.3.6.4. is disclosed pursuant to a requirement or request by operation of law, regulation or court order, but then only to the extent so disclosed and then only in the specific instance and under the specific circumstances in which it is obliged to be disclosed;

3.3.7. provided that:

3.3.7.1. the onus shall at all times rest on the Receiving Party to establish that such information falls within such exclusions;

3.3.7.2. the information disclosed will not be deemed to be within the foregoing exclusions merely because such information is embraced by more general information in the public domain or in a Party's possession;

3.3.7.3. any combination of features will not be deemed to be within the foregoing exclusions merely because individual features are in the public domain or in a Party's possession, but only if the combination itself is in the public domain or in a Party's possession; and

3.3.7.4. The determination of whether information is Confidential Information shall not be affected by whether or not such information is subject to, or protected by, common law or statute related to copyright, patent, trademarks or otherwise;

3.4. "Content" means all information regardless of the medium used for the communication of such Content (including, but specifically not limited to, data files, written text, computer software, music, audio files or other sounds, photographs, videos or other images) which may be protected by copyright;

- 3.5. "Content License" means a perpetual, worldwide, royalty-free and sub-licensable license to reproduce, adapt, modify, translate, publish, publicly perform, publicly display and distribute the subject matter of the license;
- 3.6. "Deed of Suretyship" shall mean the Deed of Suretyship annexed to this Agreement, and as referred to more fully in clause 10 hereof;
- 3.7. "Disclosing Party" means the Party disclosing Confidential Information to the Receiving Party;
- 3.8. "Effective Date" they date on which the terms of this Agreement are agreed to by virtue of the Client indicating its/his/her acceptance hereof by Signature, mark or otherwise.
- 3.9. "External Party" means a party other than the Parties to this Agreement;
- 3.10. "Intellectual Property" means the expression and/or representation of an intellectual and/or creative process and includes, but is not limited to, any text, images, data, multimedia, ideas, source code, concepts, know-how, data processing techniques, copyrights, trademarks, logos, patents, designs, inventions;
- 3.11. "Intellectual Property Rights" shall include, but not be limited to, rights in Intellectual Property attaching to any Content –
- 3.11.1. Created, invented and/or developed by Persuade at the Client's specific instance and request pursuant to Services rendered in terms of a Scope of Work ("the Proprietary Content"); and
- 3.11.2. Developed independently and/or owned by Client ("Client's Content"); and/or developed independently and/or owned by Persuade ("Persuade's Content"); and/or developed and owned by any External Party ("External Party Content");
- 3.12. "Interruption Event" means theft, strike, lock-out, load shedding, blackout, fire, explosion, flood, riot, war, accident, act of nature, embargo, legislation, shortage of or a breakdown in transportation facilities, civil commotion, unrest or disturbances, cessation of labour, server downtime, government interference or control, or any other cause or contingency beyond the control of the Party concerned;
- 3.13. "Interrupted Party" means a Party prevented or restricted directly or indirectly from carrying out all or any of its obligations under this Agreement by reason of an Interruption Event;
- 3.14. "Losses" means all indirect, consequential, or incidental losses (including, but not limited to, those in respect of injury, damage to physical property or loss of life), liabilities, costs, expenses, fines, penalties, damage, and claims, loss of profits, and all related costs and expenses (including legal fees on the scale as between attorney and own client, tracing and collection charges, costs of investigation, interest and penalties);

- 3.15. "Persuade" means Persuade Marketing (Pty) Ltd, a private company duly registered and incorporated in accordance with the laws of the Republic of South Africa and with registration number 2017/457769/07;
- 3.16. "Persuade's Associates" means Persuade's officers, servants, agents, contractors or other persons in respect of whose actions Persuade may be held to be vicariously liable;
- 3.17. "Parties" means Persuade and the Client. "Party" shall have a corresponding meaning;
- 3.18. "Quotation" means Persuade's fees and charges associated with the Services, as presented and agreed to by the Client, prior to consenting to the terms of this Agreement.
- 3.19. "Receiving Party" means the Party directly or indirectly receiving Confidential Information from the Disclosing Party;
- 3.20. "Signed", unless the context clearly illustrates otherwise, includes a Signature or other identifying mark, whether effected digitally, by hand or otherwise. "Signature" shall have a corresponding meaning;
- 3.21. "Scope of Work", which may be comprised of more than 1 (One) schedule annexed to this Agreement, means the detailed descriptions of Persuade's roles and responsibilities as well as Services rendered or proposed to be rendered to the Client. The Scope of Work(s) shall be annexed hereto, or hyperlinked herefrom, and forms an integral part of this Agreement and ought to be read as if specifically incorporated herein;
- 3.22. "Scope Variation" means a material change in the Services' scope described in the Scope of Work;
- 3.23. "Services" mean the services to be rendered by Persuade to the Client as defined in the Scope of Work(s) annexed hereto.

#### **4. COMMENCEMENT AND DURATION**

- 4.1. The Client hereby appoints Persuade, which appointment Persuade hereby accepts with immediate effect, to render the Services on the terms and conditions as set out in this Agreement.
- 4.2. This Agreement shall commence on the Effective Date and endure until terminated on the basis catered for in this Agreement.

#### **5. EFFECT OF TERMINATION**

- 5.1. In the event this Agreement is terminated for any reason whatsoever, those clauses which, by way of necessity ought to survive, shall survive beyond such termination.

#### **6. THE SERVICES**

- 6.1. Scope of Work

- 6.1.1. Persuade shall, during the currency of this Agreement, render the Services on the basis set out in the Scope of Work(s) annexed hereto. The Parties agree that the Scope of Work details the extent and nature of the Services and the Client acknowledges that its failure to complete its obligations described in the dependencies portion of the Scope of Work may delay or impair the further performance of the Services.
- 6.1.2. Scope of Works may be amended or wholly replaced by the Parties provided that each amended or replaced version of the Scope of Work shall be effected in writing and be agreed to by way of Signature by both Parties' representatives.
- 6.1.3. Scope of Work amendments and/or replacements may, at Persuade's sole and unfettered discretion, require consequential changes to Persuade's fees payable and delivery timeframe for the Services, as described in the amended or replaced Scope of Work. Persuade shall notify the Client of any such changes in writing, and Services based on such amended or replaced Scope of Work shall commence on acceptance of such changes by the Client, and receipt of any additional fees, if required, into Persuade's designated bank account.
- 6.1.4. Persuade shall not be required to render Services until such time as the relevant Scope of Work is Signed by the Parties, and any required deposits in terms of the Quotation, be paid in full.
- 6.1.5. To the extent a conflict or inconsistency arises between the terms of any Scope of Work, as amended from time to time, and the terms of the main body of this Agreement in respect of the Services' description, the provisions of the Scope of Work, insofar as they pertain to the Services, shall prevail to the extent of such inconsistency.
- 6.1.6. The Services shall, unless specified in the Scope of Work or otherwise agreed in writing, be rendered during business hours.
- 6.1.7. The Client acknowledges and agrees that it is responsible for appropriately evaluating the Services described in the Scope of Work, and reasonably satisfying itself that the relevant Services have been rendered.

## 6.2. Scope Variation

- 6.2.1. Departures from the Scope of Work, shall constitute a Scope Variation.
- 6.2.2. In dealing with Scope Variations, this clause 6.2 must be read in conjunction with the clause pertaining to Scope Variation, if any, in the Scope of Work.

## 6.3. Intellectual Property

- 6.3.1. All Intellectual Property Rights together with all rights, titles and/or interest therein attaching to –

6.3.1.1. the Proprietary Content, shall remain vested in Persuade, and Persuade shall, subject to –

6.3.1.1.1. Persuade receiving payment for the Proprietary Content in full; and

6.3.1.1.2. the Client not materially breaching this Agreement, hereby grant to the Client, which the Client hereby accepts, a non-exclusive Content License in respect of the Proprietary Content, until such time as Persuade has been paid, in full, for the Proprietary Content.

6.3.1.2. Notwithstanding the foregoing;

6.3.1.2.1. the Client's Content shall, at all times remain vested in the Client; and

6.3.1.2.2. Persuade's Content shall, at all times remain vested in Persuade; and

6.3.1.2.3. External Party Content shall, at all times remain vested in the applicable External Party owner,

and no other provisions in this Agreement shall be deemed to be a transfer of the aforesaid Intellectual Property Rights to either Party.

6.3.2. In the event that the Client materially breaches this Agreement, the licence granted to the Client in respect of the Proprietary Content shall automatically terminate should the Client fail to remedy its breach of this Agreement in the time period afforded to the Client in terms of this Agreement.

6.3.3. Persuade and the Client shall not –

6.3.3.1. remove and/or tamper with the copyright, trademark and/or other proprietary notices contained on or in the Proprietary Content, Persuade's Content and/or External Party Content and shall reproduce such notices on all copies of such Content;

6.3.3.2. save as may be required for the fulfilment of this Agreement, reproduce or modify Persuade's Content; or

6.3.3.3. cause or allow the discovery by any External Party of the source code of any software owned by Persuade; or

6.3.3.4. rent or lease Persuade's Content or its direct derivatives; or

6.3.3.5. distribute Persuade's Content to External Parties.

## **7. FEES**

- 7.1. The Client shall, as consideration for the Services to be rendered by Persuade in terms of this Agreement, effect payment to Persuade of its fees as set out in the Scope of Work.
- 7.2. Payments
  - 7.2.1. The Client agrees that it shall be liable for Persuade's fees Project Fees associated with partially rendered Services where the Client is responsible for interruptions to the Services or otherwise delays their completion.
  - 7.2.2. In the event of the Client failing to timeously effect payment of any amount due to Persuade in terms of this Agreement, Persuade shall without prejudice to any other rights which it may have in terms of this Agreement or otherwise at law, be entitled to –
    - 7.2.2.1. suspend the provision of the Services in terms of this Agreement for any period in which any payment remains outstanding; and/or
    - 7.2.2.2. retain any or all relevant materials under Persuade's effective control until such time as the outstanding amounts are paid in full.

## **8. CONFIDENTIALITY**

- 8.1. The Receiving Party shall not, without the prior written consent of the Disclosing Party (which consent may, for the avoidance of doubt, be withheld in the unfettered discretion of the Disclosing Party) disclose such Confidential Information to any person, and/or make use of such Confidential Information for any purposes other than in connection with the rendering of the Services.
- 8.2. The Receiving Party may disclose Confidential Information to its officers, employees and subcontractors but only to the extent required for the purposes of the rendering of the Services pursuant to the provisions hereof.
- 8.3. The Receiving Party shall inform any officer, employee or subcontractor to whom it discloses such Confidential Information, that such information is confidential and shall instruct them to keep it confidential and not to disclose it to any External Party (other than those persons to whom it has already been disclosed in accordance with the terms of this Agreement), on the basis that the Disclosing Party is responsible for any disclosure, in breach of this clause 9, by the person to whom it is disclosed.
- 8.4. Notwithstanding the provisions of this clause 8 –
  - 8.4.1. either Party may make reference to this Agreement, the Parties' identities and a general description of the Services rendered pursuant to and in terms of this Agreement, unless such information is explicitly and specifically identified as



Confidential Information on written notice by either Party to the other in the Scope of Work; and

- 8.4.2. either Party shall be entitled in its discretion from time to time to publish and/or to make known to members of the public, including (without limitation) its shareholding, the details of its financial performance, its financial performance forecast and the Party's strategic planning.

## **9. LIABILITY**

### 9.1. Disclaimers and limitation of liability -

- 9.1.1. To the fullest extent permissible by law, Persuade disclaims all warranties, any representations of fitness for purpose of any kind, whether express or implied in respect of the Services and the Client utilises the Services at its own risk.
- 9.1.2. The Client agrees that Persuade is unable to, and is not required to, guarantee a particular result or set of commercial results.
- 9.1.3. The Client agrees that neither Persuade nor Persuade's Associates shall be liable for any Losses however arising and whatever the cause including, but not limited to, Losses arising as a result of the Client's negligence, and/or failure to furnish Persuade with adequate information it requires in order to render the Services.
- 9.1.4. The Client irrevocably waives any claims it may have against Persuade arising out of, or related to (and agrees not to institute any proceedings in respect of), the Services or this Agreement more than 1 (One) year after the cause of action relating to such claim or legal action arose.
- 9.1.5. Persuade's liability to the Client pursuant to the provisions of 9.1.4 shall furthermore be limited to the Project Fees for one calendar month.
- 9.1.6. The Client hereby indemnifies Persuade and Persuade's Associates from any Losses, which may arise as a result of the Client's unlawful conduct, wilful misconduct, negligence and/or gross negligence.

## **10. BREACH**

- 10.1. Subject to any other provision of this Agreement providing for the remedy of any breach of any provision hereof, should either Party ("the Offending Party") commit a breach of any provision of this Agreement and fail to remedy such breach within 10 (Ten) days of receiving written notice from the other Party ("the Aggrieved Party") requiring the Offending Party to do so, then the Aggrieved Party shall be entitled, without prejudice to its other rights in law to -
  - 10.1.1. cancel this Agreement, provided the breach in question is a breach going to the root of this Agreement; or

- 10.1.2. claim specific performance of all of the Offending Party's obligations whether or not due for performance,

in either event, without prejudice to the Aggrieved Party's right to claim damages.

## **11. GOVERNING LAW AND JURISDICTION**

- 11.1. This Agreement shall be governed in all respects by and shall be interpreted in accordance with the laws of the Republic of South Africa.
- 11.2. In the event of a dispute, the Parties shall endeavour to resolve such dispute informally within 14 days of such dispute being raised by either Party, failing which, the Parties hereby consent and submit to the jurisdiction of the appropriate Magistrate's Court situated in the province of the Western Cape.

## **12. INTERRUPTION EVENT**

- 12.1. An Interrupted Party shall be relieved of its obligations in terms of this Agreement during the period that the Interruption Event and its consequences continue, only to the extent so prevented, and shall not be liable for any Losses which the other Party may suffer as a result.
- 12.2. The Interrupted Party shall notify the other Party of an Interruption Event in writing as soon as it becomes reasonably aware of the Interruption Event as such.
- 12.3. In the event that an Interruption Event exceeds –
  - 12.3.1. 20 (Twenty) consecutive days, and in the event that alternative services and/or facilities cannot be provided by the Interrupted Party or its nominee, the Parties agree to meet and negotiate the suspension, termination or restructuring of this Agreement; or
  - 12.3.2. 3 (Three) consecutive months, and in the event that alternative services and/or facilities cannot be provided by the Interrupted Party or its nominee, either Party may terminate this Agreement and shall only remain liable for performance under this Agreement which fell due immediately prior to the Interruption Event.

## **13. NON-DISPARAGEMENT**

- 13.1. During the term of this Agreement and thereafter, the Client agrees to take no action which is intended, or would reasonably be expected, to harm Persuade, its employees, contractors, shareholders and investors or its or their reputation or which would reasonably be expected to lead to unwanted or unfavourable publicity to Persuade, its employees, contractors, shareholders and investors. This includes any action that reveals, discloses, incorporates, is based upon, discusses, includes or otherwise involves any confidential or proprietary information of any employees, contractors, shareholders and investors, or to

malign, harm, disparage, defame or damage the reputation or good name of any employees, contractors, shareholders and investors.

#### **14. SEVERABILITY**

- 14.1. If any clause or term of this Agreement shall have been held by a court of competent jurisdiction to be invalid, unenforceable or illegal, then the remaining terms and provisions of this Agreement shall be deemed to be severable therefrom and shall continue in full force and effect unless such invalidity, unenforceability or illegality goes to the root of this Agreement.

#### **15. DOMICILIUM AND NOTICES**

- 15.1. The Parties choose as their *domicilia citandi et executandi* for all purposes under this Agreement, whether in respect of court process, notices or other documents or communications of whatsoever nature. The Parties chosen *domicilia citandi et executandi* is set out as follows:

Persuade: 701 Garden City Heights, 4 Lonsdale Way, Pinelands, Western Cape, 7405;  
Email address: [info@persuade.co.za](mailto:info@persuade.co.za).

Client: As set out on the first page of this Agreement.

- 15.2. Any Party hereto shall be entitled to change its domicilium from time to time, provided that any new domicilium selected by it shall be an address other than a box number, and shall be in the Republic of South Africa, and any such change shall only be effective upon receipt of notice in writing by the other parties of such change.
- 15.3. All notices, demands, communications or payments intended for any Party shall be made or given at such Party's domicilium for the time being.
- 15.4. A notice sent by one Party to another Party shall be deemed to be received:
- 15.4.1. on the same day, if delivered by hand;
  - 15.4.2. one day after transmission if sent by email;
  - 15.4.3. on the third day after despatch, if sent by prepaid courier.
- 15.5. Notwithstanding anything to the contrary herein contained, a written notice or communication actually received by a Party shall be an adequate written notice or communication to it notwithstanding that it was not sent to or delivered at its chosen *domicilium citandi et executandi*.

#### **16. MISCELLANEOUS**

- 16.1. Except as otherwise set forth referred to in this Agreement, this document constitutes the sole record of the Agreement between the Parties in regard to the subject matter thereof, and supersedes all prior discussions, agreements and understandings of whatsoever nature between Parties as to such subject matter.
- 16.2. No Party shall be bound by any express or implied term, representation, warranty, promise or the like, not recorded herein.
- 16.3. No addition to, variation or consensual cancellation of this Agreement, or this clause, shall be of any force or effect unless in writing and Signed by or on behalf of all the Parties.
- 16.4. No indulgence, which any of the Parties ("the Grantor") may grant to any other or others of them ("the Grantee(s)"), shall constitute a waiver of any of the rights of the Grantor, who shall not thereby be precluded from exercising any rights against the Grantee(s) which might have arisen in the past or which might arise in the future.
- 16.5. The Parties undertake at all times to do all such things, to perform all such acts and to take all such steps and to procure the doing of all such things, the performance of all such actions and the taking of all such steps as may be open to them and necessary for or incidental to the putting into effect or maintenance of the terms, conditions and import of this Agreement.



