

## **SERVICE LEVEL AGREEMENT**

### **(INCLUDING A WAIVER AND INDEMNITY)**

#### **1. Parties:**

- 1.1 Uniteam Investments 101 (Pty) Ltd t/a PSI Services; and
- 1.2 The Customer.

#### **2. DEFINITIONS**

Unless otherwise expressly stated, or the context otherwise requires, the words and expressions listed below shall, when used in this Agreement, including this definitions clause, bear the meanings ascribed to them:

- 2.1 **"Agreement"**: this Service Level Agreement, read with and incorporating any annexures attached;
- 2.2 **"Business Day/ Day"**: any day (excluding Saturday, Sunday and a public holiday) in the Republic of South Africa;
- 2.3 **"Commencement Date"**: the date on which PSI commences rendering the Services to the Customer or the Signature Date, whichever occurs first;
- 2.4 **"CPA"**: the Consumer Protection Act 68 of 2008;
- 2.5 **"Customer/s"**: collectively and individually as the context requires, the customers of PSI as detailed in Annexure "A" hereto;
- 2.7 **"Parties"**: the parties to this Agreement and "Party" shall refer to any one of them as required by the context;
- 2.8 **"PSI"**: Uniteam Investments 101 (Pty) Ltd t/a PSI Services;
- 2.8 **"Services"**: the services set out in clause 4 of this Agreement;
- 2.9 **"Signature Date"**: the date on which the last Party to sign this Agreement does so; and

### 3. INTERPRETATION

- 3.1 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 this Agreement nor any clause hereof.
- 3.2 Unless a contrary intention clearly appears, words importing:
- 3.2.1 any one gender include the other genders;
- 3.2.2 the singular includes the plural and vice versa; and
- 3.2.3 natural persons include created entities (incorporated or unincorporated) and vice versa;
- 3.3 If any provision in a definition is a substantive provision conferring rights or imposing obligations on a Party, notwithstanding that it is only in the definition clause, effect shall be given to it as if it were a substantive provision of the Agreement.
- 3.4 Expressions defined in this Agreement shall bear the same meanings in schedules or annexures to this Agreement (if any) which do not themselves contain their own conflicting definitions.
- 3.5 If a term is defined within the context of any particular clause in this Agreement, that definition, unless it is clear from the clause in question that the definition has limited application to the relevant clause, shall have the same meaning throughout this Agreement.
- 3.6 The rule that a contract shall be interpreted against the party responsible for the drafting or preparation of the contract (the *Contra Pro Ferentem* Rule) shall not apply to the interpretation of this Agreement.
- 3.7 The words "include", "including" and "in particular" shall not be construed as limiting the generality of any preceding word/s or introducing an exhaustive list.
- 3.8 Any reference in this Agreement to any other agreement or document shall be construed as a reference to such other agreement or document as same may have been, or may from time to time be, amended, varied, novated or supplemented.

3.9 When, in this Agreement, a particular number of business days is provided for between the happening of one event and another, the number of days must be calculated by:

3.9.1 excluding the day on which the first such event occurs;

3.9.2 including the day on or by which the second event is to occur; and

3.9.3 excluding any public holiday, Saturday or Sunday in South Africa that falls on or between the days contemplated in clauses 3.9.1 and 3.9.2 respectively.

3.10 This Agreement may be signed in one or more counterparts all of which shall be considered one and the same Agreement and shall become effective when a counterpart has been signed by each of the Parties.

#### **4. PREAMBLE**

4.1 PSI undertakes to render information technology ("IT") services ("Services") to the Customer, at the Customer's special instance and request. These Services shall include, but not be limited to:

4.1.1 IT products, internet and networking connectivity and general services;

4.1.2 remote and on-site support;

4.1.3 data protection and security; and

4.1.4 Cloud hosting services.

#### **5. EXCLUSIVITY AND APPOINTMENT**

5.1 The parties hereby agree and record that this Agreement and the appointment by the Customer of PSI as a service provider is not one of exclusivity nor shall this Agreement be deemed to create of any form of agency, partnership or joint venture between the parties.

5.2 Either party shall be entitled to enter into subsequent agreements that may compete with this Agreement and/or the other party.

5.3 Subject to the signing of this Agreement, PSI accepts the appointment as a service provider to the Customer.

**6. DURATION AND TERMINATION**

6.1 This Agreement shall operate in perpetuity until terminated by either party in terms of this clause 6, read with clause 11, subject to an initial period of twelve (12) months in which the Agreement shall not be capable of termination without the written consent of PSI.

6.2 In the event of either party wishing to terminate this Agreement after the initial period, the provisions of clause 11 shall apply.

**7. SERVICES AND OBLIGATIONS**

7.1 PSI shall render Services to the Customer, as per clause 4 of this Agreement, alternatively as may be amended from time to time and with the revised Services being annexed to this Agreement in the form of an updated schedule.

7.2 PSI shall render and perform the Services in the utmost good faith.

7.3 In rendering the Services prescribed in this Agreement, PSI shall be and is hereby authorised to appoint any sub-contractors and/or agents ("Agent") as may be required for the proper performance of the Services. If PSI is required to appoint an Agent, written notice of this appointment will be provided to the Customer.

7.6 PSI shall ensure that the necessary technical skill, diligence and care is applied that could be expected from a reasonable service provider in the position of Customer and in terms of the applicable legislative requirements.

7.7 The Parties shall each appoint a contact person who shall represent them and be the point of contact for all purposes of this Agreement. The respective contact persons are as set out below:

7.7.1	PSI's Contact Person Name:	Email: Telephone Number:
7.7.2	The Customer's Contact Person Name:	Email: Telephone Number:

7.8 The appointment of such persons referred to in clause 7.7 may only be altered on written notice to the other Party.

7.9 Time is not a material term of this Agreement unless agreed to in writing by the Parties prior to the rendering of Services. However, PSI will utilise all reasonable commercial efforts to address emergency requests as expeditiously as possible.

- 7.10 In consideration for the provision of the Services by PSI to the Customer:
- 7.10.1 the Customer shall effect payment of any amounts quoted and/or agreed on receipt of an invoice from PSI; and
  - 7.10.2 in the event that no price is stipulated for the Services, the Customer shall be liable for the Services at PSI's usual hourly rates (which do not need to be stipulated); and
  - 7.10.3 should the Customer require PSI to address data breaches or network or device infection by malware, ransomware or the like, PSI shall be entitled to its usual rates.
- 7.11 Any invoice or statement, as the case may be, rendered by PSI to the Customer, shall become due, owing and payable on presentation.
- 7.12 The Customer shall effect payment on or before thirty (30) days from date of invoice only, failing which, interest shall accrue on all outstanding amounts at the maximum rate permissible in law.
- 7.13 The rendering of Services by PSI to the Customer shall be subject to:
- 7.13.1 PSI's fair usage policy;
  - 7.13.2 the Customer's account being up to date and in good standing; and
  - 7.13.3 PSI's ongoing compliance with vendor licenses, terms, conditions and agreements, as the case may be.
- 7.14 In rendering the Services, PSI shall utilise ESET Smart Security Protection for all devices connected directly to the LAN or WIFI network. Should the Customer grant authority to use the network to a visitor, this access will be subject to PSI's guest network policy which may *inter alia* limit the ability by the visitor to access certain services.
- 7.15 In order for PSI to render data protection as prescribed in clause 7.14 *supra*, the Customer undertakes to:
- 7.15.1 not remove or limit end point protection;
  - 7.15.2 allow upgrades to the end point protection; and
  - 7.15.3 comply with industry standard safe computing practices.
- 7.16 The Customer's compliance with clause 7.15 shall be a material term of this Agreement.

## 8. **WARRANTY AND INDEMNITIES**

- 8.1 The Parties undertake, for the duration of this Agreement, to act in good faith, in each other's best interests and not to utilise each other's confidential information, as referred to in clause 9 below, in any way which could be detrimental to the other Party.
- 8.2 The Customer indemnifies PSI against any claims of any nature whatsoever made against PSI, save for claims occasioned solely through the gross negligence of PSI or its nominated Agent.
- 8.3 The Customer further indemnifies PSI and holds it harmless against all claims of any nature arising out of any loss or damage to the Customer, its property or that of its employees, agents, contractors, consultants, representatives of customers and/or the injury to any of its employees, agents, contractors, consultants, representatives or customers arising from the rendering of Services as provided for in this Agreement, save in the event that such loss, damage, or injury occurred as a result of any act or omission on the part of PSI, its employees, agents, contractors, consultants and representatives which was grossly negligent

## 9. **CONFIDENTIALITY**

- 9.1 The Parties agree that the terms of this Agreement and all confidential and proprietary information of the Parties communicated to them in connection with (including negotiation and drafting) this Agreement shall be received in strict confidence and be used only for the purposes of this Agreement.
- 9.2 Each Party shall use the same means as it uses to protect its own confidential information to prevent the disclosure and to protect the confidentiality of such information. No such information shall be disclosed by the recipient Party, its agents, representatives or employees without the prior written consent of the other Party.
- 9.3 The provision of this clause 9 shall not apply to information which is:
- 9.3.1 disclosed by the Customer during the course and scope of rendering the Services;
  - 9.3.2 publicly known or becomes publicly known through no unauthorised act of the recipient Party;
  - 9.3.3 rightfully received by the recipient Party from a third party;
  - 9.3.4 independently developed by the recipient Party without use of the other Party's information;
  - 9.3.5 disclosed by the other Party to a third party without similar restrictions;
  - 9.3.6 required to be disclosed pursuant to a requirement of a governmental agency or any applicable law, so long as the Party required to disclose the information gives the other Party prior notice of such disclosure;

9.3.7 publicly disclosed with the other Party's written consent; and

9.3.8 any announcement intended solely for internal distribution by either Party or to any disclosure required by legal, accounting or regulatory requirements beyond the reasonable control of the Party in question.

9.4 The Parties agree further not to compete with each other for business and/or customers by utilising confidential information obtained by it, its employees or its representatives in order to encourage, entice, incite, persuade or induce any of the other Party's customers to utilise its services as opposed to the other Party's services, or to compete with that Party in general for any business on behalf of any other customer of that Party's or otherwise.

9.5 The obligation contained in this clause 9 shall endure, even after the termination of this Agreement, without limit in point of time except and until such confidential information enters the public domain other than by breach hereof

## **10. ARBITRATION**

10.1 Should any dispute arise between the Parties ("Dispute") concerning the interpretation of this Agreement, or which relates to rights or obligations (except for which shall be dealt with in accordance with clause 13) under this Agreement or any matter arising out of this Agreement in respect of which no mechanism for resolution is provided for elsewhere in this Agreement, the Parties shall endeavour to resolve the Dispute by negotiation. This clause shall exclude actions for non-payment by the Customer, in which the sole discretion to refer the Dispute regarding non-payment shall be exercised by PSI.

10.2 This shall entail one of the Parties inviting the other in writing to meet and to attempt to resolve the Dispute within 10 Days.

10.3 If the Dispute has not been resolved by such negotiation within 10 days then the Parties or any one of them shall:

10.3.1 submit the Dispute to mediation to be administered by the Arbitration Foundations of South Africa ("AFSA"), upon such terms as agreed between the Parties and the secretariat of AFSA; and

10.3.2 failing agreement as aforesaid within 10 days of the Dispute being submitted to mediation, either Party shall refer the Dispute to arbitration as provided below.

10.4 The award of the mediator shall become final and binding within 10 days of delivery thereof to the Parties, unless any of the Parties disputes the Mediator's award by written notice to the other Parties within the aforesaid 10-day period, in which event the Dispute shall be referred to arbitration in accordance with the provisions below.

- 10.5 Failing agreement as referred to above or in the event of either of the Parties furnishing his notice of dispute within 10 days of the mediator's award as envisaged, the Dispute shall be submitted to arbitration for final resolution in accordance with the rules of AFSA by an arbitrator appointed by AFSA, whose decision shall be final and binding.
- 10.6 Unless otherwise agreed in writing by all the Parties, any such mediation or arbitration shall be held in Durban, South Africa.
- 10.7 Notwithstanding anything to the contrary contained in this clause, any Party shall be entitled to apply for, and if successful, be granted an interdict or other interim and/or urgent relief from any Court having competent jurisdiction.
- 10.8 There shall be no right of appeal or review of an arbitration award and any award made in terms of this clause shall be of final and binding effect on the Parties.
- 10.9 Any failure by a party to comply with an award, shall be a material breach of this Agreement.

## **11. BREACH AND TERMINATION**

11.1 If any of the Parties breaches any provision of this Agreement ("Defaulting Party") and, if such breach is capable of being remedied, fails to remedy the breach within 10 Days after written notice has been given to the Defaulting Party by any other Party requiring the breach to be remedied, then the other Party shall be entitled to:

11.1.1 seek an order for specific performance against the Defaulting Party; or

11.1.2 cancel this Agreement in relation to the Defaulting Party; and / or

11.1.3 claim any damages suffered by the Aggrieved Party;

without prejudice to any other rights and remedies existing under common law, statute or this Agreement. If the Customer is the Defaulting Party, damages will include any cancellation penalties that PSI may be liable for in respect of vendor licenses.

11.2 The Defaulting Party shall be liable for all costs and expenses (calculated on an Attorney and Own Client scale) incurred because of or in connection with any breach.

11.3 This Agreement shall be capable of being terminated by either Party (after the initial period prescribed in clause 6) subject to the provision of three (3) calendar month's written notice ("Termination Notice") being provided to the other Party. If the Defaulting Party is PSI:

11.3.1 PSI is to be notified in writing of the default and once notified, will have 3 months to remedy the default. Failing PSI's remedying of the default, the Customer will be entitled to deliver its Termination Notice, as prescribed in clause 11.1 *supra*.

11.4 Any of the following acts shall be deemed as a material breach of this Agreement and render the Agreement capable of immediate termination, without the provision of the Termination Notice:

11.4.1 the Defaulting Party ceases to carry on business;

11.4.2 the Defaulting Party is placed under provisional or final liquidation;

11.4.3 the Defaulting Party undergoes a substantial change in ownership and fails to notify the other Party; and

11.4.4 the Defaulting Party has a judgment granted against it and fails to:

11.4.4.1 effect payment of the judgment debt; and/ or

11.4.4.2 takes steps to rescind the judgment,

within twenty (20) Days of becoming aware of the judgment against it.

11.5 Where the CPA will have application, namely with regards to the termination of this Agreement, the provisions of the CPA shall supersede this Agreement.

## 10. DOMICILIUM

10.1 The Parties respectively choose as their *domicilia citandi et executandi* for the purposes of court process and formal notices provided for in this Agreement, the following addresses:

Name of Party	Physical Address	Email Address
PSI	Atrium Court, 50 Dullah Omar Street, Durban, South Africa	<a href="mailto:shanem@psiservices.co.za">shanem@psiservices.co.za</a>
The Customer		

- 10.2 Any notice or communication required or permitted to be given in terms of this Agreement shall be valid and effective only if in writing, including as defined in the Electronic Communications and Transactions Act, 25 of 2002.
- 10.3 A Party shall be entitled to change its domicilium address from time to time, by way of written notice to the other Party specifying its new domicilium address provided always, however, that the new address is within the Republic of South Africa and is not a post office or post restante address.
- 10.4 Any notice to a Party:
- 10.4.1 sent by prepaid registered post (by airmail if appropriate) in a correctly addressed envelope to it at its domicilium address shall be deemed to have been received on the 5th Business Day after posting (unless the contrary is proved);
  - 10.4.2 delivered by hand to a responsible person during ordinary business hours at its domicilium address shall be deemed to have been received on the day of delivery;
  - 10.4.3 transmitted per email to its chosen email address shall be deemed to have been received on the day of transmission;
  - 10.4.4 shall be written in English.
- 10.5 Notwithstanding anything to the contrary herein contained a written notice actually received by a Party shall be an adequate written notice to the recipient notwithstanding that it was not sent to or delivered at the recipient's chosen domicilium address.

## **11. GENERAL**

- 11.1 This Agreement constitutes the whole Agreement between the Parties relating to the subject matter hereof.
- 11.2 No amendment or consensual cancellation of this Agreement or any provision hereof, and no extension of time, waiver or relaxation or suspension of any of the provisions of this Agreement shall be binding unless recorded in writing and signed by the Parties (or in the case of an extension of time, waiver or relaxation or suspension, signed by the Party granting such extension, waiver or relaxation).
- 11.2.1 "Writing" includes electronic communication as defined in the Electronic Communications and Transactions Act No. 25 of 2002.
  - 11.2.2 Where an amendment, novation and cancellation of this Agreement is required to be signed by the Parties, the signing must be a manuscript signature and excludes digital signatures, unless an Advanced Digital Signature is used.

- 11.3 No extension of time or waiver or relaxation of any of the provisions of this Agreement shall operate so as to preclude such Party from thereafter exercising that Party's rights strictly in accordance with this Agreement.
- 11.4 To the extent the law permits, neither Party shall be bound by any representation or warranty not recorded in this Agreement, irrespective of whether the representation or warranty induced the Parties to conclude the Agreement and irrespective of whether the representation or warranty was made negligently or not.
- 11.5 This Agreement shall be binding on all the Parties and on their estates, executors, curators, debt counsellors, administrators, liquidators, business rescue practitioners, successors-in-title or assigns, as may be applicable in the circumstances.
- 11.6 Any provision in this Agreement which is presently or in the future becomes illegal, invalid or unenforceable shall, to the extent of such illegality, invalidity or unenforceability, be treated as if it had not been drafted and severed from the Agreement, without invalidating the remaining provisions of the Agreement.
- 11.7 The rights and obligations of the Parties in respect of this Agreement shall not be ceded or assigned without the prior written consent of all the Parties, save to the extent that this Agreement expressly provides to the contrary.
- 11.8 The signatories to this Agreement warrant that they have the requisite authority to conclude this Agreement.
- 11.9 The Parties warrant that they are duly authorised to conclude this Agreement and that there is no restriction, condition and/or prohibition which prohibits the conclusion of this Agreement or which has not been satisfied, as the case may be.

<b><u>For and on behalf of PSI</u></b>	
Signature of Representative	
Date	
Place	
<b><u>For and on behalf of The Customer</u></b>	
Signature of Representative	
Date	
Place	