



SERVICE LEVEL AGREEMENT

between

LENOMEDIA (Sole Proprietor)

(hereinafter referred to as "LENOMEDIA")

and

(name of client or contracting party)

Registration Number _____

Lawfully represented by _____

In terms of a resolution to be supplied to LENOMEDIA if applicable, failure by which the undersigned party agrees to be liable for any damages or debts due to LENOMEDIA, jointly and severally.

("Hereinafter referred to as "THE CLIENT")

1. Introduction and definitions

- 1.1 THE CLIENT seeks graphic or web design services to be provided by LENOMEDIA in the field of advertising and media production.
- 1.2 LENOMEDIA has agreed to render such production services to THE CLIENT.
- 1.3 The parties agree to record in writing the terms and conditions on which the said services will be made available.
- 1.4 For purposes of this agreement:

words in the singular shall include the plural and one gender shall include the others; unless the context indicates a contrary intention, "**confidential information**" means all information of whatsoever nature relating to the business, affairs and interests of a party which comes into the possession of the other party, any of the employees of that party or any of that party's independent consultants (together, "the affected parties"), or becomes known to it by whatsoever means during the course of carrying out its work under this

agreement, or the results of any research conducted during the course of this agreement, other than information

- 1.4.1.1 which at the time that it was disclosed to such affected party or came into its possession, was already known to it from other sources or was in the public domain, or thereafter comes into the public domain otherwise than through any default on the part of the affected party; or
- 1.4.1.2 which becomes known to such affected party without restriction as to its use and disclosure from a third person with valid title to that information; or
- 1.4.1.3 which was or is developed by or is known to such affected party either before or subsequent to such information being disclosed by THE CLIENT, and LENOMEDIA, such affected party having no knowledge of the content of such disclosure.
- 1.4.2 THE CLIENT's **representative** shall be _____
- 1.4.3 **LENOMEDIA's representative** shall be Heilene Oosthuizen. Heilene Oosthuizen shall sign all agreements and amendments hereto and where necessary both parties will be afforded reasonable opportunity to consult with their respective attorneys.
- 1.4.4 **No Part** of this agreement should be **read in isolation** – the headers are only there for convenience.

2. Appointment

THE CLIENT appoints LENOMEDIA to provide the services and LENOMEDIA accepts such appointment to the satisfaction of THE CLIENT's representative, in strict accordance with the requirements of this agreement and Annexure "A".

3. Duration and Deadline

The **first proof** to be delivered by Leno Media on or before the end of 3 weeks starting from the date that all relevant content, as well as 50% payment have been received for the contracted work. If vast changes need to be made, the timeframe needed will be communicated to THE CLIENT immediately.

4. Fees and disbursements

- 4.1 THE CLIENT agrees to pay LENOMEDIA a **50% deposit** of the quoted amount upon signature of this agreement for work to commence. In exchange, LENOMEDIA will progress to approximately 50% of the work to be completed. Should LENOMEDIA fail to enforce this clause, the indulgence may not be interpreted by THE CLIENT to construe a waiver of any of LENOMEDIA's rights.
- 4.2 **Remaining fees** will be payable based on the progress made as is envisaged in **paragraph 5 of "Annexure A"** and clients will be invoiced accordingly. Where LENOMEDIA pays for external material (e.g. photos) in US\$ or other currencies, the actual cost in Rand at the time of the Transaction will be billed to THE CLIENT, irrespective of changes in the **exchange rate**, later.
- 4.3 It is common practice for LENOMEDIA to charge according to **milestones** reached and THE CLIENT agrees to adjust the payable remuneration according to the actual milestones reached. The milestones are not necessarily connected to any specific date (although deadlines will be adhered to in as far as it is by any means possible for LENOMEDIA), but to the milestones that was actually reached on a percentage scale, which percentage may be expressed in LENOMEDIA's sole discretion. LENOMEDIA may work faster than anticipated and it may then happen that two or more milestone-payments may become payable simultaneously, which LENOMEDIA is immediately entitled to, with a 48 hour grace period for payment.
- 4.3.1 The **total price** for these services rendered shall not exceed _____ **(stipulate the amount in digits)**
_____ **(stipulate the amount in words)** as far as the work stipulated in "Annexure A" is concerned, subject to THE CLIENT making provision for a **contingency budget** over and above the afore stated amount of not more than **10%**.
- 4.3.2 Should LENOMEDIA advise that an increase in the budget would be necessary (due to the newly defined nature of the task at hand), LENOMEDIA shall engage with THE CLIENT in advance to find a solution to the change in circumstances. LENOMEDIA shall nevertheless professionally endeavour to provide the services herein within the approved budget.
- 4.4 THE CLIENT shall provide final approval of the deliverables that form part of the services as per the **approval milestones** set out in Annexure "A". In the event that

THE CLIENT approves a deliverable at the applicable milestone and requires any changes after such approval, LENOMEDIA shall be entitled to charge THE CLIENT for such additional work at R400.00 per hour (i.e. our normal hourly tariff).

- 4.5 The accepted quote or estimate does not provide for any **Value Added Tax**.

5. Confidentiality and confidentiality contracts

- 5.1 Each party undertakes during this agreement and at all times thereafter, to **hold in trust** and confidence all confidential information which comes into its possession or which becomes known to it in the course of LENOMEDIA's consultancy, and not to disclose or make use of that confidential information in any way whatsoever, or in any way whatsoever make the confidential information available to others, without the prior written consent of the other party.
- 5.2 LENOMEDIA undertakes to procure that every person who assists it in the performance of its services in terms of this agreement, whether that person is an employee of LENOMEDIA, an independent consultant, or an employee of an independent consultant, shall acknowledge the matters referred to in 5.3 and agree to be bound by an undertaking in the form of that referred to in 5.1.
- 5.3 LENOMEDIA acknowledges that the results of the research conducted by LENOMEDIA, and every person who assists LENOMEDIA in terms of this agreement, will belong to LENOMEDIA absolutely, and that they will not be entitled to any payment for those results or for carrying out any research, whether in the form of a **royalty or otherwise**, other than the fees payable to LENOMEDIA in terms of this agreement.
- 5.4 The **data of THE CLIENT** will at all times remain the property of THE CLIENT. LENOMEDIA is authorised to have access to and to make use of such data as is appropriate for the performance by LENOMEDIA of its obligations under this agreement. Upon termination or expiration of this agreement for any reason, such data will, at the election of THE CLIENT, be either erased from all data storage media maintained by LENOMEDIA returned to THE CLIENT in such form as THE CLIENT may reasonably request. The data of THE CLIENT will not be used by LENOMEDIA for any purpose other than in accordance with this agreement. On expiration or termination of the agreement LENOMEDIA will issue to THE CLIENT a certificate stating that it has complied with its obligations stated herein, on demand.

6. Intellectual property rights and licence

- 6.1 THE CLIENT acknowledges and undertakes to procure that LENOMEDIA's **employees and independent consultants** acknowledge that LENOMEDIA will become the owner of the intellectual property rights in any work which is eligible for intellectual property rights and which is created by the above parties in the course and scope of providing services in terms of this agreement.
- 6.2 Insofar as it may be necessary, LENOMEDIA automatically cedes and assigns to THE CLIENT all **intellectual property rights** in any work created or executed by it in the course and scope of this consultancy, provided that LENOMEDIA's Accounts are paid in full, and undertakes to procure that LENOMEDIA's Owners, employees and independent consultants likewise cede and assign such intellectual property rights at the very end of the project and provided that LENOMEDIA's Account is paid in full.
- 6.3 LENOMEDIA undertakes not to exercise any residuary rights and undertakes to procure that the affected parties shall not exercise any residuary rights in respect of any work created or executed by it or them in the course and scope of this consultancy.
- 6.4 LENOMEDIA undertakes to assist or support THE CLIENT to the best of its ability with any application which THE CLIENT may see fit to make for any form of intellectual property protection, whether in the form of a foreign or South African **copyright**, patent or design right or otherwise, in respect of any concept, idea, process, method or technique which may be discovered by any of the affected parties in the course of performing services in terms of this agreement, at the agreed hourly fee.
- 6.5 For the purposes of this agreement, the term "intellectual property rights" shall include, but shall not be limited to, copyright and **patent and design and trademark rights**.
- 6.6 THE CLIENT shall be entitled to exploit the above rights by **licensing** or portions thereof (and any derivatives) to third parties.

- 6.7 In the event that a third party purchaser requires **customisation** and production, recommend the services of LENOMEDIA, and LENOMEDIA and the third party shall enter into a separate contract.
- 6.8 In the event that THE CLIENT requires further services in regard to the delivered deliverables, LENOMEDIA shall have the **right of first refusal** to provide such services to THE CLIENT.

7. Risk and Delivery

- 7.1 The risk in the deliverables arising from the services to be provided by LENOMEDIA shall **pass to THE CLIENT upon THE CLIENT's signing off** of the final products. Any amendments thereafter shall be performed only upon the payment of additional service fees, as agreed to between LENOMEDIA and THE CLIENT.

8. Breach

- 8.1 If any party breaches any provision of this agreement and remains in breach for **7 days after receipt** of written notice from the other party requiring the defaulting party to rectify the breach, or if any party repudiates this agreement, the other party will be entitled to **cancel this agreement**.
- 8.2 The innocent party's remedies in terms of this clause are without prejudice to any other remedy to which the innocent party may be entitled in law.
- 8.3 Notwithstanding anything to the contrary herein contained, LENOMEDIA shall **not be liable for any indirect or consequential damages** which THE CLIENT may suffer as a consequence of the performance by LENOMEDIA of its services hereunder.

9. Force majeure (“Act of God”)

- 9.1 Either party shall be **relieved of liability** for the non-performance or defective performance of any of its obligations under this agreement caused by an act of force majeure beyond the reasonable control of that party.
- 9.2 A party subject to force majeure shall as soon as possible notify the other party in writing of the circumstances amounting to force majeure and shall provide an estimate (which shall be updated in writing from time to time) of when those circumstances are expected to cease to apply.
- 9.3 In conditions of force majeure, each party shall take all reasonable steps by whatever lawful means are available to resume all performance of the parties' obligations under this agreement as soon as reasonably possible and shall discuss with the other party ways and means to overcome such conditions.
- 9.4 If conditions of force majeure persist continuously in respect of a party for a period in **excess of six weeks** and have a material adverse effect on the other party, and the parties are within such period unable to reach written agreement on amendments to the relevant provisions of this agreement to take into account such conditions, the other party may terminate this agreement with immediate effect on written notice.

10. Liability

- 10.1 Notwithstanding any other provision in this Agreement, in no event shall the parties herein be responsible to each other or to any **third party** for any special, incidental, punitive, indirect or consequential losses or damages of any kind, directly or indirectly in connection with this agreement, including, without limitation, loss of profits, loss of earnings, loss of business opportunities even if they have been informed in advance of the possibility of such damages, and whether or not such damages are foreseeable.
- 10.2 The entire **aggregate liability** of LENOMEDIA and THE CLIENT (including without limitation, any liability for the acts and omissions their employees, agents and subcontractors) towards each other in connection with this agreement including contractual breach (fundamental or otherwise), any representation, statement or unlawful act or omission including negligence arising under or in connection with

this agreement, shall not exceed the agreed to fee as to the Services provided herein.

11. Responsibilities & consequences of non-compliance

The following assumptions are made by LENOMEDIA:

- 11.1 All **text** (in Microsoft Word / “.doc” file format) and **visual content** (jpg, gif, png, pdf etc.) including logos will be provided by THE CLIENT as if it is ready to use. It should be **correct and signed** of, no draft versions will be accepted unless otherwise stated in writing. Alterations will be charged for. Pictures in Microsoft Word- Excel or PowerPoint **formats** cannot be used.
- 11.2 **THE CLIENT undertakes to give specific guidelines** in their brief as to where what content need to be used, and assumes all responsibility for text and other content unless expressly noted otherwise. The Estimated cost layout is an estimate based on current information; the final cost to THE CLIENT depends in changes or additions that THE CLIENT makes to the project and THE CLIENT will be invoiced for additional work at the hourly fee. It is THE CLIENT’s responsibility to ensure that he/she fullt understands what is quoted for and what will be delivered. LENOMEDIA will not be held responsible for unmet expectations for items or services not specifically mentioned or quoted for.
- 11.3 **Recreation** of Logos, graphics, printing or scanning is not included in any quote, unless otherwise specified in writing. **Printing or scanning** attracts an hourly fee plus printing costs calculated at R10 per A5 page, or pro rata if the size varies.
- 11.4 If THE CLIENT is **late** in providing content, LENOMEDIA will not be held liable for late delivery of the project and THE CLIENT waives his rights to institute legal proceedings in this regard.
- 11.5 If **alterations** cause necessary after-hours work by LENOMEDIA, such work will be billed at one and a half times the hourly rate. Clients are advised to take caution that the design process pays attention to fine and intricate details, which is time and labour intensive. In circumstances such as these, THE CLIENT agree to pay LENOMEDIA a discretionary fee.



- 11.6 Any and all **callout fees** (provided it is during working hours) will be billed at the normal hourly tariff plus **travelling** at R5 per kilometre for distances outside Potchefstroom.
- 11.7 Client's accept that discretionary billable hours as per paragraph 11.5 are not necessary only hours spent on computer work, but also any procuring administrative or other actions necessary to provide the deliverables.
- 11.8 Client's accept that **hosting of websites** will be terminated after a two month grace period if the hosting fees are not paid up to date, which may result in loss of data which LENOMEDIA will not be liable for.
- 11.9 **Maintenance of websites** will be handled on an ad hoc basis unless THE CLIENT requires a maintenance contract.
- 11.10 **Client must request** the following from the current hosting company in order to provide access to the website before development can start:
- Hosting company contact details
 - SQL Database details (if no database exists the hosting package should be upgraded to support an SQL database)
 - FTP Login details
- 11.11 **Changes or additions** to contents after incorporating it into designs, will attract our hourly rate.
- 11.12 The quote **excludes** copywriting, translation (the quote is for a single language website), photography, photos, hosting services, e-marketing strategy or marketing
- 11.13 A project can only **commence** when all information is provided. Content may be shared via dropbox or email. Development will take a minimum of three weeks.

12. Warranties

LENOMEDIA warrants and represents to THE CLIENT that:

- 12.1 it agrees that **time is of the essence** in this agreement;
- 12.2 the services shall be supplied and rendered by appropriately experienced, and **trained personnel** with all due skill, care and diligence;

13. Subcontractors

- 13.1 **LENOMEDIA shall remain responsible** for all the obligations, services and functions performed by its subcontractors to the same extent as if such obligations, services and functions were performed by LENOMEDIA. LENOMEDIA shall be THE CLIENT's **sole point of contact** regarding the services.

Dispute resolution

- 13.2 The parties shall attempt in good faith to promptly resolve any dispute or claim arising out of or relating to the agreement through negotiations between the respective designated representatives of the parties, who failing to reach an acceptable resolution may escalate the matter to relevant senior executives of each party.
- 13.3 Should the procedure as described in clause 14.1 fail and a dispute remains unresolved, either party may submit the dispute to the Arbitration Foundation of South Africa who is hereby authorised to appoint any **mediating attorney in Potchefstroom** to advance the dispute.
- 13.4 Nothing contained in this clause will preclude either party from obtaining intermediate relief on an urgent or other basis from a court, pending the decision of the arbitrator(s). Parties agree that the Potchefstroom Magistrate's Court will have Jurisdiction as Potchefstroom is for legal Purposes where this contract was concluded.

14. Relationship of the parties

LENOMEDIA in furnishing the services to THE CLIENT, will act as an **independent contractor** and under no circumstances will LENOMEDIA be deemed to be in any relationship with THE CLIENT carrying with it fiduciary responsibilities, whether through partnership or otherwise. LENOMEDIA is not an agent of THE CLIENT and has no authority to represent THE CLIENT as to any matters, except as authorised by THE CLIENT.

15. Cession

LENOMEDIA shall not cede or assign any or all of its rights and obligations in terms of this agreement without the prior written consent of THE CLIENT, which may be withheld in its sole and absolute discretion.

16. Miscellaneous matters

16.1 Any written notice in connection with this agreement may be addressed:

16.1.1 in the case of THE CLIENT to:

telephone no : 072 660 7218
e-mail address: hello@lenomedia.co.za

16.1.2 in the case of LENOMEDIA to:

postal address: _____
telefax no : _____
telephone no : _____
e-mail address: _____

16.2 The notice shall be deemed to have been duly given:

16.2.1 7 days after posting, if posted by registered post to the party's address in terms of this sub-clause;

16.2.2 on delivery, if delivered to the party's physical address in terms of either this sub-clause or the next sub-clause dealing with service of legal documents;

16.2.3 on despatch, if sent to the party's then telefax number and confirmed by registered letter posted no later than the next business day unless the addressor is aware, at the time the notice would otherwise be deemed to have been given, that the notice is unlikely to have been received by the addressee through no act or omission of the addressee.

A party may change that party's address for this purpose, by notice in writing to the other party.

16.3 **address for the service of legal documents**

The parties choose the following physical addresses at which documents in legal proceedings in connection with this agreement may be served (ie their domicilia citandi et executandi):

16.3.1 THE CLIENT:

Bella Velee Unit 10
Kokkewiet Str 10
Potchefstroom
2531

16.3.2 LENOMEDIA:

A party may change that party's address for this purpose to another physical address in the Republic of South Africa, by notice in writing to the other party.

16.4 **entire contract**

This agreement contains all the express provisions agreed on by the parties with regard to the subject matter of the agreement and the parties waive the right to rely on any alleged express provision not contained in the agreement.

16.5 **no representations**

No party may rely on any representation which allegedly induced that party to enter into this agreement, unless the representation is recorded in this agreement.

16.6 **variation, cancellation and waiver**

No contract varying, adding to, deleting from or cancelling this agreement, and no waiver of any right under this agreement, shall be effective unless reduced to writing and signed by or on behalf of the parties.

The terms and conditions of this agreement shall be interpreted and implemented in accordance with the laws of the Republic of South Africa.

16.7 Continuous agreement

The parties hereby agree that in the event that LENOMEDIA handles any **subsequent briefs**, this contract shall be applicable to those briefs in the event of absence of alternative arrangements in writing, whereby this agreement is also expressly revoked.

16.8 Escalation

Fees escalate at a rate of 10% per year, every year on 1 January.

17.8 Contact References

Cost code: _____

Technical Queries _____

Commercial Queries: _____

17. Project Completion and final delivery

The parties agree that either the **project completion form, a signed final invoice or payment of the final invoice or any other method expressly stating the work is accepted as final or complete, all serve as proof that THE CLIENT or LENOMEDIA both view the project as finalised and complete.** All Source files remain the property of LENOMEDIA. LENOMEDIA takes no responsibility for errors or omissions that take place concerning this project after final delivery, signoff and acceptance by THE CLIENT. Websites will either be uploaded or given to THE CLIENT on a CD if required.

18. By-line for Developer's credit & Hosting and Hacking

LENOMEDIA reserves the right to place the LENOMEDIA and/or subcontractor's logo and/or a by-line giving credit in the final product. The placement will be sensitive as not to detract from THE CLIENTS' corporate identity or marketing. Should LENOMEDIA host a website, LENOMEDIA will not be responsible or be liable in any event where the website gets hacked.

Signed at POTCHEFSTROOM for and on behalf of THE CLIENT on _____

(insert day, month and year).

Name: _____ Signature: _____

Title: _____

(Who warrants that he/she is duly authorised hereto)

Name: _____ Signature: _____

Title: _____

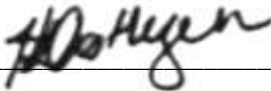
(Who warrants that he/she is duly authorised hereto)

As Witnesses:

1 _____ 2 _____

Signed at POTCHEFSTROOM for and on behalf of LENOMEDIA on _____

(insert day, month and year).

Name: Heilene Oosthuizen Signature:  _____

Title: Me.

(Who warrants that she is duly authorised hereto)

As Witnesses:

1  _____

2 _____