

## ORDER FORM

Fax to Profile Media 011 728-5845

### Subscriber Information

Company Name: \_\_\_\_\_  
Subscriber Contact Name: \_\_\_\_\_  
E-mail: \_\_\_\_\_ Cell: \_\_\_\_\_  
Executive Remuneration Representative: \_\_\_\_\_  
E-mail: \_\_\_\_\_  
Postal Address: \_\_\_\_\_  
Code: \_\_\_\_\_  
Physical Address: \_\_\_\_\_  
Code: \_\_\_\_\_  
Phone: ( ) \_\_\_\_\_ Fax: ( ) \_\_\_\_\_  
Person Responsible for Accounts Queries: \_\_\_\_\_  
E-mail: \_\_\_\_\_  
Order Number (if any): \_\_\_\_\_

### Subscription:

Executive and Non Executive Director Survey @ R11 000 pa (excl. Vat)

I have read and understood and agree to be bound by the terms of this Agreement. I confirm that no verbal promises or warranties other than contained in this Order Form and the Agreement have been made by ProfileMedia/Swicon360 People or its agents or representatives.

Signed at \_\_\_\_\_ on this the \_\_\_\_\_ day of \_\_\_\_\_ 20 \_\_\_\_\_

Subscriber \_\_\_\_\_ For ProfileMedia \_\_\_\_\_

### Payment

I would like to pay by:  Bank Transfer/Cheque  Credit Card

#### Bank Transfer/Cheque

Bank Transfers and cheque payments are to be paid to the following bank account and proof of payment faxed c/o June to 011 728-5845 together with this signed Order Form.

Profile Data (Pty) Ltd  
Standard Bank  
Account Details: 200354574  
Branch Detail: Braamontein 0004805

#### Credit Card

Card Number:

Name of cardholder: \_\_\_\_\_

CCV: \_\_\_\_\_ Authorisation No: \_\_\_\_\_

Valid Dates:(from) \_\_\_\_\_ / \_\_\_\_\_ to \_\_\_\_\_ / \_\_\_\_\_

Cardholder Signature: \_\_\_\_\_

### For Office Use

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

# Executive Capital Subscription Agreement

## 1. Definitions

In this Agreement the following definitions apply –

"Agreement" means these Terms and Conditions and all documents incorporated therein by reference;

"Charges" means the subscription charges payable to Executive Capital by the Subscriber;

"Current Term" means a period of 12 months from the last renewal date.

"Executive Capital" means the Executive Capital website and (where applicable) including its successors in title and assignees;

"Initial Term" means a period of 12 months from the signature date on the Order Form.

"Rights" means copyright, database rights, trade marks or other intellectual property rights in any jurisdiction;

"Service" means access to the relevant Executive Capital subscription service;

"Subscriber" means any person or legal entity to whom Executive Capital agrees to provide the Service. 'It' and 'its' are used throughout this Agreement for the Subscriber, even though the Subscriber might be a natural person;

"Subscription Page" means that part of Executive Capital's website which sets out commercial terms such as the Charges;

## 2. Passwords and access to the Service

- 2.1 Executive Capital grants the Subscriber a licence to use the Service subject to the terms set out in this Agreement.
- 2.2 The Subscriber's password for accessing the Service shall be used solely by the Subscriber (or Executive Capital for the purpose of administering the Subscriber's account), is not transferable, and shall be kept strictly confidential. The Subscriber agrees
  - (a) not to disclose the password to anyone;
  - (b) to indemnify Executive Capital for all costs, liabilities, claims, losses (including loss of revenue) for any unauthorised use of the password.
- 2.3 The Subscriber shall notify Executive Capital immediately if a third party has discovered its password.
- 2.4 Executive Capital shall not be liable to the Subscriber for any failure by the Subscriber to access the Service as a result of a failure of the Subscriber's equipment or events effecting access to the internet generally (which prevent or delay the Subscriber accessing the Service).
- 2.5 The Subscriber undertakes that it will only use the Service on one terminal, personal computer or device at a time.
- 2.6 This Agreement shall be effective for 12 months from the date of signature on the Order Form and shall be automatically renewed for successive 12 month periods unless either party elects not to renew by giving written notice of not less than 3 months to the other party before the end of the then-Current Term.

## 3. Grant of licence, warranties

- 3.1 Executive Capital grants to the Subscriber a non-exclusive, non-transferable licence to use the Service for the Subscriber's personal or internal purposes and on the terms set out in this Agreement. Executive Capital may suspend or terminate the Service at any time without notice and without making a refund of the charges paid where it suspects the Subscriber is downloading information supplied under the Service for separate commercial gain.
- 3.2 The Subscriber acknowledges that the use and interpretation of the Service requires skill and judgement. The Subscriber shall at all times exercise its own skill and judgement in the use and interpretation of the Service and shall be solely responsible for the purposes for which it is used and for all opinions, recommendations, forecasts and other comments made or action taken by the Subscriber based wholly or partly on the Service. Executive Capital shall not be liable for any losses suffered by the Subscriber or any third party as a result of its use or reliance on the Service (subject to clause 6 below).
- 3.3 The Services are supplied "as is" and no representation, warranty, condition or other term as to the quality of the Service or their usefulness or fitness for any purpose is made or given, and any implied terms are expressly excluded. Executive Capital shall not be liable for any inaccuracy or incompleteness in any information supplied under the Service and the Subscriber uses the Service at its own risk.
- 3.4 Executive Capital reserves the right to revise or amend the format and/or content of the Service from time to time.
- 3.5 Executive Capital gives no warranty or undertaking as to the uninterrupted continuity of any part of the Service.
- 3.6 The Subscriber shall not resell, rent, license, distribute or otherwise transfer or deal with the Service on a commercial basis or otherwise.
- 3.7 The Subscriber must not use the Service except as permitted under the Agreement, and shall not use them for any illegal or unlawful purpose, or so as to bring Executive Capital or its business, products or services into disrepute.
- 3.8 Executive Capital reserves the right to suspend access to any part of the service on becoming aware of any such regulation, claim, condition or restriction in any part of the world which requires it to do so or which exposes it to any liability or claim if it does not do so.
- 3.9 Executive Capital may refuse to supply the Service to any Subscriber for any or no reason.

## 4. Charges

The Subscriber accepts that by signing the Order Form it is liable for the Charges (or instalments of the Charges). The amount of the Charges shall be as displayed from time to time on the Subscription Page and may change.

- 4.1 The Subscriber shall give Executive Capital prior notice of any anticipated change to its credit card or banking details.
- 4.2 The annual renewal subscription for the Service shall be the standard fees displayed on the then-prevailing Order Form.
- 4.3 Executive Capital reserves the right to charge interest on the Subscriber for any outstanding Charges at the annual rate of prime plus 3%.
- 4.7 Without prejudice to its rights to recover the sums outstanding from the Subscriber (including interest pursuant to clause 4.3 above) should Executive Capital not be able to withdraw any part of the Charges from the Subscriber's credit card or bank account (pursuant to clause 4.1 above) Executive Capital reserves the right to:
  - (a) suspend access to the Service; or
  - (b) terminate this Agreement.

## 5. Rights in the Service

- 5.1 All Rights which exist in the Service are owned by Executive Capital or licensed to Executive Capital.
- 5.2 The Subscriber shall not infringe Executive Capital's Rights in the Service or its presentation, or enter into an arrangement, agreement or understanding which would or might allow a third party to do so.
- 5.3 The Subscriber may print off limited extracts from the Service in hard copy solely for the Subscriber's own personal purposes. The Subscriber may not otherwise copy the Service or transfer the Service (or its subscription thereto) to any third party. Save as aforesaid, any other copying or downloading of information from the Service is strictly prohibited.
- 5.4 The Subscriber shall promptly notify Executive Capital of any unauthorised use of the Service or any actual or suspected infringement of any of the Executive Capital's Rights in the Service of which the Subscriber becomes aware.

## 6. Liability

- 6.1 The Subscriber agrees to indemnify and to render Executive Capital harmless from and against any and all losses, damages and costs suffered or incurred by Executive Capital howsoever arising out of or in connection with the Subscriber's use of the Service or howsoever arising in relation to any breach of this Agreement.
- 6.2 Executive Capital shall not be liable to the Subscriber, in contract, tort or otherwise, for any loss of profits, business or anticipated savings, or for indirect or consequential loss, however caused or arising.
- 6.3 Executive Capital's liability shall be limited to the Charges paid by the Subscriber.

## 7. Suspension and termination

- 7.1 If the Subscriber is in breach of the Agreement, Executive Capital may suspend the provision of the Services immediately or terminate this Agreement with immediate effect and without having to make a refund.
- 7.2 Either party may terminate the Agreement by prior written notice in accordance with clause 2.6. In the event of the Subscriber terminating the Agreement, the Subscriber shall ensure that it pays Executive Capital all Charges owing in terms of the Order Form (including any outstanding interest). The Subscriber shall not be entitled to any refund of charges it has already paid to Executive Capital in the event of early termination.
- 7.3 The exercise by either party of any right to terminate the Agreement shall not limit any other rights or remedies it may have, and shall not affect any accrued rights or obligations arising before the date of termination.
- 7.4 On the termination of the Agreement for any reason (including the termination of a Free Trial) the Subscriber shall immediately discontinue use of the Service.
- 7.5 The restrictions under the Agreement on the use of and dealing in the Service shall survive the termination of the Agreement for any reason.

## 8. Assignment

- 8.1 The Agreement is personal to the Subscriber, which may not assign or otherwise transfer any of its rights or obligations under the Agreement to any third party.
- 8.2 Executive Capital reserves the right to subcontract the performance of any of its obligations under this Agreement through a third party.

## 9. Severance

Each provision of the Agreement is severable from the rest. If any part of the Agreement is held invalid, illegal or void for any reason, this shall not affect the validity or legality of the remainder, which shall continue in full force and effect.

## 10. Force majeure

Executive Capital shall not be liable for any delay or failure to perform its obligations under this Agreement caused by circumstances beyond its reasonable control including network or telecommunications outages.

## 11. Entire agreement

This Agreement together with the commercial terms set out on its website constitutes the entire agreement between the parties and supersedes all previous communications, representations and arrangements, statements or representations, written or oral. The Subscriber acknowledges that no reliance is placed on any representation or statements made prior to the Agreement unless they were made fraudulently.

## 12. Governing law

The Agreement shall be construed in accordance with and governed by South African law and the parties shall submit to the exclusive jurisdiction of the South African Courts.