

---

## TERMS AND CONDITIONS

The client agrees that the terms and Conditions set out herein form part of the Services Agreement.

### **1. DEFINITIONS AND INTERPRETATIONS**

1.1 Unless otherwise expressly stated, or the context otherwise requires, the words and expressions listed below shall, when used in this Agreement or any appendices hereto, bear the following meaning:

- 1.1.1 "Services Agreement" means the Service Agreement and the terms and condition set out herein.
- 1.1.2 "the Client" means the Company/Close Corporation or other juristic or natural person as reflected in the Services Agreement page;
- 1.1.3 "ECA" mean the Electronic Communications Act , 2005;
- 1.1.4 "ECT "means the Electronic Communications and Transactions Act, 2001;
- 1.1.5 "Equipment" means the equipment referred to in schedule A attached hereto.
- 1.1.6 "hardware" means computer equipment or components of such computer equipment, including printers, scanners and networking equipment.
- 1.1.7 "Management of Computer systems" means attending at the Client's premises at various times during the month, in order to monitor the system; Making recommendations on the appropriate Anti Virus software; Ensuring that daily backups of the Client's data are attended to; Monitoring the Client's computer capacity, including the disk drive space; Monitoring the systems performance; Providing on-going computer support in order to attend to system problems; Implementing procedures and policies in order to optimise the functionality of the system with due reference to Client's IT policy; Providing telephonic and on-site support to the Client; Attending to printer assignment and sharing functions.; Providing consulting functions and advice in respect of changes and modifications to the Client's system and attending to the installation of new hardware; Recommending procedures and equipment in order to reduce the risk of data loss and system availability as a result of power outages.
- 1.1.8 "NCA" means the National Credit Act, 34 of 2005;
- 1.1.9 "Overtime" shall mead time period outside of HSC Working Hours and time during public holidays as defined in the Public Holidays Act, 34 of 1994.
- 1.1.10 "Party" means the Service Provider or the Client and Parties mean the Service Provider and the Client;
- 1.1.11 "Service Provider" means HSC Systems Proprietary Limited, registration number 1989/007258/07, a company duly constituted and incorporated in terms of the Company Laws of the Republic of South Africa;
- 1.1.12 "Services" means management of computer systems, IT Support, VOIP Solutions, Cloud Computing, Cloud Email and Fibre for Business or any other defined services as set out in the Services Agreement.
- 1.1.13 "Service Levels" shall be categorized as follows; Critical – 5 hour response time (Fileserver down or network unavailable); Workstation Critical – Within 6 hours; Minor Failures within 24 hours;
- 1.1.14 "Software" shall mean computer programs installed on the Hardware.

- 
- 1.1.15 “System” shall mean computer the clients computer system, including networking, hardware and specifically excluding application software.
- 1.1.16 “Signature Date” shall mean the date on which the Service Provider receives the signed Agreement from the Customer.
- 1.1.17 “Writing” shall include but not be limited to hand written and data messages. Any requirement in this Agreement that a document or information must be in writing is met if the document or information is in the form of a data message; and accessible in a manner usable for subsequent reference.
- 1.1.18 “VAT” means Value Added Tax imposed in terms of the Value Added Tax Act, No. 89 of 1991 (as amended), including any similar tax which may be imposed in place thereof from time to time;
- 1.2 Unless the context clearly indicates a contrary intention:
- 1.2.1 A reference to any gender includes the other genders;
- 1.2.2 A reference to any natural person includes a legal entity (whether incorporated or unincorporated) and vice versa;
- 1.2.3 A reference to the singular includes the plural and vice versa.
- 1.3 Paragraph headings are inserted for convenience only and shall not bear upon the interpretation or construction of this Agreement or any provision thereof.
- 1.4 Should any provision in a definition be a substantive provision conferring rights or imposing obligations on any party, then effect shall be given to that provision as if it were a substantive provision in the body of this Agreement;
- 1.5 When any number of days is prescribed, such number shall exclude the first and include the last day, unless the last day falls on a Saturday, Sunday or 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 public holiday;

## **2. APPOINTMENT**

The Client hereby engages the Service Provider to use the Equipment described in the Services Agreement for an initial term and render services to the Client as described in the Services Agreement.

## **3. COMMENCEMENT, DURATION AND CANCELLATION**

- 3.1 This Agreement shall commence on the last date of signature of the parties and shall:
- 3.1.1 in respect of the rental of Equipment remain in force for the duration of the initial term as described in the Services Agreement;
- 3.1.2 in respect of the Services remain in effect until terminated by either party giving the other party 30 days notice of cancellation.
- 3.2 Any notice of termination or any other notice whatsoever by the Client to the Service Provider shall be in writing on a letter head, signed by a duly authorised representative of the Client and delivered via email as an attachment to [jc@hsc.co.za](mailto:jc@hsc.co.za).
- 3.3 Termination of this Agreement does not relieve the Client from the liability to pay charges for the initial period plus the notice period.
- 3.4 Summary Termination/Cancellation
- 3.4.1 In addition, this Agreement may be terminated summarily by the Service Provider if the Client;
- 3.4.1.1 takes steps to deregister itself or is deregistered; or
- 3.4.1.2 takes steps to place itself, or is placed in liquidation, whether voluntary or compulsory, or under judicial management in either case whether provisionally or finally; or
- 3.4.1.3 makes, or attempts to make or recommends, any offer of compromise with any or all of its creditors; or

- 
- 3.4.1.4 owns or possesses assets which are subject to judicial attachment and the Client fails to procure the release of such assets from attachment within 60 (sixty) days of their attachment, except that if the Client provides evidence on an ongoing basis to the reasonable satisfaction of the Service Provider that steps have been initiated within 60 days to appeal, review or rescind the attachment order and to procure the suspension of the attachment and that such steps are being expeditiously pursued, the period of 60 (sixty) days shall run from the date the attachment order becomes final or the attempt to procure suspension of the attachment fails; or
  - 3.4.1.5 commits an act which would be an act of insolvency as defined by the Insolvency Act of 1936 as amended from time to time if committed by a natural person; or
  - 3.4.1.6 fails to satisfy a judgment entered against itself within 21 (twenty-one) days after it becomes aware of the judgment, except if it provides evidence on an ongoing basis to the reasonable satisfaction of the Service Provider that steps have been initiated within the 21 (twenty-one) days to appeal, review or rescind a judgment and to procure suspension of execution of the judgment and that such steps are being expeditiously pursued; the period of 21 (twenty-one) days shall run from the date on which the judgement becomes final, or the date on which the attempt to procure the suspension of the execution fails; or
  - 3.4.1.7 in the reasonable opinion of the Service Provider, engages in a fraudulent or illegal practice in connection with this Agreement.
- 3.4.2 In the event that the Agreement is Summarily cancelled the Service Provider shall have the right without notice to the Client and without it affecting any other rights:-
- 3.4.2.1 claim immediate payment of all amounts which would have been payable in terms of this Agreement until expiry of the rental period stated in the Schedule A and/or Schedule B, whether such amounts are then due for payment or not and take possession of the Equipment and only return them to the Client on receipt of full payment of all amounts owing by the Client.
  - 3.4.2.2 immediately terminate the Agreement, recover possession of the Equipment, retain all amounts already paid by the Client and claim all outstanding rentals, all legal costs as between attorney and his own client and the Net Present Value of the rentals which would have been payable had the Agreement continued until expiry of the initial rental period stated in the Schedule as pre-estimate of the damages which we may suffer.

### 3.5 Early Cancellation

3.5.1 A Client may discontinue the rental of the equipment and accompanying Services before the lapse of the initial terms by advising the Service Provider of such discontinuation by giving one calendar month's notice in writing in which event such Service shall be discontinued on the required termination date specified in the said notice. In such event the Service Provider shall invoice and the Client who shall pay to the Service Provider an early cancellation charge ("the early cancellation charge") calculated as set out in 3.5.2 and 3.5.3 below.

3.5.2 The early cancellation charge is calculated as follows:  $C = N \times R - A$

3.5.3 Where:

- 3.5.3.1 C is the Cancellation Charge
- 3.5.3.2 N is the New Period, being the revised total number of months calculated in 12 (twelve) month increments and reckoned to the end of the next full twelve-month period after the cancellation date.
- 3.5.3.3 R is the service rate applicable to the revised shorter period as per the current ruling Service Provider price list.
- 3.5.3.4 A is the actual payment received to date from the Subscriber related to the service being cancelled.

3.5.4 Then for example: for a 36-month contract cancelled after 16 months. If the 36-month Price is R100 per month and the 24month price is R120 per month, the total over 24-months would be R2 880.00 less the amount paid to date for the 16-months of R1 600.00. The early cancellation charge is then therefore R1 280.00.

### 3.6 Cancellation Prior to Installation of Equipment

---

3.6.1 The Client hereby acknowledges that acceptance of any quotation from the Service Provider confirms a binding commitment and an order placed on the Service Provider for the quoted Services.

3.6.2 The Client further acknowledges, accepts and confirms that any cancellation requested by the Client of the Service Provider Services, subsequent to the signing thereof, but prior to the physical installation of the equipment, will result in a penalty fee of twenty-five percent (25%) of the total contract value, which payment shall be due and payable by the Client immediately upon demand

#### 4 FEES

4.1 The fees payable by the Client to the Service provider for the rental of the Equipment and/or Services is set out in the Services Agreement.

4.2 The Service Provider reserves the right to change the fees as set out in the Services Agreement and will give the Client 30 (thirty) days written notice of the change to its fees structure.

#### 5 PAYMENT

5.1 The Service Provider shall invoice the Client the initial installation and set-up charges and any other introductory or commencement charges upon receipt of the signed quotation for services, which invoice shall be paid by the Client on presentation of the invoice;

5.2 The Client shall upon demand of the Service Provider pay the Service Provider, a deposit as security from the Client of an amount determined by the Service Provider in its sole discretion, which shall not bear interest. The Service Provider may utilise this deposit at any time towards payment of any portion of the Rental or Service Fees or other monies due and owing to the Service Provider by the Client

5.3 The Service Provider shall render an invoice for the rental, monthly in advance and the Client agrees to pay the monthly rental on or or before the last day of the month.

5.4 The Service Provider shall render a monthly invoices on the 25<sup>th</sup> of each month for the Services, which invoice shall be paid by the Client to the Service Provider upon receipt

5.5 Value Added Tax at the applicable rate on all VAT charges and services. All charges, unless otherwise stated exclude Value Added Tax.

5.6 Unless expressly otherwise agreed to in writing, all payments shall be made either via debit order or if agreed by the Service Prover by Electronic Funds Transfer to the Service Provider's nominated bank account, the details of which shall be forwarded to the Client, and shall be made free of exchange, taxes, fees and charges.

5.7 In the event of any debit order returned unpaid or should any charge be rejected for whatever reason, then the Client shall be liable for an administration charge as may be levied by the Service Provider in respect of each such non-payment, including any bank charges incurred by the Service Provider as a result of the non-payment.

5.8 If the Clients account becomes overdue, the Service Provider may suspend the services being provided to the Client.

5.9 Interest will accrue on overdue accounts at the prime lending rate of First National Bank until the outstanding balance is paid in full.

- 
- 5.10 The Client shall not be entitled to withhold payment from the Service Provider for any reason whatsoever, nor shall the Client set-off against any charges or amounts payable, any present or future claim which the Client may have against the Service Provider from any cause arising.
- 5.11 If a Client's account is overdue for a period of 30 (ninety) days or more, the Service Provider may at its discretion hand over the account to attorneys for collection. In such instances the Client will be liable for all attorney and Client costs incurred by the Service Provider.
- 5.12 A reconnection fee will be levied, where the Clients right to use the services is suspended due to nonpayment.
- 5.13 The reconnection fee is in respect of any restoration of the services and. is payable in advance, together with any outstanding amounts which are due to the Service Provider.
- 5.14 The reconnection fee for residential services is R150 exclusive of VAT.
- 5.15 The reconnection fee for business services is R500 exclusive of VAT.
- 5.16 The reconnection fees are subject to change on 30 (thirty) days written notice.
- 5.17 The Service Providers monthly statement of charges shall be prima facie proof of the amounts owed by the Client to the Service Provider in terms hereof and of the other facts stated therein and should the Client dispute the number, duration or amount charged in respect of any Services rendered by the Service Provider, then the Client shall bear the onus of proving that the Service Providers statement is incorrect in respect of such charges.
- 5.18 The Client acknowledges that data and other Services are rendered to the Client by means of the hardware which are issued to the Client personally and which facilitates access to the network and the Services.
- 5.19 The Client will be liable for all charges applicable to hardware issued to the Client, irrespective of whether or not such hardware has been used by the Client or whether any other has been requested by the Client. Until the Service Provider has received notification in writing from the Client and confirmed such notification that the equipment has been stolen or destroyed, the Client shall be liable for all data and other charges howsoever and by whomsoever for the replacement costs thereof.
- 5.20 The Client is liable to pay for all calls made from its account whether authorised or unauthorised. This includes, but is not limited to, calls made from fraudulent use of the account caused by hacking or any other form of unauthorised intrusion or use.
- 5.21 The Client agrees and acknowledges that a certificate given under the hand of a financial manager or controller of the Service Provider whose status and authority need not be proved shall be considered prima facie proof of the amount due and shall entitle the Service Provider to apply for judgment against the subscriber and to obtain summary judgment or provisional sentence, as the case may be.

## 6 CREDIT LIMIT

- 
- 6.1. The Service Provider shall be entitled in its sole and absolute discretion from time to time to determine and amend the maximum amount of fees and charges ("credit limit") which may be used and/or accumulated by the Client during each billing period and the Service Provider shall be entitled to suspend the services should the Client exceed such maximum amount.
  - 6.2. The Parties acknowledge that this does not constitute a credit facility in terms of section 8(3) of the National Credit Act, 34 of 2005, and no interest or charges in respect of the deferral, will accrue on the deferred amount
  - 6.3. The Service Provider may amend or vary this credit limit in its sole discretion from time to time, which amendment shall only take effect for the following billing period, and the Service Provider shall give the Customer 7 days' written notice of such amendment.
  - 6.4. The Service Provider shall be entitled to suspend the Services in the event that the Customer reaches the credit limit.

## 7 THE SERVICE PROVIDERS UNDERTAKINGS

- 7.1. The Service Provider warrants that it has the necessary skill, knowledge, expertise and ability to carry out the functions as required by the Client.
- 7.2. The Service Provider shall be responsible to provide services in accordance with professional and generally accepted standards of the industry in which the Service Provider operates.
- 7.3. The Service Provider shall provide services on a non-exclusive basis to the Client;
- 7.4. The Service Provider will use its best endeavors to maintain full-time internet presence for the Client.
- 7.5. The Service Provider shall ensure that the services are rendered accurately and timeously;
- 7.6. The Service Provider will provide the Client with the requisite passwords upon installation, which passwords will be kept confidential by the Service Provider.

## 8 THE CLIENT'S CONSENT, UNDERTAKINGS AND ACKNOWLEDGEMENTS

- 8.1. The Client hereby consents to the Service Provider conducting an investigation into the creditworthiness of the Client utilising the information provided by the Client to the Service Provider, which information the Client warrants is true and correct, and such information forms the basis of this Agreement.
- 8.2. The Client agrees that should such information turn out not to be correct in all respects, the Service Provider shall be entitled to, immediately and without prejudice to any other rights that the Service Provider may have, terminate this agreement in terms of clause 3.
- 8.3. Any subsequent changes that affect the information supplied to the Service Provider such as bank account details must be brought to the immediate attention of the Service Provider.
- 8.4. Should the Service Provider suspect or find evidence of violation of the acceptable and fair usage policy or network traffic that interferes with the Service Providers network, the Client hereby agrees to be immediately disconnected without notice until the violation and/or interfering network traffic is removed.
- 8.5. The Client hereby agrees that the Service Provider may, in addition to any of its other rights in terms of this agreement or otherwise, list any default information of the Client with any credit information bureau, and the Client agrees to the

---

disclosure by the Service Provider to any third party, of any information pertaining to the Client or this Agreement, to the extent that such disclosure is necessary for the conduct of the Service Providers business, or is required by any relevant statute, regulation or license.

- 8.6 The Client acknowledges that the Service Provider operates and manages the network and the functioning, operation, regulation and coverage area of the network and certain related services provided to the Client in terms hereof.
- 8.7 The Client further acknowledges that to enable the Service Provider to provide certain services, the Service Provider is dependent on third party Service Providers and the delivery of these services may be affected by circumstances beyond either the supplier or the Service Providers Control.
- 8.8 The Client shall afford the Service Provider reasonable access to its premises as may be necessary to carry out the Services under this Agreement;
- 8.9 The Client undertakes to use the internet account and/or any related services for legal purposes under all applicable international, federal, provincial and municipal laws;
- 8.10 The Client agrees not to store, transmit link to or advertise or make available any images of a pornographic nature and that a violation of this provision may result in the termination of services by the Service Provider, with or without a notice or cure period at the sole discretion of the Service Provider based on the nature and severity of the violation;
- 8.11 The Client undertakes to keep the passwords provided by the Service Provider confidential and shall not hold the Service Provider liable should the passwords becoming known.
- 8.12 The Client may elect to change the passwords provided by the Service Provider to the Client.
- 8.13 In the event of the Client requesting the Service Provider to re-set its passwords, the Service Provider will only do so upon the written instruction from the Client on the letterhead of the Client authorising the Service Provider to reset the passwords.
- 8.14 The Client hereby agrees to abide by the Service Providers acceptable and fair usage policy, which is made available on the Service Providers website and can be supplied on request to the Client.

## 9 EQUIPMENT

- 9.1. All Equipment shall be and remain the property of the Service Provider.
- 9.2. Accordingly, where the Equipment is in the possession, or under the control, of the Client, the Client agrees:
- 9.2.1. Not to remove or allow the Service Providers Equipment to be removed from the site without the Service Provider consent;
  - 9.2.2. To keep the Equipment in a secure and suitable place and use them according to the manufacturers directions;
  - 9.2.3 To keep the Service Providers Equipment in good condition and complete;
  - 9.2.4 Not to allow the Service Providers Equipment to be encumbered by operation of law or otherwise;
  - 9.2.5 To allow the Service Provider to inspect the Equipment at reasonable times;
  - 9.2.6 Take reasonable steps to protect the Service Providers Equipment from loss and/or damage; and
  - 10.2.7 To return the Service Providers Equipment to the Service Provider on the termination of this Agreement.

## 10 DELIVERY AND RISK

- 
- 10.1 All risk of loss, theft, destruction or damage to or malfunction of the equipment, being the property of Service Provider, and which is provided to the Client, shall vest in the Client on delivery.
- 10.2 Delivery of the equipment shall take place upon delivery and/or installation by the Service Provider or a courier company designated by the Service Provider.
- 10.3 The Service Providers delivery note signed or countersigned by the Client or the employee of the Client shall for all purposes be deemed to be accurate in all respects and binding on the Client.
- 10.4 The Client shall insure the Equipment for their replacement cost with a registered insurer or through a broker of the Client's choice for as long as the Client has the Equipment, and advise the insurer of the Service Providers ownership and rights in and to the Equipment.
- 10.5 The Client shall will notify the Service Provider, in writing within fourteen days, if any of the goods are lost, stolen or damaged.
- 10.6 The Service Provider may require the Client to make the Equipment available for inspection at a time to be arranged by the Service Provider or its nominee.
- 10.7 Should the Service Provider accept the Equipment for repairs and maintenance it shall be deemed to do so as agent on behalf of the manufacturer or local supplier of the equipment and the Service Provider shall not be liable for any loss, damage, destruction, theft or negligent workmanship howsoever or by whomsoever caused.
- 10.8 Should the Customer fail to pay any monies due in respect of equipment purchased, leased or loaned from the Service Provider then the Service Provider shall be entitled without prejudice to any other rights it may have at law forthwith and without notice to suspend, interrupt or disconnect the Services or any part thereof.
- 10.9 Should the Service Provider loan equipment to the Client whilst the Client's owned or leased equipment is being repaired, then the Client shall upon demand return the equipment to the Service Provider and all risk in and to such loaned equipment shall vest in the Client until the Client returns it to the Service Provider at the Service Providers own cost. Should the Client fail to return any owned equipment of the Service Provider to the Service Provider when asked to, then the Service Provider shall be entitled to charge and recover from the Client (who shall pay such charges upon demand) a rental of R1 000 (one thousand rand) excluding VAT per day reckoned from the due date of return or demand, whichever is the earlier, until the equipment is returned to the Service Provider. The provisions of this agreement shall mutatis mutandis apply to such loaned equipment and its use.
- 10.10 Where the Client purchases equipment from Service Provider then the manufacturer's warranty will apply to such equipment. Such warranty is normally for 12 months from date of purchase and normally covers defective equipment as a result of faulty design, manufacture or workmanship provided that such equipment has not been misused, over-loaded, modified or repaired by an unauthorised party. The Service Provider may require the Client to make available the equipment to the Service Provider or its nominee for inspection of the equipment at a time and place to be arranged by the Service Provider or its nominee.
- 11 CONFIDENTIALITY
- 11.1 Subject to 11.2, each party undertakes to the other that it will treat as confidential the terms of this agreement together



---

with all information whether of a commercial, financial, personal or technical nature or otherwise relating in any manner to the business or affairs of the other party as may be communicated to it hereunder or otherwise in connection with this agreement and will not disclose such information to any person, firm or company (other than to its auditors and other professional advisers) or to the media, and will not use such information other than for the purposes of this agreement, subject always to any prior specific authorisation in writing by the parties concerned to such disclosure or use.

11.2 The provisions of 11.11.1 shall not apply to any information which –

- 11.2.1 is in the public domain other than by default of the recipient party;
- 11.2.2 is obtained by the recipient party from a bona fide third party having the right to disseminate such information;
- 11.2.3 is or had already been independently generated by the recipient party;
- 11.2.4 is required to be disclosed by law or the valid order of a court of competent jurisdiction or the request of any governmental or other regulatory authority or agency, in which event the disclosing party shall so notify the other as promptly as practicable (and if possible prior to making any disclosure) and shall use its reasonable endeavours to seek confidential treatment of such information.

11.3 The obligations contained in this 11 shall endure beyond the termination of this agreement without limit in time except and until any confidential information enters the public domain otherwise than through default of the recipient party

## 12 EXCLUSION OF LIABILITY AND WARRANTIES

12.1 The Service Provider shall be exempted from and not be liable to the Client and/or any third party under any circumstances whatsoever for any direct or indirect or consequential damages of any kind or any loss of profit or special damages of any kind, whether in contemplation of the parties or not, which the Client and/or the third party may suffer as a result of:

- 12.1.1 the utilisation of the Service Providers services;
- 12.1.2 any act or omission of the Service Provider, its employees or agents and or any breach of the Service Provider obligations in terms of this Agreement;
- 12.1.3 the failure of the services or facility or the failure of the internet censorship software provided and operated by the Service Provider;
- 12.1.4 The Client's negligent and or illegal use of the website or services thereon;
- 12.1.5 Any unavailability of or interruption of services provided by the Service Provider;

12.2 Notwithstanding any provisions in this Agreement, the Service Provider's liability to the Client and/or any third party for any damages or loss of whatsoever nature, including without limitation any damages or loss caused by the negligence of the Service Provider or its agents, shall in any event and under all circumstances be limited to an amount equal to the fees payable by the Client during the initial term.

12.3 The Client acknowledges that due to the need to conduct maintenance, repair and/or make improvements from time to time on the technical infrastructure by means of which services are provided, the provision of services may be suspended from time to time without notice by the Service Provider and in such instances, the Service Provider and its agents are exempt from all liability for any loss or damage (direct or consequential) and/or for any costs or demands of any nature to the Client and/or any third party arising from such suspension

12.4 The Service Provider does not undertake to reinstate the services within a specific time period and will be exempted from any liability whatsoever, if the nature of the failure is caused due to the Service Provider failure to deliver their services and if the failure is due to a reason out of the direct control of the Service Provider.

- 
- 12.5 The Client acknowledges that the network may, at various times, be down due, but not restricted to utility interruption, equipment failure, Acts of God, or human error. In such circumstances the Service Provider shall not be liable to the Client for any damages resulting from or related to any failure or delay in providing access to the Internet under this Agreement. Further the Client agrees that the Service Provider will not be held liable for any indirect, special or consequential damages or lost profits arising out of or related to this Agreement of performance or breach thereof.
- 12.6 The Service Provider and the Client will promptly notify the other upon receipt of any claim or legal action arising out of activities conducted pursuant to this agreement
- 12.7 The Service Provider does not make any representations nor, unless expressly given in writing, give any warranty or guarantee of any nature whatsoever in respect of services or their suitability for any intended purpose, whether the Service Provider is informed of the purpose or not. Without derogating from the generality of the foregoing, the Service Provider does not warrant or guarantee that the information transmitted by the use of the services will be preserved or sustained in its entirety, will be suitable for the intended purpose, will be free of inaccuracies, defects, bugs, viruses of any kind, and will not contravene the laws of a particular country.
- 12.8 The Client indemnifies the Service Provider and holds the Service Provider harmless against any claim by any third party arising directly or indirectly out of the Client's access to and use of the Service Provider's services or information obtained via the use of the Service Provider's services, including without limitation any claim due to use of services for illegal/unlawful purposes, whether or not such claims are caused by any act or omission of the Client or anyone else.
- 13 NOTICES AND DOMICILIA
- 13.1 The Parties choose as their domicilia citandi et executandi their respective addresses set out in this clause for all purposes arising out of or in connection with this Agreement at which addresses all processes and notices arising out of or in connection with this Agreement, its breach or termination may validly be served upon or delivered to the Parties.
- 13.2 For the purposes of this Agreement the Parties' respective addresses shall be:
- 13.2.1 The Service Provider:  
Address: 4 Hluti Lane, Paulshof, Johannesburg  
Email: jc@hsc.co.za
- 13.2.2 The Client: As reflected on the Services Agreement
- Or such other addresses, not being a post office box or poste restante, of which the Party concerned, may notify the other in writing.
- 13.3 Any notice given in terms of this Agreement shall be in writing and shall:
- 13.3.1 If delivered by hand be deemed to have been duly received by the addressee on the date of such delivery; and
- 13.3.2 If posted by prepaid registered post be deemed to have been received by the addressee on the 7<sup>th</sup> (seventh) day following the date of such posting;
- 13.3.3 If transmitted by email shall be deemed to have been received by the addressee 1 (one) day after dispatch; unless the contrary is proved.
- 13.4 Notwithstanding anything to the contrary contained or implied in this Agreement, a written notice or communication actually received by one of the Parties from another including by way of facsimile or e-mail transmission shall be adequate written notice or communication to such Party.
- 14 FORCE MAJEURE
- 14.1 If either party is prevented or restricted directly or indirectly from carrying out all or any of its obligations under this

---

agreement by any cause beyond the reasonable control of that party, including, without limitations, acts of God, civil commotion, riots, insurrection, acts of government, fire, explosion, the elements, epidemics, governmental embargoes or like causes (“force majeure”), the party so affected shall, to the extent so prevented, be relieved of its obligations hereunder during the period of such events and shall not be liable for any delay or failure in the performance of any obligations hereunder or loss or damage either general, special or consequential which the other party may suffer due to or resulting from such delay or failure; provided always that written notice of the occurrence constituting force majeure shall be given within 24 (twenty-four) hours by the affected party.

14.2 The parties agree that, should force majeure last more than 6 (six) weeks, the party who has not invoked force majeure to excuse any non-performance of its obligations may terminate this agreement by giving 10 (ten) days’ written notice to the other party.

## 15 CESSION AND ASSIGNMENT

15.1 The Service Provider shall without notice be entitled to cede, sell, pledge and/or assign any of its rights under this agreement;

15.2 The Client’s shall not without be entitled to cede and/or assign any of its rights and privileges under this Agreement nor may the Client delegate any of its obligations in and to and arising from this agreement without the written consent of the Service Provider;

## 16 BREACH OF AGREEMENT

16.1 Save as otherwise provided in this agreement, should a party (the “defaulting party”) commit a material breach of any material provision of this agreement and should such breach be –

16.1.1 incapable of remedy; or

16.1.2 be capable of being remedied and should such party fail to remedy such breach within 7 (seven days) after receiving written notice from another party (the “aggrieved party”) requiring the defaulting party to do so,

16.1.3 then the aggrieved party shall be entitled, without prejudice to its other rights in law, to cancel this agreement or to claim immediate specific performance of all of the defaulting party’s obligations whether or not due for performance, in either event without prejudice to the aggrieved party’s right to claim damages.

## 17 JURISDICTION AND COSTS

All matters arising out of or in connection with the interpretation, implementation, termination or cancellation of this Agreement, shall be governed in accordance with the laws in force in the Republic of South Africa, from time to time, and the law of the Republic of South Africa shall be deemed for all purposes to be the proper law of this Agreement;

## 18 GENERAL

18.1 No variation of or addition to this Agreement will be of any force or effect unless reduced to writing and signed by or on behalf of all the parties

18.2 This Agreement constitutes the whole Agreement between the parties and supersedes all agreements or understandings or representation by or between the parties regarding the subject matter of this agreement and the parties will not be entitled to rely, in any dispute regarding this agreement, on any terms, conditions or representations not expressly contained in this Agreement.

18.3 All costs, charges and expenses of any nature whatever which may be incurred by a party in enforcing its rights in terms of this agreement, including without limiting the generality of the foregoing, legal costs on the scale of attorney and own Client and collection commission, irrespective of whether any action has been instituted, shall be recoverable on demand from the party against which such rights are successfully enforced and shall be payable on demand.

18.4 The provisions of this agreement shall be binding upon the successors-in-title- and the permitted assigns of the parties

18.5 All provisions in this agreement are, notwithstanding the manner in which they have been put together or linked grammatically, severable from each other. Any provision of this agreement which is or becomes unenforceable in any

---

jurisdiction, whether due to voidness, invalidity, illegality, unlawfulness or for any other reason whatsoever, shall, in such jurisdiction only and only to the extent that it is so unenforceable, be treated as pro non scripto and the remaining provisions of this agreement shall be of full force and effect. The parties declare that it is their intention that this agreement would be executed without such unenforceable provisions if they were aware of such unenforceability at the time of its execution.

- 18.6 No remedy conferred by this agreement is intended, unless specifically stated, to be exclusive of any other remedy which is otherwise available at law, by statute or otherwise. Each remedy shall be cumulative and in addition to every other remedy given hereunder or now or hereafter existing at law, by statute or otherwise. The election of any one or more remedy by a party shall not constitute a waiver by such party of the right to pursue any other remedy available at law.