



1. Introduction

- 1.1 The Vendor has developed HSEC Online® to streamline your document compliance requirements depending on the module you selected when signing-up for HSEC Online®, as updated from time to time.
- 1.2 Your Users will be accessing HSEC Online® via the internet.
- 1.3 These Terms of Use set out the terms and conditions for the use of HSEC Online®.

2. Definitions

- 2.1 "Access Fees" bears the meaning assigned to that term in 10.1;
- 2.2 "Anniversary Date" means the date of the anniversary of the Commencement Date for the duration of the Term;
- 2.3 "Business Day" means any day other than a Saturday, Sunday or public holiday declared as such in South Africa;
- 2.4 "Commencement Date" means the earlier of the date on which you accept the Online Terms of Use or you start accessing and using HSEC Online®;
- 2.5 "Confidential Information" means all confidential and proprietary information disclosed by the Disclosing Party to the Receiving Party whether prior to or after the Signature Date. "Confidential Information" shall include:
 - 2.5.1 oral, written, printed, photographically and electronically recorded information of all types;
 - 2.5.2 documents, letters, agreements, undertakings;
 - 2.5.3 messages, codes, data, formulae, specifications;
 - 2.5.4 blueprints, plans, processes;
 - 2.5.5 marketing methods;
 - 2.5.6 know-how, methodology, intellectual property (whether pre-existing or still to be created), trade secrets;
 - 2.5.7 projects, projections, cash flow charts;
 - 2.5.8 software and copies;
 - 2.5.9 notes and extracts;
 - 2.5.10 strategic plans, financial plans, the financial planning process;
 - 2.5.11 the direction, manner, timing, and implementation of any projects to be undertaken;
 - 2.5.12 information (economic as well as financial) regarding the affairs of the Disclosing Party which comes to the attention of the Receiving Party pursuant to the conclusion of these Terms of Use;
- 2.6 "CPI" means the Consumer Price Index or its successor publication published by Statistics South Africa or its successor from time to time and is determined by comparing that index 18 months before the relevant Anniversary Date compared with 3 months prior to the same Anniversary Date;
- 2.7 "Customer Material" bears the meaning assigned to that term in 14.6;
- 2.8 "Disclosing Party" bears the meaning assigned to that term in 15.1;
- 2.9 "Encumbrance" or "Encumber" means any:
 - 2.9.1 mortgage, pledge, lien, deed of cession in security, assignment in the nature of security, hypothecation, set-off arrangement, security interest or any other agreement or arrangement having the effect or intention of conferring security;
 - 2.9.2 arrangement under which money or claims to or the benefit of a bank or other account may be applied, set-off or made subject to a combination of accounts to effect discharge of any sum owed or payable to any person; and/or
 - 2.9.3 other type of preferential agreement or arrangement (including any title transfer and retention arrangement) the effect whereof is the creation of security;
- 2.10 "HSEC Online®" means the HSEC Online® software accessible via the Site together with all updates and upgrades thereto as well as all accompanying documentation and the technical support services;
- 2.11 "Operator" bears the meaning assigned to that term in section 1 of POPIA;
- 2.12 "Parties" refers collectively to you and us and "Party" refers to either of you or us;
- 2.13 "POD" means proof of delivery and includes a delivery note;

- 2.14 "POPIA" means the Protection of Personal Information Act 4 of 2013;
- 2.15 "Personal Information" bears the meaning assigned to that term in section 1 of POPIA;
- 2.16 "Process" bears the meaning assigned to that term in section 1 of POPIA;
- 2.17 "Receiving Party" bears the meaning assigned to that term in 15.1;
- 2.18 "Site" means the website from which HSEC Online® is accessed namely <https://www.hsec.co.za>;
- 2.19 "South Africa" means the Republic of South Africa;
- 2.20 "Tax Invoice" bears the meaning assigned to that term in section 1 of the VAT Act;
- 2.21 "Term" means the duration of these Terms of Use which shall be determined from the Commencement Date until the Termination Date and includes the Evaluation Period;
- 2.22 "Terms of Use" mean these Terms of Use as updated and published on the Site as part of the logon procedures or otherwise and which we may amend from time to time provided that we will email you a copy of the updated Terms of Use. If you do not accept the updated Terms of Use, you must notify us in writing within 5 Business Days of receiving our email notification and we will consider any objections you may have. If we are unable to resolve those objections, at our option, the immediately preceding version of the Terms of Use shall apply to your use of HSEC Online® despite the provisions of these Terms of Use, alternatively we notify you in writing that we cannot agree to any changes proposed by you to the Terms of Use, in which case you shall have the option of terminating your access to HSEC Online® on 30 days' prior written notice;
- 2.23 "Termination Date" means the date of termination of the agreement created in terms of these Terms of Use for any reason;
- 2.24 "Users" mean your employees acting within the course and scope of their employment with you and who are nominated by you in writing as being the authorised users of HSEC Online®. "Users" may include one or more "admin users" who shall be system administrators;
- 2.25 "We, Us" means Saryx Engineering Group Proprietary Limited (registration number 2016/105521/07), a private company incorporated and registered in accordance with the laws of South Africa acting as an authorised distributor appointed by the Vendor in respect of HSEC Online®; and
- 2.26 "You" means your entity that has contracted with us to use the Software by registering and accepting the Online Terms of Use;
- 2.27 "VAT Act" means the Value-Added Tax Act 89 of 1991; and
- 2.28 "Vendor" means Saryx Property Group Proprietary Limited (registration number 2016/106453/07), a private company incorporated and registered in accordance with the laws of South Africa.

3. Interpretation

- 3.1 In the interpretation of these Terms of Use:
 - 3.1.1. clause headings are for convenience and reference purposes only and shall not be used in the interpretation, modification, or amplification of any of the provisions hereof;
 - 3.1.2. a reference to:
 - 3.1.2.1. a Party, shall include a reference to that Party's successors-in-title including that Party's executors, administrators, trustees, liquidators, and assigns;
 - 3.1.2.2. any gender shall refer to the other genders;
 - 3.1.2.3. the singular shall include a reference to the plural and vice versa;
 - 3.1.2.4. a natural person shall include reference to a juristic person; and
 - 3.1.2.5. a regulatory enactment shall be a reference to that enactment as at the Commencement Date and as amended or re-enacted from time to time;
 - 3.1.3. where any term is defined in the context of a clause and not specifically in clause 2, it shall bear the meaning assigned to that term in that clause;
 - 3.1.4. if any provision set out in 2 is a substantive provision setting out the rights and obligations of the Parties, effect shall be given thereto as if such provision were located elsewhere in these Terms of Use and not only in 2;
 - 3.1.5. unless otherwise provided, defined terms appearing in these Terms of Use in title case shall be given their meaning as defined, whilst the same terms appearing in lower case shall be interpreted in accordance with their plain English meaning;
 - 3.1.6. where figures are referred to in numerals and in words, and there is any conflict between the two, the words shall prevail, unless the context indicates a contrary intention;
 - 3.1.7. any provision in 0 shall be deemed a material provision of these Terms of Use and shall not merely constitute an introduction and/or contextualisation of these Terms of Use;

- 3.1.8. the use of the term "including" (or a term similar thereto) followed by specific examples shall not be construed as limiting the meaning of the general wording preceding such term;
- 3.1.9. where any provision requires any Party to perform any act in writing, it shall be competent for the Parties to use the medium of e-mail;
- 3.1.10. where the day on or by which anything to be done is not a Business Day, it shall be done on the first Business Day thereafter;
- 3.1.11. where any number of days is prescribed in these Terms of Use, such number of days shall be determined by excluding the first day and including the last day;
- 3.1.12. these Terms of Use shall be binding and enforceable on the successors-in-title of the Parties as if such third parties themselves had signed these Terms of Use;
- 3.1.13. no provision of these Terms of Use shall (unless otherwise stipulated) constitute a stipulation for the benefit of any person (*stipulatio alteri*) who is not a Party;
- 3.1.14. the interpretation of these Terms of Use shall not affect those provisions which either expressly provide that they will operate after such termination or which, of necessity, must continue to have effect after such termination even if those clauses themselves do not expressly provide for this; and
- 3.1.15. if you are accessing and using HSEC Online® in a country other than South Africa, the provisions of the United Nations Convention on the International Sale of Goods are specifically excluded from these Terms of Use and will not be considered in the interpretation of these Terms of Use.

4. Term and termination

- 4.1 These Terms of Use commence on the Commencement Date and shall remain in force indefinitely, provided that you shall be entitled to terminate the agreement created by these Terms of Use by your admin User unsubscribing for HSEC Online®. If your admin User unsubscribes from HSEC Online®, your subscription to HSEC Online® will cease on the expiry of a period of 30 days following the date of unsubscribing.
- 4.2 The agreement created between you and us by these Terms of Use, and, accordingly, your right to access HSEC Online® will be suspended if:
 - 4.2.1. you fail to make payment of the Access Fees and your account with us is not in good standing and accordingly we suspend your Users' ability to access and use HSEC Online®;
 - 4.2.2. we need to suspend your Users' access to HSEC Online® to prevent damage to or degradation of the Vendor's network integrity;
 - 4.2.3. you and/or your Users breach any of the provisions of these Terms of Use; it being agreed that a breach of any of the provisions of these Terms of Use by your Users constitutes a breach of these Terms of Use by you;
 - 4.2.4. your Users' continued access to and use of HSEC Online® will result in an infringement of the intellectual property rights of the Vendor or any third party;
 - 4.2.5. your Users' continued use of and access to HSEC Online® violate any applicable laws including in relation to confidentiality and/or privacy.
- 4.3 If we have suspended you and your Users' right to use and access HSEC Online® and the cause of suspension is removed and we and/or the Vendor decides to lift such suspension, you will be liable for the prevailing reactivation fees which shall be included in the next Tax Invoice rendered by us to you.
- 4.4 The provisions of 2, 2.28, 4.4, 7, 10, 11, 12, 13, 14, 15, 17, 18 and 19 shall survive the termination of these Terms of Use for whatever reason.

5. Right to access the Hosted Service

- 5.1 We are authorised to grant you the right to access and use HSEC Online® together with any documentation provided by the Vendor and grant you and your Users a limited, revocable, non-exclusive, non-transferable and non-sublicensable right to access and use HSEC Online® via the internet during the Term as well as use the documentation, subject to 4.2.
- 5.2 You and your Users will access and use HSEC Online® via the internet and will be responsible for obtaining and maintaining all telephone, computer hardware and other equipment needed to access HSEC Online® including all charges relating to such access and use. In this regard:
 - 5.2.1. you will be solely responsible for the back-up, recovery, and re-boot services for your equipment;
 - 5.2.2. you will be responsible for ensuring that the equipment and operating system software that you use on your equipment is compatible with HSEC Online®;
 - 5.2.3. you will maintain the integrity and security of your equipment, your account, and your data; and
 - 5.2.4. you will ensure that your internet connectivity has the requisite bandwidth and that you maintain the minimum bandwidth required to access HSEC Online®. You will be responsible for procuring additional equipment and/or bandwidth to ensure and maintain the minimum bandwidth at your sole cost and expense.

- 5.3 You will not be entitled to download any of the software that forms part of HSEC Online. You will also not be entitled to make copies of any of the software that underpins HSEC Online®.
- 5.4 Nothing in these Terms of Use shall be construed as us and/or the Vendor selling HSEC Online® or any component thereof to you or transferring in any other manner any of the intellectual property rights or other proprietary rights in HSEC Online® to you including in respect of the underlying technology, know-how, architecture, format, structure, sequence, organisation, processes, dashboards, technical data, operational data, metadata, functions, algorithms, improvements, enhancements, modifications or derivative works.
- 5.5 The Vendor has the right to make changes to HSEC Online® and to update functionality from time to time including by installing updates, bug fixes, upgrades and error corrections.

6. Logon credentials

- 6.1 To access and use HSEC Online®, we will provide you with an account and you will create logon credentials for each of your Users. All activities, use and transmissions shall be via authorised User accounts.
- 6.2 By creating logon credentials for your Users, you confirm that the User has been authorised by you to logon to the Site, to access and use HSEC Online® and in accessing and using HSEC Online®, the User is always acting on your behalf.
- 6.3 In allowing your Users to access and use HSEC Online®, such access and use is subject to the provisions of these Terms of Use and any additional online terms of use as updated by us from time to time (whether or not they are acting within the course and scope of their employment with you at the time of such access or use).
- 6.4 You will therefore be responsible for all the conduct of the User whilst such User is accessing or using HSEC Online® and you shall accordingly maintain, administer and safeguard the security and confidentiality of all logon credentials issued to you and/or your Users by us including account details, Usernames and passwords.
- 6.5 In addition, you will be solely responsible for ensuring and maintaining the integrity and security (whether physical, electronic, or otherwise) of your equipment to ensure that no third party has unauthorised access to your account and/or any of the login credentials of your Users. You remain accountable for all access and use of HSEC Online® even if a third party does so either with or without your permission. You will ensure that prior to third party consultants or subcontractors accessing and using HSEC Online®, that unique login credentials are assigned to them. No third party shall be entitled to access and use HSEC Online® using another authorised User's login credentials.
- 6.6 You will maintain and use the systems and procedures that allow you to track, document, and report entitlements to the Vendor including:
- 6.6.1 providing information and attestation to the use of HSEC Online® as specified by the Vendor to verify compliance with these Terms of Use; and
- 6.6.2 maintaining an updated, written list of all current authorised Users.
- You will provide us and/or the Vendor with this information on 5 business days' notice.
- 6.7 You will notify us in writing as soon as you become aware of the unauthorised use or access of any of the logon credentials which we have given to any of your Users and/or your account. In addition, you will notify us in writing of any other known or suspected breach of security of which you are aware.
- 6.8 In accessing HSEC Online®, you and/or your Users shall ensure that no objectionable content (including any content that is illegal, misleading, defamatory, indecent, obscene, in poor taste, threatening, infringing any third party intellectual property rights, invading personal privacy, is contrary to any applicable data protection laws or is otherwise objectionable (as determined within the Vendor's sole and absolute discretion)) is uploaded by your Users onto the Site or any location where HSEC Online® is accessed. We reserve the right to remove any objectionable content within our discretion.
- 6.9 When accessing and using HSEC Online®, you shall ensure that your Users comply with all applicable laws and the provisions of these Terms of Use.
- 6.10 Any failure by your Users to comply with 6.8 and 6.9 shall constitute a material breach of these Terms of Use.
- 6.11 Without limiting our rights in terms of 6.10, we reserve the right to refuse the registration of logon credentials or to cancel logon credentials if you or a User linked to your account breaches any of the provisions of these Terms of Use.
- 6.12 We reserve the right to cancel logon credentials that have been inactive for more than 6 months.

7. Prohibited conduct

- 7.1 In granting you a right to access and access HSEC Online® you shall ensure that neither you nor any of your Users (whether acting in the course and scope of their employment or not):
- 7.1.1 reverse engineer, decompile, disassemble, or use any similar means to discover the source code or the underlying structures of the software underpinning HSEC Online® or attempt to do so;
- 7.1.2 recreate, copy, reproduce, modify, manufacture, adapt or reformat any features, functions, or graphics of HSEC Online® or create any derivative works from HSEC Online®;
- 7.1.3 translate the whole or part of HSEC Online® into another language;

- 7.1.4. use any of the Vendor's intellectual property rights to create other software or software that is similar to HSEC Online®;
- 7.1.5. circumvent or attempt to circumvent, bypass, delete or remove any form of security or protection, control, functional or technical restrictions or limitations that has been put in place to control access to HSEC Online® or enable functionality disallowed by the Vendor and/or us;
- 7.1.6. disrupt or cause harm to the Vendor's or our computers, systems, or infrastructure or that of any third party (including by spamming);
- 7.1.7. monitor, crawl, store, transmit malicious code, malware, viruses, worms, time bombs, spyware, adware, bots, and Trojan horses;
- 7.1.8. interfere with anyone accessing and using HSEC Online®;
- 7.1.9. Encumber, transfer, rent, lend or license HSEC Online® to a third party or timeshare HSEC Online® to any third party;
- 7.1.10. sublicense, distribute, publish, display, post, transmit, telecommunicate, host, frame, sell, resell, reproduce, assign, transfer or in any way commercially exploit HSEC Online® or any intellectual property rights of the Vendor or render a service to a third party using HSEC Online® without our prior written consent which may be withheld in our sole discretion;
- 7.1.11. use HSEC Online® as part of a service bureau offering to third parties;
- 7.1.12. permit any third party to directly or indirectly gain or attempt to gain unauthorised access or intercept, interfere with, expropriate, or otherwise do harm to any account, workspace, software, data, files, computer systems or environments accessible via HSEC Online®;
- 7.1.13. access or make HSEC Online® available other than for internal business purposes including acting as a service provider to third parties or provided a managed or network provisioned service;
- 7.1.14. distribute, manufacture, adapt or create derivative works from HSEC Online® or otherwise modify HSEC Online®;
- 7.1.15. remove, alter, or render illegible the logo, trademark, copyright notice or other proprietary notices or labels from HSEC Online® and/or the software underpinning HSEC Online®;
- 7.1.16. will challenge (or assist others to challenge) HSEC Online®'s marks or the registration thereof nor will you attempt to register trademarks, marks, or names confusingly similar to HSEC Online®'s marks;
- 7.1.17. access or use HSEC Online® or any of the documentation provided by the Vendor or us to conduct a competitive or comparative analysis of HSEC Online® or benchmark HSEC Online® or to develop, provision, or use a competing service or any other purpose prejudicial to the interests of the Vendor including building a competing product or service or copying any ideas, features, functions, or graphics of HSEC Online®;
- 7.1.18. file or seek intellectual property right protection in respect of HSEC Online® or any component thereof anywhere in the world;
- 7.1.19. interface, link, or combine HSEC Online® with any opensource software which will have the effect of rendering HSEC Online® or any component thereof subject to or be Encumbered by the terms and conditions of an opensource license;
- 7.1.20. performing any security testing that attacks or disrupts HSEC Online®;
- 7.1.21. combine or integrate HSEC Online® with any other software or hardware or web-based services or technology (except if this has been authorised in writing in advance by us), provided that when you do so, the choice, installation and use of third-party software not forming part of HSEC Online® or used in connection with HSEC Online® or proxy is made by you. If the use of third-party software in conjunction with HSEC Online® results in the infringement of the Vendor's or our intellectual property rights or those of any third party, you indemnify and hold us harmless from any losses or damages sustained by the Vendor or us as a result thereof;
- 7.1.22. frame or mirror any content forming part of HSEC Online®; nor
- 7.1.23. allow any third party to do anything which is prohibited in this 7.1.
- 7.2. Although neither we nor the Vendor are obliged to monitor content, we and/or the Vendor may do so in our discretion from time to time and may remove objectionable content.
- 7.3. Should you and/or any of your Users do anything that is prohibited by 7.1 (without limiting any of our rights in terms of 7.2), we shall, in our sole and absolute discretion, be entitled to refuse the registration of logon credentials for a defaulting User or cancel such logon credentials with immediate effect and we shall not be deemed to have repudiated these Terms of Use by doing so.

8. Updates and upgrades

- 8.1 The Vendor may upgrade and update HSEC Online® from time to time within our sole discretion including by means of bug fixes, upgrades and new releases. You shall remain responsible for ensuring that you are using the latest, updated version of HSEC Online® from time to time and if HSEC Online® are not available due to your not uploading the latest version of HSEC Online®, neither we nor the Vendor will in any event be liable.

8.2 The Vendor reserves the right to elect whether to provide any release or upgrade to HSEC Online® or whether to create a separate module or future version HSEC Online® that the Vendor may or may not choose to license separately.

8.3 The Vendor may modify, update, or discontinue HSEC Online® which modifications, updates, or discontinuations may be detrimental to you or result in a diminishment of value. We and/or the Vendor shall not be liable to you for such modifications, updates, or discontinuations but shall use reasonable commercial endeavours to notify you of such modification, update or discontinuation and allow you to transfer your Customer Material.

9. Downtime

9.1 The Vendor does not warrant that you will be able to access HSEC Online® on an uninterrupted basis.

9.2 The Vendor may be prevented, from time to time, from providing you with access to HSEC Online® due to circumstances beyond the Vendor's reasonable control. Those circumstances shall constitute acceptable downtime and the Vendor shall take all reasonable precautions to prevent such circumstances from occurring.

9.3 HSEC Online® may be temporarily unavailable due to scheduled maintenance and/or emergency unscheduled maintenance from time to time or due to circumstances beyond the Vendor's reasonable control. We will use reasonable commercial efforts to advise you in advance of any scheduled downtime.

9.4 The Vendor does not warrant that HSEC Online® will be uninterrupted and you agree that downtime occasioned by the circumstances contemplated in 9.1 and 9.3 shall be permissible and shall not constitute a breach of any of the provisions of these Terms of Use.

10. Access Fees

10.1 You shall be liable to make payment of the Access Fees linked to the type of HSEC Online® you choose from time to time ("Access Fees"). Access Fees are non-cancellable and non-refundable and shall escalate annually. We shall notify you in writing of the changes to the Access Fees no later than 60 days prior to the Access Fees increasing.

10.2 Either we or a third party nominated by us shall issue a Tax Invoice for all Access Fees due by you to us. Tax Invoices are payable monthly in arrears, with payment being due on presentation of the Tax Invoice. If you fail to make payment of any Tax Invoice within 30 days of the date of such Tax Invoice, in addition to our right to charge you interest on all overdue Tax Invoices at 1.5% per month, we reserve the right to suspend the ability of you and/or your Users to access and use HSEC Online® pending such payment, subject to the provisions of 4.3. We will not be repudiating these Terms of Use by doing so and shall not be liable for any losses or damages you may sustain as a result of such suspension.

10.3 Depending on the country in which you are based, you may be obliged to deduct withholding taxes from the amount of any Tax Invoice issued to you by us. In such event you agree that we will gross up any invoiced amount by amount equal to such withholding taxes so that the net amount we receive from you as payment for the right to access and use HSEC Online® is equal to the amount payable by all other customers who use and access HSEC Online®. This grossing up of our Tax Invoice will not be subject to disputes as contemplated in 10.4 and 10.5.

10.4 If you dispute any Tax Invoice amount, you should notify accounts@saryx.com as soon as possible in the circumstances.

10.5 We will have 7 days to assess whether any dispute lodged by you in terms of 10.4 is valid or not. If valid, we will credit any amount due to you from your next Tax Invoice. However, if we do not agree with your reasons for dispute, a representative from our contact centre will notify you if we do not agree with the items disputed; providing reasons. If you continue to dispute the billing of a load, you are welcome to escalate the dispute via the provisions of 17.

11. Warranties

11.1 The Vendor and we provide HSEC Online® to you on an "as is" and "as available" basis and warrant only that HSEC Online® will substantially conform with the documentation supplied by either us or the Vendor and is free of material defects. If HSEC Online® do not substantially conform with the documentation supplied by us or the Vendor, your sole remedy shall be for the Vendor to modify HSEC Online® to ensure substantial conformance with the documentation supplied by the Vendor or us to you.

11.2 Accordingly, neither we nor the Vendor warrants:

11.2.1 the uninterrupted nature of access to HSEC Online®;

11.2.2 that HSEC Online® will be error-free, subject to the provisions of 11.1;

11.2.3 that any results will be obtained from the use of HSEC Online®;

11.2.4 that HSEC Online® will meet your requirements and that it is fit for the purpose for which you have procured HSEC Online®; nor

11.2.5 that the results produced by HSEC Online® will be correct, accurate, or reliable.

11.3 Save for the warranties provided in 11.1 and 11.2, we and the Vendor provide you with no further warranties whether express or implied and then, to the extent implied, only insofar as are specifically provided for in these Terms of Use.

- 11.4 You remain responsible for evaluating HSEC Online® and ascertaining whether the data generated by HSEC Online® is accurate or sufficient for your purposes.
- 11.5 HSEC Online® is proprietary to the Vendor and we have been appointed as the authorised distributor of HSEC Online® and no third party has made any claim alleging that HSEC Online® infringes its intellectual property rights. To the extent that a third party makes any claim that HSEC Online® somehow infringe on its intellectual property rights, you are obliged to immediately notify us of such claims in writing by addressing an email to warrantyclaims@saryx.com within 72 hours of receipt of such claim.
- 11.6 Without limiting the generality of 11.1, neither we nor the Vendor are responsible for the other software (including operating system software) installed by you on your equipment nor are we responsible for the operation or performance of the internet.

12. Limitation of liability

- 12.1 The Vendor agrees to indemnify, defend, and hold you harmless from and against any damages, losses, liabilities, settlements, and expenses (including costs and reasonable attorneys' fees) incurred in connection with any third party asserting that HSEC Online® infringe such third party's intellectual property rights on the basis outlined in 11.5.
- 12.2 You undertake to notify us promptly of any such claim and provide us with reasonable assistance in the defence and settlement of any claim.
- 12.3 We will assume sole control of the defence and settlement of such claim.
- 12.4 You are not authorised to make any representations and/or statements to any third party.
- 12.5 Provided you have not engaged in any dealings with any third-party alleging infringement of its intellectual property rights, your sole remedy in the case of a third-party infringement action or any allegation thereof shall be for the Vendor to place you in the same position you would have been in had such third party not asserted infringement of its intellectual property rights.
- 12.6 Neither we nor the Vendor shall be responsible for any losses or damages (howsoever sustained) by you, your customers, your employees or any other third party associated with the use and access by you and/or your Users of HSEC Online® and by using HSEC Online®, you irrevocably and unconditionally release us and the Vendor from such liability including in relation to any indirect or consequential losses or damages.

13. Transfer of rights

- 13.1 You shall not be entitled to cede your rights, delegate your obligations, or assign your rights and obligations in these Terms of Use to any third party without the Vendor's prior written consent, which the Vendor shall be entitled to withhold in its sole discretion.
- 13.2 The Vendor shall be entitled to cede its rights, delegate its obligations, or assign its rights and obligations in these Terms of Use to any third party without your prior written consent provided that the Vendor shall notify you in writing, whether in terms of a general notice or specific correspondence within a reasonable time of such cession, delegation, or assignment.

14. Data Processing

- 14.1 "Transaction data" means all data that is inputted by you and/or your Users and constitutes data pertaining to any transaction Processed by HSEC Online®.
- 14.2 You will retain all proprietary rights in and to the Transaction Data and will be entitled to obtain a data file of all historical Transaction Data from us at any time upon reasonable request, subject to the payment by you of any amounts we may need to incur to provide you with access to the Transaction Data in the form requested by you.
- 14.3 The Vendor reserves the right to compile and analyse the Transaction Data to prepare reports, studies, analyses, and other work product which we undertake to do solely on an anonymous basis. This data shall constitute "Compiled Data" and the Vendor shall retain all proprietary rights in and to such Compiled Data.
- 14.4 The Vendor and/or us may use the Compiled Data for any purpose including for marketing and advertising purposes and for the promotion of other networking opportunities to third parties including other end users or prospective end users.
- 14.5 We and the Vendor will not distribute the Compiled Data in a manner which identifies such data as belonging to you without your prior written consent, which you shall not unreasonably withhold or delay.
- 14.6 Your Personal Information and that of your customers, employees, or any third parties they have contracted with will be Processed via HSEC Online® as part of its normal operations during the Term ("Customer Material").
- 14.7 You are responsible for the Customer Material and, aside from implementing reasonable technical and organisational measures to ensure the integrity of the Customer Material as required by applicable law, we will not assume any risk or liability associated with the quality, legality or back-up, or use of the Customer Material. You will ensure that you acquire, install and maintain your environment and applications and that you regularly back-up all data Processed by HSEC Online®. In addition, you will be liable for compliance with all applicable law not generally applicable to an Operator operating in the environment in which the Vendor and/or we operate HSEC Online®.

- 14.8 You consent to the Processing of the Customer Material by us and/or the Vendor or any third party contracted by us and/or the Vendor as contemplated in these Terms of Use and consent to the further Processing of the Contract Information by us and/or the Vendor for the purposes of:
- 14.8.1 data analysis purposes including:
 - 14.8.1.1 linking Usernames to authorised Users;
 - 14.8.1.2 obtaining feedback from or receiving data about HSEC Online® including details of the hardware profile (including the internet protocol of such hardware), location, operating system of the User, amount of time used, file sizes created, internal errors, and regions of functionality of HSEC Online® that a particular User is using;
 - 14.8.1.3 data and metrics from the use of HSEC Online® including accessibility and active process-related data;
 - 14.8.1.4 audit logs and reporting to be used in furthering the Vendor and/or our activities in accordance with these Terms of Use; and
 - 14.8.2 identifying any trends with the aim of either providing anonymous statistical information for general industry reports or to improve HSEC Online®. Without limiting the generality of the foregoing, we and/or the Vendor shall have the right to Process the technical data without restriction or compensation payable to you relating to the access and use of HSEC Online® to assist in the development of future releases and developments.
- 14.9 In the Processing or further Processing of the Customer Material:
- 14.9.1 you acknowledge that some data may be processed via web applications that are cloud-based and which may be based in South Africa or abroad. You consent to any Processing or further Processing of the Customer Information in South Africa or abroad; and
 - 14.9.2 you grant us and/or the Vendor a licence to use and copy the Customer Material, subject to such Processing being reasonable and linked to the provision of HSEC Online® by us and/or the Vendor to you, subject to the provisions of 15.
- 14.10 You shall ensure that you obtain the consent of your customers, employees, or any third parties relating to the Processing of their Personal Information to the extent that it forms part of the Customer Material and indemnify and hold us and/or the Vendor and/or any third party appointed by us and/or the Vendor directly or indirectly to Process the Customer Material as described in these Terms of Use and for the purposes of providing HSEC Online® from any losses or damages sustained by any customer, employee, or third party as a result of your failure to obtain such customer, employee's, or third party's consent including any fines or administrative penalties as well as all reasonable legal costs incurred by us and/or the Vendor whether action has been instituted against us and/or the Vendor or not.

15. Confidentiality

- 15.1 Each Party ("Receiving Party") acknowledges that the Confidential Information of the Party disclosing such Confidential Information ("Disclosing Party") that it may have acquired, or which may have come to its attention pursuant to the negotiation, settlement and/or implementation of the agreement created by these Terms of Use is a valuable, special, and unique asset of the Disclosing Party and accordingly that it is not to be used other than in accordance with these Terms of Use.
- 15.2 The Receiving Party shall keep secret and confidential and shall not disclose the Confidential Information to any person (save as may be strictly necessary for the purpose of giving effect to these Terms of Use) without the prior written consent of the Disclosing Party, which consent may be withheld in the sole and absolute discretion of the Disclosing Party.
- 15.3 The provisions of 15.2 shall apply to all Confidential Information even if such Confidential Information was disclosed prior to the production of any draft of these Terms of Use and/or the Signature Date.
- 15.4 The provisions of this 15 shall supersede and replace the provisions of any confidentiality and/or non-disclosure agreement concluded between the Parties prior to the Signature Date.
- 15.5 The Receiving Party shall not use the Confidential Information of the Disclosing Party for its own benefit other than pursuant to these Terms of Use provided that this obligation shall not extend to information:
- 15.5.1 which is in or comes into the public domain otherwise than through the default of the Receiving Party;
 - 15.5.2 the disclosure whereof is agreed to by the Parties;
 - 15.5.3 which is properly available to the public or disclosed or divulged pursuant to an order of a court of competent jurisdiction subject to 15.8;
 - 15.5.4 the disclosure whereof is required by applicable law, a stock exchange or other regulatory authority subject to clause 15.8;
 - 15.5.5 which is already known to the Receiving Party and is not subject to an obligation of confidence;
 - 15.5.6 which is independently developed by the Receiving Party without using proprietary information of the Disclosing Party; and/or

- 15.5.7. which is rightfully received from any third party.
- 15.6 The Receiving Party shall be entitled to disclose the Confidential Information on a "need to know" basis to its staff and advisers; provided that in doing so:
- 15.6.1. it notifies such staff and advisers that they are bound by the confidentiality undertakings in these Terms of Use; and
- 15.6.2. it indemnifies and holds the Disclosing Party harmless from any loss or damage which the Disclosing Party may sustain because of such disclosure.
- 15.7 The Receiving Party shall employ reasonable measures in order to protect the Confidential Information and shall securely store all Confidential Information in whatever medium or format so that, subject to the provisions of 15.6, only individuals who are entitled to access same are able to do so.
- 15.8 If the Receiving Party is compelled in law to disclose the Confidential Information to any third party (if permitted in law to do so):
- 15.8.1. it shall immediately notify the Disclosing Party thereof to enable the Disclosing Party to consent to such disclosure and/or to seek an appropriate order preventing such disclosure;
- 15.8.2. insofar as the Disclosing Party has consented to such disclosure or a court of competent jurisdiction has ordered such disclosure:
- 15.8.2.1. the Receiving Party shall only disclose the Confidential Information that is directly relevant to the purpose for which it is sought and shall not disclose all the Confidential Information; and
- 15.8.2.2. the Confidential Information disclosed by the Receiving Party in terms of 15.8.2.1 shall remain protected by this 15 notwithstanding such disclosure; provided that such Confidential Information is not publicly available without obtaining specific access thereto in terms of any applicable access to information laws and is not available to any member of the public without undue effort.
- 15.9 Upon becoming aware of any loss or unauthorised use or disclosure of the Confidential Information, the Receiving Party shall, as soon as is reasonably practicable in the circumstances, notify the Disclosing Party thereof in writing. The Receiving Party shall use reasonable commercial endeavours to assist the Disclosing Party in remedying such unauthorised use or disclosure at its own cost.
- 15.10 No provision of these Terms of Use shall be construed as:
- 15.10.1. granting a license to the Receiving Party to use the Confidential Information;
- 15.10.2. transferring any proprietary rights in and to the Confidential Information to the Receiving Party; or
- 15.10.3. granting access to the Confidential Information in terms of the provisions of any applicable access to information legislation including the Promotion of Access to Information Act 2 of 2000.
- 15.11 Within 14 days of the Termination Date, the Receiving Party shall:
- 15.11.1. return all Confidential Information to the Disclosing Party in whatever format;
- 15.12 expunge all Confidential Information from electronic media without retaining copies of same;
- provided that this 15 shall survive for so long as the Receiving Party is obliged by applicable law to retain copies of such Confidential Information.

16. Force Majeure

- 16.1 Neither we nor the Vendor shall be in breach of these Terms of Use where the Vendor or our inability to comply with any obligation is caused by Force Majeure.
- 16.2 For the purposes of 16.1, "Force Majeure" shall include wars, riots, civil commotion, natural physical disasters, strikes or industrial action by either Party's employees (provided such strikes and industrial action are legal and further provided that they are industry-wide and not limited solely to the employees of a Party) any action by government or a public authority and all other circumstances beyond the reasonable control of the Parties, but excluding lack of funds or lack of access to available funds ("Force Majeure Event").
- 16.3 If the Vendor or we are unable to perform in accordance with these Terms of Use for a continuous period of at least 90 consecutive days, you shall be entitled to terminate the agreement created by these Terms of Use on the expiry of such 90-day period on 7 days' prior written notice to us and you shall not have any right of action vis-à-vis us and/or the Vendor.

17. Dispute resolution

- 17.1 If a dispute arises between the Parties with regards to these Terms of Use or their interpretation, either Party may convene a meeting (to be held either in person or via electronic communication) on 14 days' prior written notice to the other Party to resolve such dispute.
- 17.2 If the dispute is not resolved through *bona fide* discussion between the Parties within 14 days of the date of such meeting, subject to the provisions of 17.10, either Party shall be entitled to refer such matter to arbitration by giving the other Party a written notice of arbitration ("Arbitration Notice").

- 17.3 The Arbitration Notice shall constitute legal process for the purpose of interrupting extinctive prescription as contemplated in the Prescription Act 68 of 1969.
- 17.4 The arbitration shall be held in Sandton, Gauteng, South Africa.
- 17.5 The arbitration shall be held in accordance with the Arbitration Act 42 of 1965 utilising the Arbitration Foundation of Southern Africa ("AFSA") expedited commercial rules for arbitration ("AFSA Rules").
- 17.6 Only the Parties and their legal representatives (or persons agreed to) shall attend the arbitration proceedings and the arbitration proceedings shall be confidential save insofar as a disclosure is necessary to initiate and conduct appeal or review proceedings in terms of 17.9.
- 17.7 The Parties shall use reasonable commercial endeavours to expedite the arbitration proceedings; it being the intention of the Parties to dispose of the dispute within 60 days of the date of the Arbitration Notice.
- 17.8 The arbitrator shall be an independent party agreed to by the Parties. In the absence of agreement, the arbitrator shall be nominated by the chairperson for the time being of AFSA or his nominee.
- 17.9 The award of the arbitrator shall be binding on the Parties save that the Parties shall be entitled to appeal or review the decision of the arbitrator in accordance with the AFSA Rules.
- 17.10 Nothing in this 17 shall prevent any Party from seeking urgent interim relief from a court of competent jurisdiction pending the decision of the arbitrator.
- 17.11 By accessing HSEC Online® and providing access to HSEC Online®, the Parties irrevocably and unconditionally consent to the arbitration proceedings contemplated in this 17 and, save for the circumstances contemplated in 17.9 and 17.10, the Parties shall not be entitled to withdraw from such proceedings nor claim at such proceedings that they are not bound by such proceedings or the provisions of this 17.
- 17.12 This 17 constitutes a separate agreement which is severable from the remainder of these Terms of Use, and which shall survive the termination of these Terms of Use for whatever reason.

18. Applicable law

- 18.1 All matters arising from or in connection with these Terms of Use, their validity, existence, or termination, shall be determined in accordance with the laws for the time being of South Africa.
- 18.2 In circumstances contemplated in 17.10, the Parties agree to submit any dispute arising from these Terms of Use to the Gauteng Local Division of the High Court, Johannesburg.

19. General

- 19.1 The Parties warrant to each other that:
- 19.1.1 they have the requisite power, authority, and legal right to sign and perform their obligations in terms of these Terms of Use;
- 19.1.2 these Terms of Use have been duly authorised by the necessary actions of the shareholders and board of directors of each Party and constitutes a valid and binding obligation on such Party; and
- 19.1.3 the execution, delivery, and performance by each Party of its obligations in these Terms of Use shall not constitute a breach of that Party's constitutional documents.
- 19.2 These Terms of Use constitute the sole record of the agreement of the Parties in terms of the subject matter hereof. Accordingly:
- 19.2.1 these Terms of Use supersede and replace all prior agreements concluded between the Parties as to the subject matter hereof;
- 19.2.2 no Party shall be bound by any warranty, representation, promise or the like not recorded in these Terms of Use including any future functionality or features of HSEC Online® or any oral or written public comments regarding the features or functionality of HSEC Online®; and
- 19.2.3 no indulgence which any Party ("Grantor") may grant to another Party shall constitute a waiver of the Grantor's rights.
- 19.3 In performing their obligations in these Terms of Use, each Party shall comply with applicable law.
- 19.4 The fact that a Party has waived its rights on one occasion in respect of any default by another Party ("Defaulting Party") of its obligations in these Terms of Use shall not constitute a precedent upon which the Defaulting Party may rely in respect of future defaults.
- 19.5 The Parties undertake to do all such things, perform all such acts, and take all such steps and to procure the doing of all such things and the taking of all such steps as may be necessary or incidental or be conducive to the giving effect of the terms, conditions and import of these Terms of Use.
- 19.6 All provisions of these Terms of Use are severable from each other notwithstanding the way they have been drafted or linked grammatically. Accordingly:
- 19.6.1 the Parties declare that it is their intention that these Terms of Use would have been executed without such unenforceable provisions has they been aware of their unenforceability as at the Commencement Date; and

- 19.6.2. any provision of these Terms of Use which becomes unenforceable (whether due to voidness, illegality, unlawfulness or for whatever other reason) shall be deemed *pro non scripto* and the remaining provisions of these Terms of Use shall be of full force and effect.