

1. INTERPRETATION

1. In this Agreement, unless the context requires otherwise, each of the following words and expressions shall have the meaning stated opposite it and cognate expressions shall have a corresponding meaning, namely:
 1. ***“Agreement”*** refers to the terms and conditions of use, the terms and conditions of use of the HX Systems Website, any copyright notice, privacy policy and any and all terms and conditions imposed in respect of the service as amended and updated from time to time;
 2. ***“Business Hours”*** means Mondays to Fridays 08H00 to 17H00 excluding Public Holidays;
 3. ***“Maintenance Plan”*** means the optional maintenance plan sold by the service provider to cover damage to the CPE, including rain/water, lightning and other accidental damage to the CPE but excluding theft and malicious damage ***“inclusive of”*** will always be read as ***“inclusive of but limited to”***
 4. ***“Client”*** means the subscriber on any subscription agreement, service application or service order;
 5. ***“Client Data”*** means the data transmitted and received using the HX Systems network;
 6. ***“CPE”*** means Client Premises Equipment, the radio antenna that is installed at client’s premises for the delivery of the service;
 7. ***“Parties”*** means the parties to this Agreement, being the Provider and the Client, and ***“Party”*** shall mean either one of them, as the context may require; and
 8. ***“Service provider”*** means HX Systems CC, a close corporation duly incorporated in terms of the Close Corporation Act of South Africa (as amended), with its main place of business at 305 Victoria Center, 7 Victoria Road, Somerset West, Western Cape Province, 7530, including any and all of its successors in title;
 9. ***“ZAR”*** or ***“Rand”*** means the lawful currency of the Republic of South Africa.
2. In this Agreement, unless the context clearly indicates otherwise:

1. words importing any one gender shall include the other gender;
 2. the singular shall include the plural and vice versa;
 3. an expression which denotes a natural person includes a juristic person and *vice versa*;
 4. the words "include" and "including" mean "include without limitation" and "*including without limitation*". The use of the words "include" and "including" followed by a specific example or examples shall not be construed as limiting the meaning of the general wording preceding it; and
 5. any reference in this Agreement to "days" shall be construed as calendar days.
3. The head notes to the paragraphs to this Agreement are inserted for reference purposes only and shall not affect the interpretation of any of the provisions to which they relate.
 4. If any provision in clause 1 is a substantive provision conferring rights or imposing obligations on any Party, notwithstanding that such provision is contained in such clauses, effect shall be given thereto as if such provision were a substantive provision in the body of the Agreement.
 5. Save where clearly indicated to the contrary, expressions defined in this Agreement shall bear the same meanings in any schedule hereto unless such schedule contains an alternative definition for the expression.
 6. Where any term is defined within the context of any particular clause in this Agreement, the term so defined, unless it is clear from the clause in question that the term so defined has limited application to the relevant clause, shall bear the meaning ascribed to it for all purposes in terms of this Agreement, notwithstanding that that term has not been defined in this interpretation clause.
 7. When any number of days are prescribed in this Agreement (*including Business Days*), same shall be reckoned exclusively of the first and inclusively of the last day unless the last day falls on a Saturday, Sunday or public holiday, in which case the last day shall be the next succeeding day which is not a Saturday, Sunday or public holiday.

- 8. When any number of Business Days is prescribed in this Agreement, same shall be reckoned inclusively of the first and exclusively of the last Business Day.**
- 9. Should the day for the performance of any obligation in terms of this Agreement fall on a day which is not a Business Day, then such obligation shall be performed on the immediately succeeding Business Day.**
- 10. This Agreement shall be binding on and enforceable by the successors-in-title, administrators, trustees, permitted (in terms of this Agreement) assigns or liquidators of the parties as fully and effectually as if they had signed this Agreement in the first instance and reference to any Party shall be deemed to include such Party's successors, administrators, trustees, permitted assigns or liquidators, as the case may be.**
- 11. The expiration or termination of this Agreement shall not affect such provisions of this Agreement as expressly provide that they will operate after any such expiration or termination or which of necessity must continue to have effect after such expiration or termination, notwithstanding that the applicable clauses do not expressly provide for such continued effect.**
- 12. Any reference in this Agreement to legislation or subordinate legislation is to such legislation or subordinate legislation at the date of signature hereof and as amended and/or re-enacted from time to time.**
- 13. Any reference in this Agreement to a Party shall include a reference to that Party's assigns expressly permitted under this Agreement and, if such Party is liquidated or sequestrated, be applicable also to and binding upon that Party's liquidator or trustee, as the case may be.**
- 14. Should this Agreement be signed on a date that results in the use of any tenses herein being inappropriate, the terms shall be read in the appropriate tense.**

2. INTRODUCTION OF SERVICE

- 1. Access to www via the HX Systems Network, wired or wireless, referred to "the service", subject to the full terms and conditions as contained in this document**

2. These terms and conditions may be altered from time to time without notice, client responsible to revisit these terms and conditions from time to time to familiarize with content
3. by using this service you agree with the full terms and conditions as set out.

3. CONDITIONS OF USE

The service provider agrees to provide the client access to the service as subscribed to on the full terms and conditions of this agreement. By using the service you agree that you will not circumvent the user authentication process and service speed limiters or attempt to access the service provider's network. Should the client fail to comply with the full terms and conditions of this agreement and/or breach any of the provisions specified, the client agrees to pay the service provider, on demand all costs, loss or damages incurred or suffered by the service provider as a result of such breach.

4. SERVICE AVAILABILITY

The service provider will use the best possible endeavours to ensure that the service is available at all times. The client however indemnifies the service provider from any losses whatsoever, be it loss of business information, loss of data or any other direct or indirect financial losses resulting from unavailability or interruption of the service regardless of whether such a claim is based on breach of contract, intentional/negligent breach of duty of care that inflicts loss or harm that triggers legal liability, implied warranties or even if the service provider or its employees were negligent.

5. COMMUNICATION WITH THE SERVICE PROVIDER AND STAFF

1. Clients can be held accountable for their conduct towards the staff of HX Systems, including conduct pertaining to allegations or malicious conduct directed towards HX Systems or its staff.
2. Any abusive behaviour including but not limited to threats, offensive language, aggressive conduct or any type of intimidation on a public forum directed at HX Systems or its staff will not be tolerated. Should such conduct occur, HX Systems reserves the right to suspend or terminate all services to a client with immediate effect.
3. Any client that uses public platforms such as forums or social media to spread false allegations, defamation or cause any action that diminish the reputation or public perception of HX Systems could have their services suspended or terminated with immediate effect.

HX Systems also reserves the right to institute appropriate action against such a client to remedy any such perception.

6. SECURITY & PRIVACY

- 1. HX Systems reserves the right to intercept and monitor all usage and flow of communication through the service provided and take any other action required to ensure that the security and reliability of its network is not compromised.**
- 2. All customer information required for providing the service including personal information such as address, telephone numbers and banking details will be kept in the strictest confidence by HX Systems and will not be distributed or sold to third parties.**
- 3. The client may not use the service of HX Systems in any way that can compromise the security of its network and may not tamper with the network or service in any way.**
- 4. The client is solely responsible for the protection of their data on any personal computing devices (Computers, Laptops, Tablets, Smartphones) when using the HX Systems service. Devices should be adequately protected with the required anti-virus, spyware, firewall and encryption where required. HX Systems cannot be held responsible for any breach of security that occurs on client devices.**
- 5. The client may not use the service provided by HX Systems for any illegal or unlawful activity. This includes (*but is not limited to*) gathering or email addresses or names for political, commercial, charitable or any other use as well as gathering personal information of third parties without their consent. In addition, the client may not violate or allow the violation the privacy of any person or attempt to gain unauthorised access to the HX Systems network or any other network by hacking, phishing, password mining or any other action that compromises the privacy of any person or network.**
- 6. If any client is found to engage in any of the above actions, HX Systems reserves the right, without prejudice to any other rights to without notice and immediate effect, suspend or terminate any client service and/or agreement without refunding any paid service as any such action is deemed a breach of contract. Furthermore, HX Systems reserves the right to invoice the client with any costs incurred inclusive of bandwidth, administrative fees, possible downtime caused and any other costs incurred to rectify the breach of security.**

Although the client's personal information is protected by a confidentiality clause, client information may be made available to any person or entity affected by these actions.

7. HX Systems does not keep a record of any passwords to access client premises Wi-Fi routers. It is the responsibility of the client to ensure that access to premises equipment is secured by not providing outside parties with the access code to connect to these routers.

7. SUBSCRIPTION OPTIONS AND NOTICE PERIODS

All ISP services rendered by HX System are rendered on a month to month basis, in accordance with the package selected by the specific client, without the client being locked into a fixed term contract.

1. Private Individuals

1. Should a client opt to cancel the agreement at any time, the client is not obliged to give any notice of his/her intention to do so, provided such cancellation is communicated to HX Systems in writing.
2. Should the client fail to communicate such cancellation in writing to HX Systems, HX Systems reserves the right to continue billing the client for ISP services rendered until such written notice of cancellation is received.

2. Businesses

1. Should a client opt to cancel the agreement at any time, the client is obliged to give HX Systems one (1) calendar months' written notice.
2. Should the client fail to communicate such cancellation in writing to HX Systems, HX Systems reserves the right to continue billing the client for ISP services rendered until such time as the notice period (*one calendar month*), calculated from date of receipt of the written notice of cancellation is received by HX Systems.

8. BREACH OF CONTRACT

1. The following conduct will constitute breach of contract by the subscriber
 1. Using the internet service for any illegal activities

2. Bypassing any authentication methods and/or speed or data limitation methods used by the service provider.
 3. Accessing or attempting to access any part of the service provider's network infrastructure.
 4. Failing to make payment for provision of services within the stipulated time frame.
 5. Abusive behaviour including but not limited to threats, offensive language, aggressive conduct or any type of intimidation on a public forum directed at HX Systems or its staff.
2. Where a client is in breach of contract, HX Systems reserves the right to cancel any subscription agreement with the client by giving 24 hours' notice of cancellation of services. In addition to terminating an account, the service provider can take any action deemed necessary to collect any monies outstanding from the subscriber *in lieu* of his subscription agreement and may collect all equipment deemed part of the subscription agreement from the premises of the subscriber. Failure by the subscriber to allow access to the service provider to remove the CPE device from the subscription address may result in legal action to remedy the situation.

9. REFUNDS AND HANDLING FEES

All installation fees and subscription fees are payable in advance. When a client requests an installation the service provider will invoice the requested work and payment must be received prior to scheduling the requested work. The following stipulated terms will be in effect depending on the matter that arises.

1. Cancellation of installation by the Client

1. Should a client have requested an installation and payment have been received it will be deemed a binding agreement between the client and the service provider to undertake the installation and provide the service as selected by the client. Where a client then decides to cancel the installation (when installation has not taken place) the service provider will refund the client for the equipment and subscription paid less a 15% (fifteen percent) administration fee.
2. Should the client cancel the service after the installation was completed, no refund will be made to client for the installation

undertaken. Where such installation was part of a subsidised subscriber agreement, the service provider will also take possession of the CPE device as per normal cancellation of subsidised agreements.

2. Cancellation of installation by Service Provider

Where an installation was paid for by a client and subsequently the service provider determines that service cannot be provided to a client as a result of the client falling outside the service provider's coverage area or other factors such as poor reception area will hinder a stable service to the client the service provider will deem the subscription agreement as null and void and will refund the client the full amount received without penalty. No refund will be made by the service provider for any bank charges billed to the client.

3. Bank charges

Payments received *in lieu* of Internet installations and/or monthly subscriptions that is received by way of a cash deposit to the bank will attract bank charges. Should the client request cancellation and refund of said deposit, HX Systems will refund the client the net amount deposited less bank charges relating to the transaction in addition to the 15% administration fee.

10. SERVICE PROVIDERS' RIGHT FOR COLLECTION OF SUBSCRIPTIONS

Should a matter arise where the service provider billed an amount less than the agreed subscription fee the service provider reserves the right to bill the client for any amount that should have been billed as per the subscriber agreement. The service provider does not give up its rights for the collection of the amount that has become in arrears as a result of such an error or omission. The client undertakes to make payment of any such arrear amount that resulted from incorrect billing by the service provider notwithstanding payment of the revised subscription as per the original subscription agreement which will become due on the next billing cycle.

11. SUSPENSION OF SERVICES

Where a subscriber fails to make payment on the date of the subscription fee becoming due, the service provider has the right to suspend the service to any subscriber without providing further notice. All subscriptions are payable in advance and payment for services for the month is payable on or before the 1st day of the month for the service to be delivered in the forthcoming month. Where a client has signed a debit order with the service provider and the debit order is not honoured by the subscriber's bank, the account will be deemed not paid and will be suspended without notice to the subscriber.

12. RECONNECTION FEES

- 1. Where a subscriber's service has been suspended due to late or non-payment before the 1st of the month the service provider will bill a reconnection fee of R200.00 inclusive of VAT to the account of the subscriber. The subscriber must pay this reconnection fee as well as the normal subscription amount and any other fees such as interest before the account will be re-activated. At present the service provider allows a grace period up to the 7th day of the month before suspending accounts. This grace period can be revised at any time without notification.**
- 2. All related subscription fees and any other penalty fees not paid on due date by the subscriber will be subject to interest payable at a rate of 1.25% per month.**

13. REDUCED SUBSCRIPTIONS IN PROMOTIONAL PERIODS

- 1. From time to time the service provider may offer discounted subscription and/or installation fees as a promotion for new clients.**
- 2. Notwithstanding the prices offered in these promotional periods, subscribers remain bound by their original subscription agreements and the rate of subscriptions as contained in said agreements. Existing subscribers will not automatically qualify for the reduced subscriptions and in no way will such promotions constitute a change in the original subscriber agreement.**
- 3. HX Systems reserves the right to offer promotional subscription periods without notification to existing subscribers nor is HX Systems obliged to offer these reduced subscriptions to existing subscribers.**

14. ANTENNA EXTENDED WARRANTY PLAN (APPLICABLE TO WIRELESS INSTALLATIONS ONLY)

- 1. In the nature of the trade that HX Systems is in, we install electronic equipment outside a house that is open to all the natural elements. The equipment is issued with an initial warranty that stipulates if it works on installation, the equipment is deemed in working order. There is no outright warranty issued by suppliers of this equipment as in most cases it is damaged by water or electrical surges.**

2. To combat the effects of this, HX Systems offers their clients the option of adding an extended antenna warranty plan at a cost of R990.00 per year.
3. The extended warranty plan will cover any cost associated with the CPE device, the cable that leads to it and the power supply that powers the CPE. No routers or any other equipment is covered by the extended warranty plan.
4. The extended antenna warranty plan covers:
 1. Any water/rain/storm damage
 2. Electrical Surges
 3. Lightning strikes
 4. Any latent defects not covered by a supplier warranty.
5. The antenna care plan does not cover:
 1. Any malicious damage by any person
 2. Theft
 3. If any maintenance was attempted by any person other than a HX Systems representative
 4. Rust
6. In the event of a claim under the extended antenna warranty plan, a technician will assess the situation and refer the matter to management for consideration. If deemed in order the antenna will be replaced and the full cost of the antenna will be discounted. If it is found that the antenna is damaged by something not covered under the antenna care plan, the client will be advised and invoiced accordingly.

15. JURISDICTION

In the event of a dispute arising out of this agreement, the Seller consents to the jurisdiction of the Magistrates Court in regard to any proceedings which may be instituted. The Purchaser shall, however, be entitled to proceed in any division of the Supreme Court having jurisdiction should it so elect.

16. NOTICES AND DOMICILIA

1. The Parties select as their respective *domicilia citandi et executandi* for the purpose of legal proceedings and for the purposes of giving or

sending any notice provided for or necessary in terms of this Agreement, the following addresses –

1. THE SERVICE PROVIDER chooses its *domicilium citandi et executandi* at 305 Victoria Center, 7 Victoria Road, Somerset West, Western Cape Province;
 2. THE CLIENT chooses its *domicilium citandi et executandi* at the address inserted on the application form duly completed by the client, or such other address or telefax number as may be substituted by notice given as required. Each of the Parties will be entitled from time to time to vary its *domicilium* by written notice to the other to any other address within the Republic of South Africa which is not a post office box or *poste restante*.
2. Any notice addressed to a Party at its physical or postal address will be sent by prepaid registered post, or delivered by hand, sent by telefax, or sent by email.
 3. A notice will be presumed, unless the contrary is proved, to have been given –
 1. if posted by prepaid registered post, 5 (five) days after the date of posting thereof;
 2. if hand delivered during business hours on a business day, on the day of delivery;
 3. if sent by telefax or email, on the first business day following the date of sending of such telefax or email.

17. EFFECT OF INVALID OR UNENFORCEABLE CLAUSES

1. If any provision of this agreement is held by any court or other competent authority to be invalid or unenforceable in whole or in part, this agreement shall continue to be valid as to its other provisions and the remainder of the affected provision, unless it can be concluded from the circumstances that, in the absence of the provision found to be null and void, the Parties would not have concluded this agreement.
2. The Parties shall use all reasonable efforts to replace all provisions found to be null and void by provisions that are valid under the applicable law and come closest to their original intention.

18. ENTIRE AGREEMENT

- 1. This agreement sets out the entire agreement between the Parties. No Party has entered into this agreement in reliance upon any representation, warranty or undertaking of the other Party that is not expressly set out or referred to in this agreement. This clause shall not exclude any liability for fraudulent misrepresentation. This agreement supersedes any previous agreement or understanding relating to its subject matter;**
- 2. This agreement may not be varied except by an agreement of the Parties and reduced to writing.**

19. WAIVER

- 1. No waiver of any of the terms and conditions of this Agreement will be binding for any purpose unless expressed in writing and signed by the Party giving same, and any such waiver will be effective only in the specific instance and for the purpose given. No failure or delay on the part of either Party in exercising any right, power or privilege will operate as a waiver, nor will any single or partial exercise of any right, power or privilege preclude any other or further exercise thereof or the exercise of any other right, power or privilege.**
- 2. No indulgences allowed by the Purchaser to the Seller from time to time in respect of the latter's obligations herein shall prejudice the Purchaser in any way from subsequently strictly enforcing any term, condition or provision of this agreement and / or no delay or failure on the part of the Purchaser in the exercise of any right herein shall operate as a waiver thereof and no waiver whatsoever shall be valid unless set out in writing and signed by the Seller and then only to the extent therein expressly set forth.**

20. LEGAL COSTS AS A RESULT OF BREACH

If as a result of the breach of any one of the provision of this Agreement by any of the Parties to this Agreement, then the Party so in breach will be liable for all legal costs and disbursements so incurred on a scale as between Attorney and Client, on the High Court Scale.

21. LANGUAGE OF AGREEMENT

This agreement has been negotiated and concluded in English. It may be translated into any other language for practical purposes, but the version shall prevail in the event of any doubt.

22. APPLICABLE LAW

The proper law of this agreement is the law of the Republic of South Africa, and accordingly any dispute relating to this agreement, including any dispute about its validity, existence, interpretation, rectification, breach or termination or any dispute about any matter arising out of this agreement, its avoidance, interpretation, rectification, breach or termination shall be determined according to the laws of the Republic of South Africa.

23. EXECUTION

By virtue of the client signature duly appended to the Provider's Application form, the client agrees to be bound by these said terms and conditions recorded herein.