

**THE WEBSITE GENERAL TERMS AND CONDITIONS OF USE**

**1. GENERAL**

- 1.1. This document sets out the general terms and conditions of use of WebArtist Close Corporation (“**the Service Provider**”) in relation to the access, use and/or reliance on any of the information provided by the Service Provider on www. Webartist.co.za (“**the Website**”)(“**the Terms of Use**”).
- 1.2. The Terms of Use as set out hereunder, shall commence immediately from the time that any person accesses the Website, at which point the person accessing The Website as well as the organization he/she is representing, shall be deemed to be a User for purposes of the Terms of Use, and shall continue indefinitely.
- 1.3. To the extent that the User disagrees with any of the Terms of Use herein contained, he/she/it must refrain from accessing The Website and/or using or placing any reliance on any of the information provided by the Service Provider herein.
- 1.4. The Service Provider reserves the right, in its sole discretion to amend and/or replace in whole or in part, any aspect of the Terms of Use from time to time. An amendment to the Terms as aforesaid, shall become effective immediately after same has been posted on The Website and any such subsequent use of the Website (i.e. after an amendment has been effected), shall be governed by the amended version of the Terms of Use.
- 1.5. Every amended version of the Terms of Use published on The Website, shall supercede and replace in *toto*, the previous Terms of Use published.
- 1.6. The User shall be deemed to have consented to be bound to the Terms of Use in force on the date of access to The Website, through such access and/or use of The Website.

**2. WARRANTIES AND LIMITATION OF LIABILITY**

- 2.1. The Service Provider reserves the right to make any improvements, additions and/or alterations of any nature to The Website, without any notice, in relation to any aspect and/or feature of The Website as well as any information and/or content published on The Website.
- 2.2. The Service Provider makes no representations and/or warranties, whether express or implied, as to the accuracy, completeness or reliability of any information, date and/or content on The Website, including but not limited to: -
  - 2.2.1. the Service Provider does not warrant or guarantee that The Website itself, the information/content contained within The Website as well as any downloads from The Website shall be error-free or that it shall meet any particular criteria of performance or quality; and
  - 2.2.2. whilst the Service Provider has taken reasonable measures to ensure the integrity of The Website and its contents, no warranty, whether express or implied, is given that (i) The Website itself and/or (ii) any files, downloads, applications available through The Website are free from viruses and/or any other data or code which has the ability to corrupt, damage or adversely affect the operation of the User’s system.
- 2.3. The User agrees to defend, indemnify and not hold either the Service Provider, its officers, directors, employees, agents, licensors and suppliers (as the case may be), liable in respect of any form of claims, actions, demands, liabilities and/or settlements including but not limited to the reasonable legal and accounting fees resulting from or alleged to have resulted from the User’s access and use of The Website.
- 2.4. The Service Provider shall not be responsible or liable whatsoever in any manner for any content posted on The Website (inclusive of any claim for infringement relating to content posted on The Website or for the conduct of any third parties whether on The Website or otherwise relating to The Website) and the User assumes full responsibility and associated risk of loss resulting from the use of The Website.
- 2.5. The User acknowledges that the transmission of information via the internet, including without limitation e-mail, the uploading and/or the downloading of documents and/or information, is susceptible to monitoring and interception. To this end, the User accepts all risk in and related to the transmission of information in this manner and the Service Provider shall not accept any liability for loss, harm and/or damage suffered by the User as a result of same. The Service Provider reserves the right to request independent verification of any information transmitted via e-mail and the User consents to such verification, should the same become necessary in the opinion of the Service Provider.
- 2.6. The User agrees that the Service Provider, its affiliates, agents, consultant’s or employees (all of whom constitute “the Service Provider”), shall not be liable for any damages whatsoever, including without limitation any direct, indirect, special, incidental, consequential or punitive damages howsoever arising, whether in contract, statute, delict or otherwise related to (i) the inability to access or use The Website or any service linked to The Website, (ii) the content/information of/on The Website or the functionality thereof.

- 2.7. The Service Provider makes no warranty or representation as to the accuracy and/or completeness of the content of The Website as well as any information therein contained. To this end, the User expressly waives and renounces all of the rights of whatever nature that it may have against the Service Provider for any loss and/or damage that it may suffer as a result of any incorrect, incomplete and/or inaccurate information published on The Website.

### **3. LINKED THIRD PARTY WEBSITES, CONTENT AND THIRD-PARTY SERVICE PROVIDERS**

- 3.1. The Service Provider may provide links to third party websites on The Website. These links are provided to the User for convenience purposes only and the Service Provider does not endorse, nor does the inclusion of any link imply the Service Provider's endorsement of such third-party websites, their owners, licensees or administrators or such third-party websites' content or security practices and operations.
- 3.2. While the Service Provider tries to provide links only to reputable third-party websites or online partners, the Service Provider cannot accept responsibility or liability for the information provided on third-party websites. Linked third-party websites or pages are not under, nor subject to, the control of the Service Provider. The Service Provider is not responsible for and gives no warranties or makes any representations in respect of the privacy policies or practices of linked or any third party or advertised third-party websites on The Website (if any).
- 3.3. The User agrees that the Service Provider shall not be held liable, directly or indirectly, in any way for the content, the use or access any linked third-party websites or any link(s) contained in a linked third-party website, nor for any loss or damage of any sort incurred as a result of any dealings with, or as the result of the presence of such third party linked third-party website on The Website. Any dealings that the User may have with any linked third-party websites, including advertisers, found on The Website, are solely between the User and the third-party.

### **4. USAGE RESTRICTIONS AND LAWFUL USE**

- 4.1. The User agrees that he/she/it shall not use The Website for any unlawful or other purpose restricted in terms of the Terms of Use. To this end, the User expressly agrees that he/she/it shall not itself, nor through a third party: -
- 4.1.1. copy (other than for backup, archival or disaster recovery purposes), reproduce, translate, adapt, vary, modify, lease, licence, sub-licence, encumber or in any other way deal with any part of The Website, or any of the information and/or content therein contained unless same is done in accordance with the Terms of Use;
- 4.1.2. decompile, disassemble or reverse engineer any portion of The Website;
- 4.1.3. write and/or develop any derivative of The Website or any other software program based on The Website;
- 4.1.4. modify or enhance The Website. In the effect of a User effecting any modifications or enhancements to The Website in breach of this clause, such modifications and enhancements shall become the property of the Service Provider and the said User shall be deemed to have ceded any rights to ownership and/or title accordingly;
- 4.1.5. without the Service Provider's written consent, provide, disclose, divulge or make available to or permit the use of or give access to The Website by persons other than the User;
- 4.1.6. remove any identification, trademark, copyright or other notices from The Website;
- 4.1.7. post or transmit, by means of reviews, comments, suggestions, ideas, questions or other information through The Website, any content which is unlawful, harmful, threatening, abusive, harassing, defamatory, vulgar, obscene, sexually explicit, profane or hateful, or racially, ethnically or otherwise objectionable content of any kind; and/or
- 4.1.8. notwithstanding anything contained to the contrary in these Terms, use The Website for any purpose other than that for which it was intended to be used for by the User.
- 4.2. Any unauthorized use in respect of The Website, may result in the Service Provider instituting a claim for damages against the User and/or the User may be found to be guilty of a statutory and/or criminal offence.

### **5. SECURITY**

- 5.1. In order to ensure the security and reliable operation of The Website and/or all related services, the Service Provider reserves the right to take whatever action it may deem necessary to preserve the security, integrity and reliability of its network, back-office applications as well as the associated networks of the Service Provider's service providers.

- 5.2. The User may not utilize The Website in any manner which may compromise the security of the Service Provider's networks or tamper with The Website in any manner whatsoever, which shall include without limitation, gaining or attempting to gain unauthorized access to The Website or delivering or attempting to deliver any unauthorized damaging or malicious code to The Website, all of which is expressly prohibited. Any person or entity which does so or attempts to do so, shall be held criminally liable. Further, should the Service Provider suffer any damage or loss, damages shall be claimed by the Service Provider against the User.
- 5.3. Any User who commits any of the offences detailed within Chapter 13 of Electronic Communications and Transactions Act 25 of 2002 ("the ECTA"), more specifically, sections 85 to 88 (both inclusive) shall, notwithstanding the relevant criminal prosecution, be liable for all resulting liability, loss of damages suffered and/or incurred by the Service Provider and/or its affiliates, agents, and/or partners.

## 6. INTELLECTUAL PROPERTY RIGHTS

- 6.1. For purposes of this section, the following words shall have the following meanings ascribed to them:
- 6.1.1. "Intellectual Property Rights" shall mean any and all of the rights in and to intellectual property of any nature whatsoever owned and/or controlled directly or under licence by the Service Provider, now or in the future, including without limitation, the Service Provider's rights, title and interest in and to all technology, source code/s, trade secrets, logos systems, methods, trademarks, trade names, styles, insignia, designs, patents and copyright as well as all similar proprietary rights which may subsist in any part of the word, whether registered or not;
- 6.1.2. "Copyright" shall mean all forms of copyright and other intellectual property rights in all content, trademarks, software, data, material, including logos, databases, text, graphics, icons, hyperlinks, confidential information, designs, agreements and/or multimedia works, published on or via The Website ("Proprietary Material"), are the property of or are licensed to the Service Provider and as such, are protected from infringement by local and international legislation and treaties;
- 6.2. Through submitting reviews, comments and/or any other content (other than personal information) to the Service Provider for posting on The Website, the User automatically grants the Service Provider and/or its affiliates a non-exclusive, royalty-free, perpetual, irrevocable right and licence to use, reproduce, publish, translate, sub-licence, copy and distribute such content in whole or in part worldwide and to incorporate same in other works in any form, media or technology now known or hereinafter developed, for the full term of any copyright that may exist in such content. The User will, subject to that which has been outlined above, retain and all rights that may exist in such content.
- 6.3. All rights not expressly granted are reserved and no right, title or interest in any proprietary material or information contained in The Website is granted to the User.
- 6.4. With the exception of the Service Provider's written permission, no proprietary material from The Website may be copied or transmitted.
- 6.5. Notwithstanding the existence of a Copyright, the user acknowledges that the Service Provider is the proprietor of all the content on The Website (with the exception of a third party being indicated as the proprietor of such content) and the User has no right, title or interest in any such material.
- 6.6. The Service Provider authorizes the User only to view, copy or print the content of The Website or any part thereof, provided that such content is used for personal purposes and for non-commercial information purposes only.

## 7. SERVICE PROVIDER PRIVACY AND COOKIE POLICY

- 7.1. The User agrees that the Service Provider's Privacy Policy as amended from time to time ("the Privacy Policy") and published on the Website, shall regulate the privacy and user of the User's personal information.

## 8. CONFIDENTIALITY

- 8.1. Subject to the terms of the Privacy Policy, any information and/or information sent by the User to the Service Provider, will not be deemed to be confidential unless otherwise agreed to.

## 9. BREACH OF THE TERMS

- 9.1. A Breach of the Terms by the User shall entitle the Service Provider to take the appropriate legal action against the User without any prior notice to the User and the User agrees to reimburse the Service Provider for the costs associated with such legal action on the attorney and own client scale.

**10. COMPLIANCE WITH LAWS**

10.1. The User undertakes to comply with all applicable laws, statutes, ordinances and/or regulations pertaining to the use of and access to The Website.

**11. NOTICES**

11.1. Unless stated otherwise, any and all written notices shall be given by electronic mail ("**email address**") to the following addresses:-

The Service Provider info@webartist.co.za;

The User: the email address provided to the Service Provider.

11.2. Any notice as aforesaid, shall be deemed to have been received twenty-four (24) hours after the said notice has been transmitted, unless the sending party has been notified that the email address is invalid. To this end, both the User and the Service Provider acknowledge and accept that a notice given as aforesaid, shall be deemed to be "in writing".

**12. ANCILLIARY**

12.1. These Terms shall be governed in all respects in accordance with the laws of the Republic of South Africa.

12.2. The Website is controlled, operated and administered by the Service Provider from its offices within the Republic of South Africa. The Service Provider makes no representation that the content of The Website is appropriate for use outside the Republic of South Africa. Access to and use of the content/information contained on The Website in territories where such access may be unlawful, is expressly prohibited. To the extent that the User accesses The Website from a location situated outside the Republic of South Africa, the onus of ensuring that such access to and use of The Website complies with all the relevant local laws, shall rest with the User and not the Service Provider.

12.3. The Service Provider does not guarantee continuous, uninterrupted or secure access to The Website, as the operation of The Website may be interfered with as a result of a number of factors which are outside of the Service Provider's control.

12.4. To the extent that any provision within these Terms, either in part or whole, are found by a Court of competent jurisdiction to be either illegal, invalid or otherwise unenforceable for any reason, such provision shall be struck from the Terms and the remaining provisions shall be enforced to the fullest extent of the prevailing law.

12.5. To the extent that the Service Provider fails to act in response to any alleged breach of the Terms, such conduct is not to be deemed as a waiver of any rights that the Service Provider may have in respect of the same.

12.6. The User may not cede, assign, pledge or otherwise encumber its rights in terms of the Terms and further, he/she/it may not delegate any of its obligations in accordance with these Terms to any third party without the express written consent of the Service Provider.

12.7. The Service Provider shall not be bound by any express or implied term, representation, warranty, promise or the like not recorded herein, whether it induced the User to agree to the Terms or not and/or whether same occurred either negligently or intentionally.

12.8. Words importing the singular shall include the plural and *visa versa*. Further, words importing the masculine gender shall include females and words importing persons shall include partnerships as well as formally incorporated and unincorporated entities.

12.9. In accessing and using The Website, the User consents to be bound by the Terms of Use, the Website Privacy Policy.

12.10. These Terms set for the entire understanding and agreement between the Service Provider and the User.

**WEBARTIST CLOSE CORPORATION**

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