

## **HERS-SA TERMS AND CONDITIONS OF USE**

### **INTRODUCTION**

Welcome to the HERS-SA website. The HERS-SA website is operated by HERS-SA, a registered non-profit Reg. No. 027-577- NPO also referred to as "we", "us" and "our" hereafter. Please read these terms of use carefully before proceeding to use this Website as the terms and conditions of use governs your use of the HERS-SA Website (the "Website") and the products and services provided through or in connection with the Website (collectively, the "Service").

Each time you use the Service or access the Website, you acknowledge that you have read and agree to be bound by the HERS-SA Terms and Conditions of Use. If you do not agree to be bound by this agreement, you may not use the Service or access the Website.

*We strongly recommend that, as you read this Agreement, you also access and read information contained in the other pages referred to in this document, as they may contain further terms and conditions that apply to you when accessing the Website or using the Service. Please note: underlined words and phrases are links to these pages and websites.*

### **CHOICE OF LAW AND JURISDICTION**

These Terms of Use shall be governed by and construed in accordance with the laws of South Africa. You expressly agree that the exclusive jurisdiction for any claim or action arising out of or relating to these Terms of Use or your use of this Website shall be filed only in the courts located in Cape Town, and you further agree and submit to the exercise of personal jurisdiction of such courts for the purpose of litigating any such claim or action. You shall comply with all applicable domestic and international laws, statutes, ordinances and regulations regarding your use of our Service.

This Website is owned, hosted and maintained within the Republic of South Africa. When using this site and agreeing to these Terms of Conditions and Use, such use and agreement is deemed to have taken place in Cape Town, South Africa. Users of this Website are encouraged to familiarise themselves with the South African law relating to electronic communications and transactions as contained in the Electronic Communications and Transactions Act 25 of 2002. A copy of the ECT Act can be viewed at: [http://www.acts.co.za/ect\\_act/](http://www.acts.co.za/ect_act/) or <http://www.info.gov.za/gazette/acts/2002/a25-02.pdf>

### **AGREEMENT IN TERMS OF SECTION 21 OF THE ELECTRONIC COMMUNICATIONS AND TRANSACTIONS ACT**

1. No information or data on this Website constitutes an offer to do business, but is merely an invitation to do business.
2. No agreement shall be concluded merely by sending a data message to this Website or its owners. Valid agreements require an acceptance of an offer by HERS-SA.

3. No e-mail message shall be deemed to have been received by HERS-SA until a response has been issued by HERS-SA. An automated response, from HERS-SA, shall not satisfy this requirement.

#### **DISCLAIMER OF WARRANTIES**

4. This Website is provided to you without any warranties or guarantees unless specifically stated. We, our subsidiaries, officers, directors, employees and our suppliers specifically disclaim any implied warranties of title, merchantability, fitness for a particular purpose and non-infringement.
5. Although we do our best to make sure the HERS-SA Website is always functioning and accessible, we do not guarantee that the Service or the Website will be operable 100% of the time.
6. This Website contains links to other websites. Since we do not control these websites, we encourage you to review the policies of these sites and for users to liaise directly with these companies to confirm any information that they seek to rely on. Inclusion of such links does not constitute an endorsement or any type of partnership or association with those websites or their operators.
7. Information on this Website is not promised or guaranteed to be correct, current, or complete, and this site may contain technical inaccuracies or typographical errors. While HERS-SA has made all reasonable efforts to ensure that the information on this Website is correct at the time of inclusion, HERS-SA shall not be liable to any person or entity for use or reliance of any inaccurate information or opinions contained herein.
8. HERS-SA cannot and does not guarantee or warrant that any files available for downloading through this Website will be free of infection or viruses, worms, trojan horses or other code that manifest contaminating or destructive properties.

#### **LIMITATION OF LIABILITY**

9. In no event shall HERS-SA, our subsidiaries, officers, directors, employees or our suppliers be liable for lost profits or any special, incidental or consequential damages arising out of or in connection with our Service or this agreement (however arising, including negligence).
10. Our liability, and the liability of our subsidiaries, officers, directors, employees, and suppliers, to you or any third parties in any circumstance is limited to the greater of (a) the amount of fees you pay to us in the 12 months prior to the action giving rise to liability, and (b) R100.

## **HYPERLINKS AND FRAMING**

11. No person, business or website except for higher education institutions may –
- a) link to any page on this Website without the prior written permission of HERS-SA; or
  - b) frame this Website or any of the pages on this Website in any way whatsoever; or
  - c) use any robot, spider, scraper or other automated means to access the Service for any purpose without our express written permission.

12. Higher education institutions may link their website to ours, by copying and pasting the HTML code:

```
<a href=" http://www.hers-sa.org.za/"> http://www.hers-sa.org.za/</a>
```

You do not need permission to link to our Website if you use this HTML code, but HERS-SA reserves its right to request any link or other pointing to be terminated immediately upon demand.

If you link to the Website, you agree that you:

- a) Will not replicate any Website content;
- b) Will not frame or otherwise create a browser or border environment around Website content;
- c) Will not imply that we endorse you, your company or business, your website or its contents, your products, or your services;
- d) Will not misrepresent your or your website's relationship with us;
- e) Will not present false, misleading or inaccurate information about us, or our Service;
- f) Will not disparage us, our products or services, or any of our affiliates or their products or services;
- g) Will not include content on your site that is illegal, distasteful, offensive, or controversial and will include on your site only content that is appropriate for all age groups.

## **INTELLECTUAL PROPERTY RIGHTS**

13. Solely to enable HERS-SA to use the information you supply us with, so that we are not violating any rights you might have in that information, you agree to grant us a non-exclusive, worldwide, perpetual, irrevocable, royalty-free, sub-licensable (through multiple tiers) right to exercise the copyright, publicity and database rights (but no other rights) you have in Your Information, in any media now known or not currently known. With respect to Your Information, HERS-SA will only use Your Information in accordance with our Privacy and Security Policy.
14. The HERS-SA Website consists of contents which are derived entirely or in part from content supplied by HERS-SA and other sources.

15. All content on this website is protected under applicable South African Copyright and Trade Mark Laws, International Trade Marks and Copyright Laws and conventions.
16. Unless specifically stated, a user may not reproduce, duplicate, publish, modify, copy, download, upload in any manner, post, broadcast or transmit, reverse engineer or disenable, display, or distribute or in any way exploit any of the contents of the Website except for Your Information.
17. All requests for permission regarding any issue relating to the contents of the Website must be made by contacting HERS-SA at [www.hers-sa.org.za](http://www.hers-sa.org.za).

## **YOUR INFORMATION**

18. "Your Information" is defined as any information you provide to us or other users in the registration, in any public message area or through any e-mail feature. You are solely responsible for Your Information. HERS-SA acts as a conduit for your online distribution and publication of your information.
19. HERS-SA may read anything posted on the Service or sent using the Service. Postings and correspondence sent through this Service should not be considered confidential.
20. Your Information and your activities on the Service shall not
  - a) be false, inaccurate or misleading;
  - b) be fraudulent;
  - c) infringe any third party's copyright, patent, trademark or any other proprietary rights or rights of publicity or privacy;
  - d) violate any law, statute, ordinance or regulation (including, but not limited to, those governing consumer protection, anti-discrimination or false advertising);
  - e) be defamatory, unlawfully threatening or unlawfully harassing, libellous, abusive, vulgar, obscene, pornographic, or otherwise indecent;
21. We do not sell or rent your personal information to third parties without your explicit consent and we only use your information as described in the Privacy and Security Policy. We view protection of users' privacy as a very important part of our mission. We understand that you and your information are some of our most important assets. We store and process your information on computers located in South Africa that are protected by physical and technological security devices.

## **ACCESS AND INTERFERENCE**

22. You agree that you will not:
  - a) take any action that imposes, or may impose in our sole discretion an unreasonable or disproportionately large load on our infrastructure;
  - b) interfere or attempt to interfere with the proper working of the Service or any activities conducted using the Service; or

- c) bypass our robot exclusion headers or other measures we may use to prevent or restrict access to the Service.

## **BREACH**

- 23. Without limiting other remedies, HERS-SA may limit your activity, immediately remove your account, warn users of your actions, issue a warning, temporarily suspend, indefinitely suspend or terminate your membership and refuse to provide our services to you if: (a) you breach this Agreement or the documents it incorporates by reference; (b) HERS is unable to verify or authenticate any information you provide to us; or (c) HERS believes that your actions may cause financial loss or legal liability for you, other users or us.

## **INDEMNIFICATION**

- 24. You agree to indemnify and hold HERS-SA and (as applicable) our parent, subsidiaries, affiliates, officers, directors, agents, and employees, harmless from any claim or demand, including reasonable attorneys' fees, made by any third party due to or arising out of your breach of this Agreement or the documents it incorporates by reference, or your violation of any law or the rights of a third party.

## **NOTICES**

- 25. Except as explicitly stated otherwise, any notices shall be given by postal mail to HERS-SA Attn: Legal Department, P O Box 24022, Claremont, 7735, South Africa (in the case of HERS-SA) or to the e-mail address you provide to HERS-SA during the registration process (in your case). Notice shall be deemed given 24 (twenty-four) hours after the e-mail is sent, unless the sending party is notified that the e-mail address is invalid. Alternatively, we may give you notice by certified mail, postage prepaid and return receipt requested, to the address provided to HERS-SA during the registration process. In such case, notice shall be deemed given 3 (three) days after the date of mailing.

## **TRANSLATIONS**

- 26. Certain text in this Website may be made available in languages other than English. Text may be translated solely by computer software with no human intervention or review. These translations are provided as a convenience to you, and HERS-SA makes no representations or commitments regarding the accuracy or completeness of the translation, whether or not computer-generated or performed by a person. Please see the above Disclaimer of Warranties for additional conditions.

## **RESOLUTION OF DISPUTES**

27. In the event a dispute arises between you and HERS-SA, our goal is to provide you with a neutral and cost-effective means of resolving the dispute quickly. Accordingly, you and HERS-SA agree that any claim or controversy at law or equity that arises out of this Agreement and our services ("Claims") shall be resolved in accordance with one of the subsections below or as otherwise mutually agreed upon in writing by the parties. Before resorting to these alternatives, we strongly encourage you to first contact us directly to seek a resolution and we will consider reasonable requests to resolve the dispute through alternative resolution procedures, such as mediation, as an alternative to litigation.

### **BINDING ARBITRATION**

28. For any Claim (excluding Claims for injunctive or other equitable relief) where the total amount of the award sought is less than R2000 - 00, you or HERS-SA may elect to resolve the dispute through binding arbitration conducted by telephone, online and/or based solely upon written submissions where no in-person appearance is required. Any judgment on the award rendered by the arbitrator may be entered in any court having jurisdiction thereof.

### **COURT**

29. Alternatively, any Claim may be adjudicated by a court of competent jurisdiction located in Cape Town as explained in the Choice of Law and Jurisdiction section of this Policy.

### **ALTERNATIVE DISPUTE RESOLUTION**

30. Alternatively, HERS-SA will consider use of other alternative forms of dispute resolution, such as binding arbitration to be held in Cape Town or another location mutually agreed upon by the parties.

### **SEVERABILITY**

31. In the event that any of these terms of use are found not to be valid or enforceable for any reason whatsoever, such term(s) shall be severable from the remaining terms of use. The remaining terms shall not be affected by such invalidity or unenforceability and shall remain enforceable.

### **CHANGES IN THE HERS-SA POLICIES**

32. The Privacy and Security Policy ( <http://hers-sa.org.za/privacy>) is incorporated into this Agreement by reference and provide additional terms and conditions related to Services offered by HERS-SA.
33. Each of these policies may be changed from time to time and are effective immediately after we post the changes on the Website, except for the Privacy and Security Policy, which we will provide you with thirty days prior notice. In addition, when using the particular services offered by HERS-SA, you agree that you are subject to any posted policies or rules applicable to that service, which may be posted from time to time. All such posted policies or rules are hereby incorporated by reference into this Agreement. This Agreement may not otherwise be amended except in writing signed by you and HERS-SA.

### **PROVISIONS SPECIFICALLY APPLICABLE TO MEMBERS OF HERS-SA**

34. In order to make use of the Service, a person must first register online as a member using the relevant link on the Website.
35. You must read, agree with and accept all of the terms and conditions contained in this Agreement and the Privacy and Security Policy before you may become a member of HERS-SA. The party you are contracting with is HERS-SA.
36. The Service is available only to, and may only be used by, individuals who can form legally binding contracts under applicable law. Without limiting the foregoing, the Service is not available to persons under the age of 18 (eighteen) or to temporarily or indefinitely suspended HERS-SA members. If you are under the age of 18, you can use the Service only with and under the supervision of your parents or guardians. If you do not qualify, please do not use the Service. Further, your HERS-SA account, including your feedback and Public ID may not be transferred or sold to another party.
37. A member must ensure that all the details provided by him/her for his/her registration are true and correct at all times as HERS-SA shall not be liable for any expenses, costs or damages incurred as a result of incorrect details.
38. A member is responsible for securing the login password. The login password may not be disclosed to unauthorized persons, and a member will be held responsible for all transactions performed with his/her login and password. A member must immediately notify HERS-SA in writing of any unauthorized use of his/her password or of any other breach of security

## **CONTACT INFORMATION**

If you have any questions, queries or wish to request permission to use any part of this Website, including linking, framing, or searching please contact us at using either one of the following:

**Postal address:** P O BOX 24022

Claremont

7735

South Africa

**Telephone Number:** +27-(0)76 281 1426

**Facsimile Number:** +27-(086) 539 5002

**Website:** [www.hers-sa.org.za](http://www.hers-sa.org.za)



## **HERS-SA PRIVACY POLICY**

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### **INTRODUCTION**

We respect the privacy of everyone who visits this site. Please read our Privacy and Security Policy carefully so that you can understand how we collect and use the personal information that you provide to us.

By visiting this site and using the services of HERS-SA, you acknowledge that you have reviewed the terms of this Privacy and Security Policy and agree to these terms. This Privacy and Security Policy forms part of our Site [Terms and Conditions of Use](#) and such shall be governed by and construed in accordance with the laws of South Africa. Our Website provides links to third party sites. Since we do not control these Websites', we encourage you to review the privacy policies of these sites.

You can browse the HERS-SA Website without telling us who you are or revealing any personal information about yourself. Once you give us your personal information, you are not anonymous to us. If you choose to use our services, we may require you to provide contact and identity information, billing information and other personal information as indicated on the forms throughout the Website. Where possible, we indicate which fields are required and which fields are optional. You always have the option not to provide information by choosing not to use a particular service or feature.

### **COLLECTION OF PERSONAL INFORMATION**

1. We automatically track certain information based on your behavior on the Website. We use this information to do internal research on our users' demographics, interests and behaviour to better understand, protect and serve you and other users. This information may include the following:
  - a) the URL that you came from (whether or not the URL is on this Website or not),
  - b) which URL you go to next (whether on this Website or another),
  - c) your computer browser information, and
  - d) your IP address.
2. We may use data collection devices such as "cookies" on certain pages of the Web site to help understand how users manoeuvre through the site, to measure promotional effectiveness, to promote trust and safety and help us provide information that is targeted to your interests.

*"Cookies" are small files placed on your hard drive that assist us in providing our services. We offer certain features that are only available through the use of a "cookie". We also use cookies to allow you to enter your password less frequently during a visit to the Website. Most cookies are "session cookies", which means that they are automatically deleted from your hard drive at the end of a session. You are always free to decline our cookies if your browser permits, although in that case you may not be able to use certain features on the Website and you may be required to re-enter your password more frequently during a visit.*

3. If you choose to post messages on HERS-SA, leave feedback for other users, or post other content on the site, we will collect that information you provide to us. We retain this information as necessary to resolve disputes, provide customer support and troubleshoot problems as permitted by law.
4. If you send us personal correspondence, such as e-mail or a letter, or if other users or third parties send us correspondence about your activities or postings on the Website, we may collect such information into a file specific to you.
5. We do not disclose any non-public personal information about you to anyone except as permitted by law.
6. You give HERS-SA the right to perform statistical analyses of the personal data provided by you and to use or allow other parties to use such data for research, marketing or promotional purposes. No personally identifiable information will be wilfully disclosed.

## **USE OF PERSONAL INFORMATION**

7. You agree that we may use personal information about you to improve our marketing and promotional efforts, to analyze site usage, improve our content and service offerings, and to customize the Website's content, layout and services. These uses improve HERS-SA and better tailor our services to meet your needs.
8. We may use your financial information, including credit card information to verify the accuracy of your name, address, and other information, as well as to bill you for your use of our services.

9. You agree that we may use your personal information to contact you and to deliver information to you that, in some cases, is targeted to your interests, such as targeted banner advertisements, administrative notices, product offerings, and communications relevant to your use of HERS-SA. By accepting the [Terms and Conditions of Use](#) and the Privacy and Security Policy, you expressly agree to receive this information. Further, we may send notices to you or other HERS-SA users regarding suspicious activity or policy violations on the Website.

## **CONFIDENTIALITY AND SECURITY**

10. Your HERS-SA Public ID is displayed throughout the Website and is therefore available to the public and other registered members. Therefore, if you associate your name with your Public ID, other visitors to the site may be able to personally identify some of your HERS-SA activities. However, only members of the Website can see your postings, reviews, feedback ratings and associated comments.
11. We may read anything posted on the Website or sent using the tools available on the Website. Postings and correspondence sent through this service should not be considered private.
12. You may review and change the information you submit to us by logging into the Website and entering new information. Generally, we will not modify your personal information based on your request because it is very difficult to authenticate your account manually. You can change your Public ID, e-mail address, contact information, financial information and user preferences by going to our Website and accessing the preferences setup section. You must promptly update your personal information if it changes or is inaccurate. Once posted, you may not be able to change or remove public postings made on the Website.
13. Upon your request, we will deactivate your account, contact information, billing information, and financial information from our active databases and will be removed from public view as soon as reasonably possible. However, we will retain in our files some personal information to prevent fraud, collect any fees owed, resolve disputes, troubleshoot problems, assist with any investigations, enforce our Disclaimer and comply with legal requirements as is permitted by law. Such personal information will be deactivated from public and user viewing and will only be available to select HERS-SA personnel.
14. We restrict access to your non-public personal information to only those employees who need to know that information to provide products or services to you. Employees cannot use your information for any other purpose. Your information is stored on HERS-SA servers in South

Africa. For your safety, we maintain physical, electronic and procedural safeguards that comply with federal regulations to further guard your non-public personal information.

15. You agree that other users may use your personal information that is publicly available, to communicate with you in accordance with this Policy.
16. All personal information that you obtain through the Website or through a HERS-SA related communication or HERS-SA facilitated transaction, HERS-SA hereby grants to you a license to use such information only for
  - a) HERS-SA related communications that are not unsolicited commercial messages, and
  - b) any other purpose that a user expressly agrees to after you tell them the purpose you would like to use it for.

In all cases, you must give users an opportunity to remove themselves from your database and a chance to review what information you have collected about them. In addition, under no circumstances except those defined in this Policy, can you disclose personal information about another HERS-SA user to any third party without our consent and the consent of that user.

17. HERS-SA has invested and will continue to invest in the best quality security and encryption technology available to guard access to information, data quality and physical security of servers where information is stored. This site has security measures such as digital certificates and authentication measures in place to protect against the loss, misuse and alteration of the information under its control. Despite these efforts, HERS-SA cannot guarantee that a hacker will not obtain access to communications between you and the site.
18. HERS-SA and our users do not tolerate unsolicited e-mail ("spam"). Therefore, without limiting the foregoing, you are not licensed to add a HERS-SA user to your physical or e-mail mailing list without their express consent. To report HERS-SA related spam to HERS-SA, please contact us. You may not use any communications features offered by HERS-SA to send spam or otherwise send content that violates our Terms and Conditions of Use.
19. In certain circumstances we may need to disclose information about you if you breach this Policy or if you breach the Terms and Conditions of Use. HERS-SA cooperates with law enforcement inquiries, and other third parties, to enforce laws, such as copyright law and intellectual property rights. In response to a verified request in the form of a subpoena or court order by law enforcement or other government officials relating to a criminal

investigation or alleged criminal activity, we can (and you authorize us to) disclose your name, city, state, telephone number, e-mail address, Public ID history, and fraud complaints.

## **CHANGES TO THIS PRIVACY AND SECURITY POLICY**

20. We may revise and update this Policy so please check them each time you access this site as your continued use of this site means that you accept those revisions and updates. All amended terms shall automatically be effective 30 days after they are initially posted on the Website. In addition, we will notify you in accordance with your Communications Preferences.

## **SUMMARY OF POLICY**

### **INTRODUCTION**

We respect the privacy of everyone who visits this site. This summary is for convenience and quick reference, please read our full Privacy and Security Policy carefully so that you can understand how we collect and use the personal information that you provide to us. By visiting this site and using the services of HERS-SA, you acknowledge that you have reviewed the terms of the Privacy and Security Policy and agree to these terms.

### **COLLECTION OF PERSONAL INFORMATION**

HERS-SA will not collect any information from users without their expressed authorisation. HERS-SA recognises that you wish your personal information to remain private. We do not disclose any non-public personal information about you to anyone except as permitted by law. You give HERS-SA the right to perform statistical analyses of the personal data provided by you and to use or allow other parties to use such data for research, marketing or promotional purposes. No personally identifiable information will be wilfully disclosed.

### **USE OF PERSONAL INFORMATION**

You agree that we may use personal information about you to improve our services. We may use your financial information, including credit card information to verify the accuracy of your name, address, and other information, as well as to bill you for your use of our services. You agree that we may use your personal information to contact you and to deliver information to you that, in some cases, is targeted to your interests.

### **CONFIDENTIALITY AND SECURITY**

Your HERS-SA Public ID is displayed throughout the Website and is therefore available to the public. Therefore, if you associate your name with your Public ID, other visitors to the site will be able to personally identify some of your HERS-SA activities.

You may review and change the information you submit to us by logging into the Website and entering new information. Upon your request, we will deactivate your account, contact information, billing information, and financial information from our active databases and will be removed from public view as soon as reasonably possible. You agree that other users may use your personal information that is publicly available, to communicate with you in accordance with this Policy.

HERS-SA has invested and will continue to invest in the best quality security and encryption technology available to guard access to information, data quality and physical security of servers where information is stored. HERS-SA and our users do not tolerate unsolicited e-mail ("spam"). In certain circumstances we may need to disclose information about you if you breach this Policy or if you breach the Terms and Conditions of Use.

## **CHANGES TO THIS PRIVACY AND SECURITY POLICY**

We may revise and update this Policy so please check them each time you access this site as your continued use of this site means that you accept those revisions and updates. All amended terms shall automatically be effective 30 days after they are initially posted on the Website. In addition, we will notify you in accordance with your Communications Preferences.