

CONSENT TO SERVICE OF DOCUMENTS BY WAY OF ELECTRONIC MEANS

Last updated: January 2024

PREAMBLE

WHEREAS Legal Serve Document Exchange (Pty) Ltd Registration number: 2018/103789/07 (hereinafter referred to "the Company") offers a paperless document exchange and processing platform (application / system) under the name and style of Legal Serve;

AND WHEREAS the Subscriber, as defined on the face of this agreement, is desirous of utilizing the Legal Serve system;

NOW WHEREFORE the Subscriber undertakes as follows:

1. RECORDALS

MAGISTRATES COURT RULES

The Rules regulating the conduct of proceedings in the Magistrate's Court as promulgated in terms of Rules Board for Courts of Law Act, Act 107 of 1985 (as amended) read together with the

Magistrate's Court Act 32 of 1944 (as amended) provides as follows:

RULE 5 – SUMMONS

(3) (a) (i) Every summons shall be signed by the attorney acting for the plaintiff and shall bear the attorney's physical address, within 15 kilometers of the courthouse, the attorney's postal address and, where available, the attorney's facsimile address and electronic mail address.

(ii) If no attorney is acting for the plaintiff, the summons shall be signed by the plaintiff, who shall in addition append a physical address within 15 kilometers of the courthouse at which plaintiff will accept service of all subsequent documents and notices in the suit, the plaintiff's postal address and, where available, plaintiff's facsimile address and electronic mail address.

(iii) After subparagraph (i) or (ii) has been complied with, the summons shall be signed and issued by the registrar or clerk of the court and shall bear the date of issue by the registrar or clerk as well as the case number allocated thereto.

(b) The plaintiff may indicate in a summons whether the plaintiff is prepared to accept service of all subsequent documents and notices in the suit through any manner other than the physical address or postal address and, if so, shall state such preferred manner of service.

(c) If an action is defended the defendant may, at the written request of the plaintiff, deliver consent in writing to the exchange or service by both parties of subsequent documents and notices in the suit by way of facsimile or electronic mail.

(d). If the defendant refuses or fails to deliver the consent in writing as provided for in paragraph (c), the court may, on application by the plaintiff, grant such consent, on such terms as to costs and otherwise as may be just and appropriate in the circumstances.

RULE 9 – SERVICE OF PROCESSES< NOTICES AND OTHER DOCUMENTS

(9) (a) Service of any notice, request, statement or other document which is not process of the court may be effected by delivery by hand at the address for service given in the summons or appearance to defend, as the case may be, or by sending it by registered post to the postal address so given: Provided that, subject to rules 5 and 13, service of such notice, request, statement or other document may be effected by sending it by facsimile or electronic mail to the facsimile address or electronic mail address given in the summons or notice of intention to defend, as the case may be.

(b) An address for service, postal address, facsimile address or electronic address so given as contemplated in paragraph (a) may be changed by the delivery of notice of a new address and thereafter service may be effected as provided for in that paragraph at such new address.

RULE 13 – NOTICE OF INTENTION TO DEFEND

(3) (a) When a defendant delivers notice of intention to defend, the defendant shall therein give his or her full physical residential or business address, postal address and where available, facsimile address and electronic mail address, and shall also indicate and select therein the preferred address for service on the defendant thereat of all documents in such action, and service thereof at the address so given shall be valid and effectual, except where by any order or practice of the court personal service is required: Provided that the physical address given by the defendant in the notice of intention to defend shall be an address situated within 15 kilometers of the courthouse.

(b) The defendant shall indicate in the notice of intention to defend whether the defendant is prepared to accept service of all subsequent documents and notices in the suit through any manner other than the physical address or postal address and, if so, shall state such preferred manner of service.

(c) The plaintiff may, at the written request of the defendant, deliver consent in writing to the exchange or service by both parties of subsequent documents and notices in the suit by way of facsimile or electronic mail.

(d) If the plaintiff refuses or fails to deliver the consent in writing as provided for in paragraph (c), the court may, on application by defendant, grant such consent, on such terms as to costs and otherwise as may be just and appropriate in the circumstances.

1.2 UNIFORM RULES OF THE HIGH COURT

The Uniform Rules regulating the conduct of the proceedings of the several provincial and local divisions of the High Court of South Africa as promulgated in terms of Rules Board for Courts of Law Act, Act 107 of 1985 (as amended) read together with the Supreme Court Act, Act 59 of 1959 (as amended) provides as follows:

RULE 4A – DELIVERY OF DOCUMENTS AND NOTICES

4A (1) Service of all subsequent documents and notices, not falling under rule 4(1)(a), in any proceedings on any other party to the litigation may be effected by one or more of the following manners to the address or addresses provided by that party under rules 6(5)(b), 6(5)(d){i}, 17(3). 19(3) or 34(8), by: -

(a) hand at the physical address for service provided, or

(b) registered post to the postal address provided. or

(c) facsimile or electronic mail to the respective addresses provided.

(2) An address for service, postal address, facsimile address or electronic address mentioned in sub-rule (1) may be changed by the delivery of notice of a new address and thereafter service may be effected as provided for in that sub-rule at such new address.

(3) Chapter III, Part 2 of the Electronic Communications and Transactions Act 2002 (Act No. 25 of 2002) is applicable to service by facsimile or electronic mail.

- (4) Service under this rule need not be effected through the Sheriff.
- (5) The filing with the registrar of originals of documents and notices referred to in this rule shall not be done by way of facsimile or electronic mail.

RULE 6 – APPLICATIONS

(5)(b) In a notice of motion the applicant shall:-

- (i) appoint an address within 15 kilometers of the office of the registrar, at which applicant will accept notice and service of all documents in such proceedings;
- (ii) state the applicant's postal, facsimile or electronic mail addresses where available; and
- (iii) subject to the provisions of section 27 of the Act, set forth a day, not less than five days after service thereof on the respondent, on or before which such respondent is required to notify the applicant, in writing, whether respondent intends to oppose such application, and shall further state that if no such notification is given the application will be set down for hearing on a stated day, not being less than 10 days after service on the said respondent of the said notice.

(5)(d) Any person opposing the grant of an order sought in the notice of motion shall-

- (i) within the time stated in the said notice, give applicant notice, in writing, that he or she intends to oppose the application, and in such notice appoint an address within 15 kilometers of the office of the registrar, at which such person will accept notice and service of all documents as well as such person's postal, facsimile or electronic mail addresses where available;
- (ii) within fifteen days of notifying the applicant of his or her intention to oppose the application, deliver his or her answering affidavit, if any, together with any relevant documents; and
- (iii) if he or she intends to raise any question of law only he or she shall deliver notice of his or her intention to do so, within the time stated in the preceding sub-paragraph, setting forth such question.

RULE 17 – SUMMONS

(3) (a) Every summons shall be signed by the attorney acting for the plaintiff and shall bear an attorney's physical address, within 15 kilometers of the office of the registrar, the attorney's postal address and, where available the attorney's facsimile address and electronic mail address.

(b) if no attorney is acting, the summons shall be signed by the plaintiff, who shall in addition append an address within 15 kilometers of the office of the registrar at which plaintiff will accept service of all subsequent documents in the suit the plaintiff's postal address and, where available, plaintiff's facsimile address and electronic mail address.

(c) after paragraph (a) or (b) has been complied with, the summons shall be signed and issued by the registrar and made returnable by the Sheriff to the court through the registrar.

(d) The plaintiff may indicate in a summons whether the plaintiff is prepared to accept service of all subsequent documents and notices in the suit through any manner other than the physical address or postal address and, if so shall state such preferred manner of service.

(e) If an action is defended the defendant may, at the written request of the plaintiff, Deliver a consent in writing to the exchange or service by both parties of subsequent documents and notices in the suit by way of facsimile or electronic mail.

(f) If the defendant refuses or fails to deliver the consent in writing as provided for in paragraph (e) the court may on application by the plaintiff grant such consent on such terms as to costs and otherwise as may be just and appropriate in the circumstances.

RULE 19 – NOTICE OF INTENTION TO DEFEND

(3) (a) When a defendant delivers notice of intention to defend, defendant shall therein give defendant's full residential or business address, postal address and where available.

facsimile address and electronic mail address and shall also appoint an address, not being a post office box or paste restante, within 15 kilometers of the office of the registrar, for the service on defendant thereof of all documents in such action, and service thereof at the address so given shall be valid and effectual, except where by any order or practice of the court personal service is required.

(b) The defendant may indicate in the notice of intention to defend whether the defendant is prepared to accept service of all subsequent documents and notices in the suit through any manner other than the physical address or postal address and. if so shall state such preferred manner of service.

(c) The plaintiff may at the written request of the defendant deliver consent in writing to the exchange or service by both parties of subsequent documents and notices in the suit by way of facsimile or electronic mail.

(d) If the plaintiff refuses or fails to deliver the consent in writing as provided for in paragraph (c) the court may, on application by the defendant grant such consent, on such terms as to costs and otherwise as may be just and appropriate in the circumstances.

2. WARRANTY BY SUBSCRIBER

2.1 The Subscriber warrants that they have acquainted themselves with the aforementioned provisions as well as all other Rules relating to the subject matter and warrants that they understand the legal implications thereof.

3. EXCLUSIONS

3.1 Save for urgent matters, the Subscriber acknowledges that the service does not provide for the serving of Summons or Notice of Motion and that these documents can only be served on an opposing party by a duly authorized Sheriff of the Court.

4. CONSENT TO ELECTRONIC SERVICE

4.1 By choosing accept and submitting this form, the Subscriber consents to accepting service of all processes, pleadings and other documents, as provided for by the Uniform Rules of the High Court of South Africa, and the Magistrate's Court Rules respectively.

4.2 The Subscriber shall ensure that all Summonses, Notices and Pleadings, reflect the service details as allocated to the Subscriber for the purposes of utilizing the Services.

5. LIMITATION OF LIABILITY

5.1 In no event will a Party be liable to the other Party for any indirect or consequential loss or damages.

5.2 The maximum liability of the Company, whether in contract or delict (including negligence) for all acts, claims, omissions and causes of action of whatever nature and however arising, relating to or arising directly or indirectly from the Agreement or the Legal Serve System, shall be limited to the Charges paid by the Subscriber in the preceding year or the year following the Effective Date of the Agreement (whichever is the latest).