



Standard Terms and Conditions for Provision of Goods and Services

Accsys (Proprietary) Limited (Registration Number 1998/011208/07) ("Accsys") and the Client (whose details appear on the quote/proposal ("the Quote") to which these terms and conditions are attached) (hereinafter referred to as "Party" and/or "Parties", as the context may indicate) agree as follows:

1. SCOPE

These terms and conditions set out the basis upon which Accsys shall supply Software, Equipment, Support Services, Services and Third Party Software to the Client.

2. SERVICES

Accsys shall render the services described in the Quote to the Client on these terms and conditions. The Quote, read together with these terms and conditions constitute "the / this Agreement".

3. DURATION

This Agreement shall become effective on the Effective Date and shall continue until terminated in accordance with clause 13. The parties agree that:

- 3.1. this Agreement is a master agreement and, accordingly, that its terms shall apply to each Schedule appended to this Agreement from time to time;
- 3.2. no Schedule shall be of any force or effect between the parties until it has been signed by duly authorised representatives of each of them;
- 3.3. each Schedule signed between the parties shall be appended to this Agreement and shall become a separate agreement between the parties upon the terms of this Agreement;
- 3.4. each Schedule may contain its own terms and conditions which shall be read in conjunction with these terms and conditions, and in the event of any conflict, the terms of the Schedule shall prevail; and
- 3.5. termination of any one Schedule by effluxion of time or otherwise, shall not affect the continued operation of this Agreement or any other Schedule to it.

4. INSTALLATION

Accsys shall deliver the Software, Third Party Software and Equipment to the Client subsequent to this Agreement becoming effective. Accsys will not be bound to deliver the Software, Third Party Software or Equipment on any specific date or at any specific time unless expressly agreed to in writing by Accsys to the Client confirming the specific dates and times. Accsys shall be entitled to make changes to the Software and to deliver the latest release of the Software, without incurring any liability or obligation to the Client. Accsys shall install the Software, Third Party Software and Equipment at the Site. The Equipment shall be deemed to be successfully installed once it has booted up without any error messages being reported from its internal diagnostics. The Software and Third Party Software shall be deemed to be successfully installed once its installation wizard reports that the installation was complete or successful.

5. CLIENT RESPONSIBILITIES

- 5.1. Subject always to Accsys conforming with all reasonable security and safety requirements of the Client, the Client shall afford Accsys' Personnel reasonable access to the Site(s) at all reasonable times for the purpose of Accsys' performance under this Agreement.
- 5.2. The Client understands and accepts that it will be necessary for the Client to promptly supply information to Accsys and to give Accsys Personnel access to the Client's staff, equipment, data and items supported including the Software, Third Party Software and Equipment, in order to enable Accsys to perform its obligations under this Agreement.
- 5.3. For the purposes of Accsys providing the Support Services and during any period of such support:
- 5.4. The Client will appoint and authorise contact persons through which Accsys will co-ordinate support activities for the Client. It is specifically stated that only those contact persons will have authority to require Support Services and other assistance from Accsys under this Agreement. The Client shall ensure that the contact persons are sufficiently trained in use of the Software, Third Party Software and Equipment to enable effective communication between Accsys and the Client to ensure that Support Service are provided efficiently.
- 5.5. The Client shall not during the period of Support Services allow any item for which Support Services have been contracted, to be interfered with, altered, modified or added to without the prior written consent of Accsys.
- 5.6. It is the Client's responsibility to operate items for which Support Services have been contracted, in accordance with instructions issued by Accsys and/or the manufacturer or licensor and to retain sufficient trained staff to operate them in a proper manner.
- 5.7. The Client is required at its own expense to have an error-correcting fully operational modem at each Site to enable Accsys to remotely connect to and access any Server upon which any items for which Support Services have been contracted, reside. The Client will be liable for all dial up costs of Accsys which will be invoiced to and payable by the Client, monthly in arrears.

6. HARDWARE AND INSTALLATION REQUIREMENTS

- 6.1. Hardware specifications are recommended by Accsys. It is incumbent on the client to ensure computing requirements are correctly supplied, including, but not limited to, servers, personal computers, networks, communications, etc.
- 6.2. The Client is required at its own expense to have an error correcting fully operational modem at each site to enable Accsys to remotely connect to, and access, any server upon which any items for which support services have been contracted, reside. The Client will be liable for all costs of Accsys which will be invoiced to, and payable by, the Client, monthly in arrears.
- 6.3. Data cabling: the price for data cabling is subject to a site survey, for which there will be a separate quotation.
- 6.4. Power cabling: the price to supply mains power to each badge reader (clock), siren, turnstile, motor boom, pc and printer is not included in the quotation. It is the responsibility of the Client to provide clean mains power suitable for operation of the system. Accsys does not accept responsibility for any system malfunction due to irregularities in the mains power at the customers' premises. Any services supplied by Accsys to correct system malfunctions due to irregular mains power will be charged for at Accsys' prevailing rate.
- 6.5. Civil works: Accsys does not undertake any civil works, and it is the responsibility of the Client to provide civil works at their cost. This includes items such as digging trenches, fitting of striker locks to doors, installing turnstiles on a concrete base, and providing a roof over the turnstiles. It is the responsibility of the Client to provide such equipment as Accsys may require to install readers (clocks) on site (e.g. ladders etc.).

7. SOFTWARE UPGRADES, UPDATES, NEW RELEASES

If contracted for under Support Services, Accsys shall make available to the Client any Updates, Upgrades or New Releases of the Software. Otherwise, should the Client wish to acquire any such Updates, Upgrades or New Releases, these should be contracted for with, and acquired from Accsys separately.

8. THIRD PARTY SOFTWARE

The licences for Third Party Software will be supplied with the Third Party Software and those terms and conditions shall exclusively govern the Client's use of that Third Party Software and any claims which the Client might have arising out of or in connection with the Third Party Software. It is a pre-requisite of use of Third Party software that such licences are agreed to and complied with by the Client and where applicable signed and passed to the relevant licensor via Accsys. The Client must abide by those terms and take any claims up directly with the relevant licensor. Save for Accsys' obligations to supply, and, if agreed to, install such Third Party Software, the Client acknowledges that Accsys shall have no other liability in respect thereof and the Client indemnifies Accsys against all and any claims which it might have arising out of or in connection with the Third Party Software. Third Party Software is provided "as is" without any warranties and Client agrees to look solely and exclusively to the Third Party Software licensor in respect of any claims which the Client might have arising out of or in connection with the Third Party Software. Accsys will not provide support (including Updates, Upgrades or New Releases) for Third Party Software unless specifically agreed to in a Support Services Schedule.

9. SOFTWARE – LICENCE GRANT AND CONDITIONS

- 9.1. Accsys software is licenced to the end user rather than sold outright. The pricing model is based either on a monthly / annual annuity, or on an initial licence and an annual licence fee (ALF), determined by the number of active employees, system users (administrators), readers and sites. A once-off licence is payable for the communications software for each reader, termed the PeopleWare Integration Module. The licence to use the Software is granted subject to the Client paying the Licence and abiding by the terms of this Agreement. Non-payment of the Licence will result in automatic termination of the licence without notice.
- 9.2. Accsys hereby grants to the Client a personal, non-exclusive, non-transferable licence to use the Software on the Server and at the Site listed in the Schedule for up to the maximum number of employees specified in the Schedule for as long as the Annuity is fully paid up. The Client shall not permit any third party to use or have access to the Software or Documentation. Use of the Software and Documentation is restricted to use for the Client's own internal data processing requirements.
- 9.3. This licence does not include the Source Code for the Software.



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- 9.4. In the event that the Server on which the Software is installed becomes unavailable or is unable to read and execute the Software, the Client may temporarily install the Software on an alternative Server until such time as the original Server is again available or capable of reading and executing the Software, in which case the Licensee undertakes to de-install the Software from the alternative Server on which it was temporarily installed.
- 9.5. The Client undertakes:
 - 9.5.1. not to reverse engineer, disassemble, translate or in any way or decompile the whole or any part of the Software;
 - 9.5.2. not to modify, translate, adapt, or vary the whole or any part of the Software or Documentation in any way whatsoever nor to permit the whole or any part thereof to be combined with or become incorporated in any other programs;
 - 9.5.3. not to have any software or other program written or developed for itself based on the Software or Documentation without Accsys' prior written consent which may be withheld at the sole discretion of Accsys.
- 9.6. The Client may make 1 (one) copy of the Software and Documentation for back up purposes and 1 (one) copy for disaster recovery purposes. The Client undertakes to ensure that each copy (including any partial copy) of the Software made shall bear all trade marks, trade names and all copyright, ownership, proprietary and confidentiality notices as are included on the original, and that it shall not cause nor allow any such mark, name or notice to be altered, obscured or removed in any way or manner. The media on which these copies are stored shall be the property of Accsys and/or its licensors and the Client shall ensure that all such media is kept safe.
- 9.7. The Client irrevocably undertakes and agrees that upon termination of this Agreement for whatever reason, it shall:
 - 9.7.1. immediately cease all use of the Software and de-install the original and every copy (including partial copy) of the Software from any Server (or other hardware) on which the Client has installed it or caused it to have been installed; and
 - 9.7.2. at the option of Accsys, either, return the original and every copy (including partial copy) of the Software to Accsys by delivering it to the physical address of Accsys' domicilium citandi et executandi, or, destroy the original and every copy (including partial copy) of the Software and certify their destruction in writing by way of notice from the Client's chief executive officer (if a juristic person) or the Client (if a natural person).
- 9.8. In the event that any Bespoke Software is to be developed for the Client, such development will be the subject of a separate agreement between the parties.
- 9.9. Any breach by the Client of any provision of this clause 5 shall be deemed to be a material breach of this Agreement.

10. VARIATIONS

All variations, authorised or required by the Client, which shall be in writing and signed by both parties, shall be carried out and the Contract sum adjusted, the valuation being assessed on the basis of valuation of similar work included in this contract. Where this basis cannot be applied, a valuation agreed by the Client and Accsys shall be made, failing which Accsys shall be allowed the cost of the materials used, at the then current market value, plus 10% (ten percent) thereof, together with the labour cost involved.

11. OWNERSHIP AND RISK

Title in and to the Software, Third Party Software and Intellectual Property shall at all times remain with Accsys or the licensor as the case may be and will never pass to the Client. Title in any Equipment supplied by Accsys shall remain with Accsys until such time as the Client has paid the purchase price in full. If payment is not made and/or the Client becomes insolvent or a liquidator and/or trustee is appointed before payment is made Accsys is irrevocably authorised to enter forthwith the Client's Site(s) for the sole purpose of repossessing the Equipment still owned by Accsys. Risk in and to the Software, Third Party Software and Equipment shall pass to the Client on the Delivery Date.

12. PRICING AND PAYMENTS

The amounts to be paid in terms of this Agreement do not include sales taxes (other than VAT, if so specified), excise, gross receipts and withholding taxes, universal service fund fee and any similar tax or any government imposed fees or surcharges (collectively, "taxes"). The Client shall pay or reimburse Accsys for all such taxes (excluding tax on Accsys' income), which will be invoiced to the Client in accordance with the law where the Client is domiciled. In respect of withholding tax, the Client will pay such additional amounts as may be necessary, such that Accsys receives the amount it would have received had no withholding been imposed, except if the Client provides Accsys with a valid withholding tax certificate within 30 (thirty) days of date of payment of the charges or fees paid to Accsys under this Agreement.

Prices and Annuities shall be invoiced and payable as follows:

- 12.1. The Price for Equipment shall be invoiced and payable as follows:
 - 12.1.1. 90% (ninety percent) of the Price on signed order;
 - 12.1.2. 10% (ten percent) of the Price against installation of the Software or the Equipment as more fully described in clause 4.
- 12.2. In respect of Services:
 - 12.2.1. The entire portion of the Price of installation Services which are attributable to labour costs shall be invoiced and payable in full within 7 (seven) days after successful installation as more fully described in clause 4;
 - 12.2.2. The balance of the Price of installation Services shall be invoiced and payable on a Cash on Delivery ("COD") basis;
 - 12.2.3. Implementation services are strictly subject to the client account being maintained within the account profile and credit limit agreed upon. Should the charges exceed the credit limit set for a project, the account is to be brought back below the credit limit before services can be resumed;
 - 12.2.4. The Price for any other Services (for the sake of clarity, other than installation Services) shall be invoiced and payable on a COD basis;
 - 12.2.5. All Training and media (e.g. pay slips, clock cards, proximity cards, etc.) are payable on a COD basis.
- 12.3. The Licence in respect of Software and Third Party Software shall be invoiced and payable:
 - 12.3.1. Monthly in advance of the period for which it is being paid and shall be payable by no later than the last business day in the immediately preceding month – in the event that the monthly Annuity payment option has been selected – provided that, during the Initial Period the Client shall make payment of the first 3 (three) months Annuity fees in one lump sum on the Delivery Date;
 - 12.3.1.1. In the event that a three (3) year contract has been signed, and a full three (3) years licences have been paid, in year four (4) the licence fee may be renegotiated to a reduced Annual Licence Fee. This fee will be equivalent to that of a client who purchased the software up front with an Initial Licence Fee.
 - 12.3.2. Annually in advance of the period for which it is being paid and shall be payable by no later than the last business day in the month immediately preceding the Renewal Date – in the event that the annual Annuity payment option has been selected.
 - 12.3.3. Accsys consultants shall, from time to time, audit software in use in terms of employee headcount, numbers of Standard and Casual Users, readers and sites. Should adjustments to the licence fees be required, an invoice will be forwarded for payment within 30 days.
- 12.4. The Licence in respect of Support Services shall be invoiced and payable annually in advance of the period for which it is being paid and shall be payable by no later than the last business day in the month immediately preceding the Renewal Date.
- 12.5. The Price in respect of all other Services shall be invoiced and payable on a COD basis.
- 12.6. Unless otherwise specified all other charges shall be invoiced and payable monthly in arrears.
- 12.7. If the licence for the Software or Third Party Software is terminated for any reason whatsoever, the Client is not entitled to any refund of the Annuity. If any payment is overdue Accsys reserves the right, without prejudice to any other rights which Accsys may have in terms of this Agreement or in law, to suspend its contractual obligations under this Agreement until such payment is received and to charge interest at 2½ % (two and half percent) per month to be calculated monthly in arrears from due date until payment is received and to recover any collection costs or commissions and legal costs on an attorney and own client basis. Accsys also reserves the right to allocate payments between the interest and capital at its discretion.
- 12.8. The Client will bear the cost of all travel time and expenses of Accsys' personnel attending the Site/s. Travel will be charged for at Accsys' then current hourly labour rate plus the average fixed and running costs of vehicles in the relevant price and engine capacity ranges as specified by the AA from time to time. These costs are additional to the Price and Annuity unless expressly stated otherwise in the relevant Schedule.
- 12.9. Flights, airport taxes (and visas, inoculations, insurance, car rental and airport parking where applicable), rail fares and accommodation (business class accommodation within South Africa and 4 star outside of South Africa) and meals are additional to the Price and Annuity unless expressly stated otherwise in the relevant Schedule:
 - 12.9.1. within South Africa will be for the account of and invoiced to the Client who will pay the invoice on presentation; and
 - 12.9.2. outside of South Africa is booked and paid for by the Client in advance.

2016/01/10
For and behalf of **Accsys**

Initial: _____

Witnesses: _____

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The People Management Specialists

For and behalf of **Client**

Initial: _____

Witnesses: _____

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- 12.9.3. a per diem amount will be levied for any overnight travel (R85 per day in South Africa, or US\$35).
- 12.10. The Price for training Services days booked by the Client and not cancelled by way of 14 (fourteen) days prior written notice to Accsys will be charged for in full.
- 12.11. Accsys reserves the right to increase the Annuity for Software, Third Party Software and Support Services with effect from the first day of each Renewal Date, provided that such increase shall be limited to the greater of:
 - 12.11.1. 10% (ten percent); or
 - 12.11.2. the percentage increase in the CPI during the 12 (twelve) month period immediately prior to the increase.
- 12.12. Accsys shall support the current version or release of the Software and the immediately preceding version or release for a period not exceeding a maximum of one tax year. Should the Client request Accsys to provide Support Services for any older version or release, then Accsys shall not be obliged to do so, and shall further be entitled to terminate such Support Services at any time on 30 (thirty) days' notice to the Client.
- 12.13. The Client is obliged to complete a Credit Application Form and provide an ITC Bank Reference and its current Financial Statements. Accsys shall in its sole discretion determine whether or not to grant the Client an approved credit limit as regards Prices and Annuities. In the absence of such an application or should Accsys determine not to grant an approved credit limit, then, notwithstanding any provision seemingly to the contrary contained in this Agreement, all Prices and Annuities will be invoiced and payable on a COD basis.
- 12.14. Client shall be liable for and pay (or reimburse, to the extent that Accsys is liable to make the payment) all value-added, sales, withholding, customs, excise and any other taxes (other than taxes on the income of Accsys), tariffs and duties which may be assessed or levied by any government or taxing authority on any such Prices and Annuities, all at prevailing rates. Accordingly, all Prices and Annuities stated in this Agreement are exclusive of all value-added, sales, withholding, customs, excise and any other taxes (other than taxes on the income of Accsys), tariffs and duties.

13. INTELLECTUAL PROPERTY

All rights, title and interest in and to all intellectual property relating to any equipment and/or software that form the subject matter of this Agreement shall remain the sole property of Accsys, the Client, their vendors or suppliers, who own such equipment and/or software.

- 13.1. The Client shall notify Accsys as soon as reasonably possible if it becomes aware of any unauthorised use of the whole or any part of the Software or Documentation by any third party.
- 13.2. Accsys indemnifies and holds the Client harmless against all and any claims that its Software infringes the copyright of a third party in the Republic of South Africa and for avoidance of doubt this clause 13.2 and clause 13.3 does not cover third party software.
- 13.3. Should the Accsys' Software become the subject of a claim of infringement of copyright, Accsys, at its sole discretion, may choose to either:
 - 13.3.1. obtain the right of continued use of the Software if commercially practicable; or
 - 13.3.2. replace or modify the Software to avoid the claim of infringement; or
 - 13.3.3. terminate the licence for the Software and grant a credit against the unused portion of the Annuity paid by the Client for the Software.
- 13.4. This indemnity will not apply if any claim of infringement:
 - 13.4.1. is made by a parent, subsidiary or affiliate of the Client;
 - 13.4.2. results from the Client's design or specification requirements which were then made to the Software; or
 - 13.4.3. results from any modification, alteration or repair to the Software (including any attempt at same) made or commissioned by the Client.
- 13.5. This clause states the entire liability of Accsys and the Client's sole and exclusive remedies for copyright infringement claims.

14. Confidentiality

- 14.1. Each Party undertakes to the other Party, for the continuance of this Agreement and for a period of 2 (two) years from the expiry or termination thereof, as the case may be:
 - 14.1.1. to keep confidential all information whether written (including information contained in electronic format) or oral concerning the business and affairs of the other Party that it obtains or receives from the other Party or any third party, as well as the terms and conditions of this Agreement ("the Information");
 - 14.1.2. not without the other Party's prior written consent to disclose the Information in whole or in part to any person save its employees, agents, contractors and/or consultants involved in the implementation of this Agreement, and who have a need to know the Information;
 - 14.1.3. to use the Information solely in connection with the implementation of this Agreement and not for its own benefit or that of any third party.
- 14.2. The provisions of clause 14.1 shall not apply to Information to the extent that such Information is:
 - 14.2.1. already known to the recipient without obligation of confidence;
 - 14.2.2. independently developed by the recipient;
 - 14.2.3. publicly available without breach of this Agreement;
 - 14.2.4. lawfully received from a third party;
 - 14.2.5. released for disclosure by the disclosing Party with its written consent; or
 - 14.2.6. required to be disclosed in response to a valid order of court or other governmental agency or if disclosure thereof is otherwise required by law.
- 14.3. If a Party is obliged to divulge information in terms of clause 14.2.6 it shall, provided that circumstances permit the time to do so, forthwith and before releasing the information, inform the other Party of the obligation.
- 14.4. Each Party undertakes to the other to make all its relevant employees, agents, contractors and consultants aware of the confidentiality of the Information and the provisions of this clause 9 and to take all such steps as shall from time to time be necessary to ensure compliance by its employees, agents, contractors and consultants with the provisions of this clause 9.
- 14.5. Upon the expiry or termination of this Agreement for any reason, each Party shall promptly return to the other Party all documents, diskettes, drawings and any other medium containing the Information of the other Party (as well as all copies, notes or reproductions thereof) and delete and remove the Information from its electronic data bases and deliver to the other Party a certificate from a director of the Party deleting the Information that it has done so.
- 14.6. Save for compliance by a Party with the requirements of the Johannesburg Stock Exchange and the Securities Regulation Panel, neither Party may publish any announcement of this transaction without the prior written consent of the other Party, which approval shall not be unreasonably withheld.
- 14.7. Notwithstanding clause 14.1, Accsys may disclose the fact that the Client is a client of Accsys, without implying the Client's endorsement. However, Accsys may not disclose any other details of or related to this Agreement without the prior consent of the Client, which consent will not be unreasonably withheld.
- 14.8. No provision of this Agreement shall be construed as consent from a disclosing Party to a receiving Party to disclose any Information in response to a request for the Information, served on the receiving Party in terms of the Promotion to Access to Information Act, No 2 of 2000. The receiving Party shall notify the disclosing Party immediately if it receives such a request, to enable the disclosing Party to object and, if necessary, to seek judicial protection of its interests.

15. US EXPORT REGULATIONS

The Client undertakes not to sell, lease, licence, export or otherwise dispose of the Software, Third Party Software, Equipment, proprietary information or associated technical data or Documentation to any person, firm, corporation, or governmental entity which the Client knows, or should have reason to believe will export, resell, use or otherwise dispose of the Software, Third Party Software, Equipment, proprietary information or associated technical data or Documentation in any country or territory where the disposition is prohibited or regulated by law, including, but not limited to, the export administration regulations of the Bureau of Industry and Security of the United States Department of Commerce; provided that, this restriction shall not apply if a licence has been issued by the appropriate USA agency giving its consent and the transaction is otherwise lawful.

16. BREACH

If the Client:

- 16.1. commits any breach of this Agreement other than a breach of a payment obligation and fails to remedy the breach within 30 (thirty) calendar days after receipt from the other Party of written notice calling upon it to do so;
- 16.2. commits a breach of any payment obligation in terms of this Agreement and fails to make payment within 7 (seven) calendar days after receipt from the other Party of written notice calling upon it to do so;
- 16.3. without the prior written advice to Accsys, undergoes a change in its shareholding or members' interest so that a new person owns the majority of its voting share capital or members' interest, then Accsys may, in addition to and without prejudice to any other right it may have in law or in terms of this Agreement:

2016/01/10

For and behalf of **Accsys**

Initial: _____

Witnesses: _____

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The People Management Specialists

For and behalf of **Client**

Initial: _____

Witnesses: _____

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- 16.3.1. enforce specific performance of the terms of this Agreement; or
- 16.3.2. subject to clause 16.2, cancel this Agreement; and
- 16.3.3. in either event (subject to clause 18), recover such damages as it may have sustained.
- 16.4. Accsys may cancel this Agreement in terms of clause 16.1 only if the breach is material and is not capable of being remedied by payment of money or, if it is capable of remedy by payment of money, if the other Party fails to make payment within 14 (fourteen) calendar days after final determination of the amount.
- 16.5. Any amount due by the client, which is not paid on its due date, shall attract interest at Prime Rate, plus 2 (two) percentage points compounded monthly. For the purposes of this clause, "Prime Rate" means the interest rate (expressed as a % per annum, compounded monthly) published from time to time by Nedbank Limited as being its minimum overdraft rate at which it lends to its customers in the corporate sector, as certified by any manager of such bank, whose appointment or authority it shall not be necessary to prove, and which certificate shall, save manifest error of calculation, be *prima facie* proof of the contents thereof.

17. TERMINATION

- 17.1. The Software licence shall commence on the Effective Date and, subject to the provisions of clauses 17.3 and 17.4 below, shall be effective during the Initial Period and thereafter extend automatically for further one year periods unless or until terminated by the either party giving at least 90 (ninety) days written notice effective and prior to the expiry of the Initial Period or the Renewal Date, as the case may be.
- 17.2. The Support Services shall commence on the Effective Date and, subject to the provisions of clauses 17.3 and 17.4 below, shall be effective during the Initial Period and thereafter extend automatically for further one year periods unless or until terminated by Accsys giving at least 90 (ninety) days written notice effective and prior to the expiry of the Initial Period or the Renewal Date, as the case may be.
- 17.3. If any Party breaches any material provision or term of this Agreement (other than those which contain their own remedies or limit the remedies in the event of a breach thereof) and fails to remedy such breach within 14 (fourteen) days of receipt of notice requiring it to do so and warning that if the breach is not so remedied, the aggrieved Party may exercise its rights in terms of this clause, (or if it is not reasonably possible to remedy the breach within 14 (fourteen) days, within such further period as may be reasonable in the circumstances provided that the party in breach furnishes evidence within a period of 2 (two) days, reasonably satisfactory to the other party, that it has taken whatever steps are available to it, to commence remedying the breach) or even if the provision or term is not material but a breach thereof has been again committed after 2 (two) warnings from the aggrieved party, then the aggrieved party shall be entitled without notice, in addition to any other remedy available to it at law or under this Agreement, including obtaining an interdict, to cancel this Agreement or to claim specific performance of any obligation whether or not the due date for performance has arrived, in either event without prejudice to the aggrieved party's right to claim damages in which event the aggrieved party shall be entitled to retain on account of such damages all amounts paid by the defaulting party to it in terms of this Agreement. If any aforementioned breach is not capable of being remedied, it shall be deemed to have been remedied (but without prejudice to the aggrieved party's right to claim damages) provided that the defaulting party has caused it to cease within the period aforesaid.
- 17.4. Notwithstanding the provisions of clause 17.3, if a breach of any part of this Agreement is committed then the aggrieved party shall be entitled, instead of cancelling the entire Agreement, to cancel either the relevant Schedule or part of this Agreement, or alternatively only the transaction concluded pursuant to the relevant part of this Agreement or Schedule which has been breached.
- 17.5. This Agreement may be terminated by either party with immediate effect by written notice to the other if the other:
 - 17.5.1. commits an act which is or would (if committed by a natural person) be an act of insolvency within the meaning of section 8 of the Insolvency Act, 1936; or
 - 17.5.2. allows any judgment against it to remain unsatisfied for a period of 14 (fourteen) days after it becomes aware thereof; or
 - 17.5.3. compromises or attempts to compromise any debt owing by it to its creditors generally; or
 - 17.5.4. being a natural person, takes any steps to surrender his estate or is finally sequestrated; or
 - 17.5.5. being a juristic person, is provisionally or finally liquidated or takes any action for voluntary winding up; or
 - 17.5.6. dies, the performance of any obligation hereunder being personal to him; or
 - 17.5.7. being a juristic person, undergoes a change of control.

18. DAMAGES

- 18.1. If this Agreement terminates as a result of any breach by the Client of its obligations in terms of this Agreement or by reason of any act or omission on the part of the Client, then the termination of this Agreement shall be without prejudice to the rights of Accsys to claim from the Client any damages which it may have suffered as a result of such termination of this Agreement.
- 18.2. If the Client does not pay Accsys as provided for in this agreement or is in default in any other manner, then Accsys shall be entitled to forthwith cease work under this contract until the Client has made payment or until such default has been rectified.
- 18.3. In the event of termination, Accsys shall be paid by the Client:
 - 18.3.1. the Contract value of the Works completed at the date of such determination; and
 - 18.3.2. the value of work commenced and executed but not completed at the date of such determination, the value being ascertained *mulatis mutandis*; and
 - 18.3.3. the cost of materials or goods properly ordered and delivered for the Works, actually paid for by Accsys, of which the Client is legally bound to accept delivery, and on such cost being paid by the Client the same shall become his sole property; and
 - 18.3.4. damages in the sum of 25% (twenty-five percent) of the Contract sum provided that the above provisions shall in no way prejudice any other right or remedy that Accsys may have in law; and
 - 18.3.5. A retention of 10% (ten percent) may be held as a deposit against the re-instatement of the contract or negotiation of a new contract by the end of the Accsys financial year. Thereafter this retention shall be forfeited; and
 - 18.3.6. An administration fee to contribute to bank charges may also be deducted.
- 18.4. Any goods returned for credit will be subject to a 25% handling fee.
- 18.5. A Certificate signed by Accsys' Auditor specifying the amount due by the Client to Accsys shall be sufficient proof of any amount due to Accsys in terms of the Contract and may be used by Accsys for the purposes of obtaining judgement whether by default or otherwise, summary judgement or provisional sentence against the Client in any Court of Law having jurisdiction in respect thereof.
- 18.6. If the licence for the Software or Third Party Software is terminated for any reason whatsoever, the Client is not entitled to any refund of the Annual fees already paid.
- 18.7. If any payment is overdue Accsys reserves the right, without prejudice to any other rights which Accsys may have in terms of this Agreement or in law, to suspend its contractual obligations under this Agreement until such payment is received and to charge interest at 2½ % (two and half percent) per month to be calculated monthly in arrears from due date until payment is received and to recover any collection costs or commissions and legal costs on an attorney and own client basis. Accsys also reserves the right to allocate payments between the interest and capital at its discretion.
- 18.8. If the Client employs any of Accsys' staff within the period of 12 (twelve) months after termination of this Agreement, with the prior consent of Accsys, a placement fee to the value of 20% (twenty percent) of the staff member's annual salary will be payable by the Client to Accsys.
- 18.9. In the event this Agreement is terminated as a result of breach by Accsys, the client may claim damages as contemplated in clause 16.3.3, in the aggregate which is limited to 20% of the amounts paid by the Client to Accsys in respect of the specific services or product from which the claim arose. In any event, Accsys will not be liable to the Client for: (a) indirect or special damages and/or (b) loss of income, profit or anticipated savings, howsoever arising, whether or not caused by its employees, agents and/or contractors, and regardless of form or cause of action. The provisions of this clause are also stipulated for the benefit of the employees, agents and/or contractors of Accsys.

19. FORCE MAJEURE

- 19.1. Neither Party shall have any claim against the other Party ("the Affected Party") for any delay or failure of the Affected Party to carry out any of its obligations under this Agreement arising from or attributable to acts of God, war, terrorism, government, labour action or unrest, failure of suppliers or contractors or any other cause whatsoever beyond the control of the Affected Party ("force majeure").



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- 19.2. The performance of the obligations of the Affected Party shall, subject to clause 19.3, be suspended for the duration of the *force majeure*, which shall be deemed to commence only upon the date of written notice by the Affected Party to the other Party. Upon cessation of the *force majeure*, this Agreement shall again become fully operative and the Affected Party shall immediately resume its performance.
- 19.3. If the suspension of performance continues for more than 90 (ninety) consecutive calendar days, then either Party may summarily terminate this Agreement by written notice to the other Party, prior to the cessation of the *force majeure*.

20. DESCRIPTION OF SERVICES

- 20.1. Unless otherwise expressly agreed by Accsys, Support Services and Services will be provided between 8.00 a.m. to 5.00 p.m. during normal business hours, Monday to Friday, excluding Public Holidays.
- 20.2. Accsys warrants that it shall use all reasonable endeavours to carry out the Support Services and Services in a professional and workmanlike manner.
- 20.3. Electronic transfer of programs and/or data are not included in Support Services and will be charged to the Client at Accsys' prevailing rates.
- 20.4. Support Services – Software and Technical:

Where the Client has contracted for Support Services for Software, the following will apply:

- 20.4.1. Any Updates, Upgrades or New Releases which Accsys has undertaken to provide as part of the Support Services for Software may include legislative updates the scope of which can vary considerably. Where major legislative changes take place it is expressly provided that Accsys reserves the right, at its sole discretion, to charge the Client an additional amount over and above the Annuity for Support Services for Software, notwithstanding anything seemingly to the contrary contained in this Agreement.
- 20.4.2. Accsys will provide Support Services for Software remotely. On receipt of a telephone request from the Client for Support Services for Software, Accsys will log the call and endeavour to identify the cause of the problem as either a Software problem or an Equipment (including operating software) problem. Accsys will, if appropriate to the problem reported, despatch a technician/consultant to the Site concerned. Accsys will use all reasonable endeavours to respond to any such request by the Client within 8 (eight) hours (counted during normal working hours) of logging the call. Error correction is provided on a reasonable effort basis, and Accsys cannot guarantee that it will be able to correct any error within any given timescale. The Client shall endeavour to provide full details of system and client activities leading up to and immediately prior to the error being experienced, including, where requested by Accsys, screen and data dumps. As part of the Support Services for Software Accsys shall if contracted for provide Updates, Upgrades and New Releases from time to time.
- 20.4.3. It is the Client's responsibility to install corrections, Updates, Upgrades and New Releases to the Software and for ensuring that its staff have the capability of doing so. Accsys shall have the right to levy additional charges for Support Services, which are required due to the Client failing to install such items correctly.
- 20.4.4. Where Accsys has to carry out Site visits for Support Services for Software, it reserves the right to charge over and above the Annuity in respect of the Site visit including but not limited to travel and accommodation costs.
- 20.4.5. Support Services for Software do not include the correction of faults, errors or problems due to:
- failure of Equipment or other software not covered by this Agreement;
 - faults in the main electrical supply, irregular voltage or surges;
 - operator error;
 - operation of the Software by persons who have not been properly trained by Accsys in its use;
 - air conditioning, humidity or other environmental conditions;
 - failure to operate the Software within any environmental or operating specifications notified to the Client by Accsys or contained in any Documentation;
 - accident, neglect, misuse, abuse or default of the Client (including its employees, servants or agents) or any third party;
 - corruption of data;
 - failure to install corrections, Updates, Upgrades and New Releases properly;
 - acts of God, flood, lightning, war, acts of violence or any similar occurrence;
 - any attempt by any person, other than Accsys, to install, alter, modify or maintain the Software otherwise than in the case of trained Client staff carrying out normal system functions; and
 - relocation of the Equipment on which the Software is installed by persons other than Accsys; or
 - cable, connector or any other network malfunctions.

Should the Client request Accsys to correct any such error or problem, then Accsys shall do so on a time and materials basis at its then current rates for same and subject to the availability of resources.

20.5. Support Services – Equipment:

Where the Client has contracted for Support Services for Equipment, the following will apply:

- 20.5.1. On receipt of a telephone request from the Client for Support Services for Equipment, Accsys will log the call and endeavour to identify the cause of the problem as either a Software problem or an Equipment (including operating software) problem. Accsys will, if appropriate to the problem reported, despatch a consultant to the Site concerned. Accsys will use all reasonable endeavours to respond to any such request by the Client within 8 (eight) hours (counted during normal working hours) of logging the call. Where the problem encountered relates to a Server and the terms of this Agreement provide that a temporary replacement Server will be provided to the Client the consultant will make a reasonable effort to load any unaffected hard disc of the Server onto the temporary replacement Server and thus leave the Client with a working system, however, the Client acknowledges that this may not be possible and that Accsys will make such determination in its sole and absolute discretion.
- 20.5.2. Fault resolution is provided on a reasonable effort basis, and Accsys cannot guarantee that it will be able to resolve any fault within any given timescale. The Client shall endeavour to provide full details of system and Client activities leading up to and immediately prior to the fault being experienced.
- 20.5.3. Support Services for Equipment cover normal wear and tear and assume that the Equipment is operated during normal working hours and within manufacturer's specifications. Support Services for Equipment do not include the correction of faults, errors or problems (including to operating software) which are due to:
- abnormal wear and tear;
 - abnormal or excessive operation of Equipment;
 - failure of equipment or other software not covered by this Agreement;
 - faults in the main electrical supply, irregular voltage or surges;
 - operator error;
 - corruption of data;
 - operation of the Equipment by persons who have not been properly trained in its use;
 - air conditioning, humidity or other environmental conditions;
 - failure to operate the Equipment within any manufacturer's environmental or operating specifications or as have been notified to the Client by Accsys or contained in any Documentation;
 - accident, neglect, misuse, abuse or default of the Client (including its employees, servants or agents) or any third party;
 - acts of God, flood, lightning, war, acts of violence or any similar occurrence;
 - any attempt by any person, other than Accsys, to install, alter, modify or maintain the Equipment otherwise than in the case of trained Client staff carrying out normal system functions; and
 - relocation of the Equipment by persons other than Accsys;
 - installation of any add-ons, peripherals, updates or upgrades to Equipment;
 - cable, connector or any other network malfunctions; or
 - manufacturer's design or inherent defects.



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- 20.5.4. Should the Client request Accsys to correct any such fault, error or problem, then Accsys shall do so on a time and materials basis at its then current rates for same and subject to the availability of resources.
- 20.5.5. Accsys shall provide all necessary tools and test equipment together with all spares, which in the opinion of Accsys' engineer are required to ensure the operational efficiency of the Equipment.
- 20.5.6. Support Services for Equipment do not include the replacement of operating materials or consumables, including but not limited to print heads, laser cartridges, ribbons, toners, client and developer kits all of which are outside the scope of the Support Services for Equipment.
- 20.5.7. Accsys reserves the right, at its sole discretion, to charge the Client a surcharge over and above the Annuity for Support Services for Equipment, to support Equipment which is older than 5 (five) years from its date of manufacture, notwithstanding anything seemingly to the contrary contained in this Agreement. The surcharge will be based on a time and materials basis at Accsys' then current rates for same.
- 20.5.8. The Client shall not move any supported item of Equipment or Software either from one Site to another Site or location, within the same Site, or between different buildings without the prior written consent of Accsys, as this can affect the ability of Accsys to support it. Accsys shall have the right to vary the Annuity or to terminate support in respect of such item or items.

21. MAINTENANCE CONTRACT

All Accsys hardware supplied by Accsys is guaranteed by Accsys. The guarantee period runs from the delivery date for a period of 6 months. An on-going hardware maintenance contract is a mandatory part of the agreement of sale where hardware is supplied by Accsys. The hardware maintenance contract covers the cost of parts and labour to repair equipment manufactured, and installed, by Accsys.

The contract includes:

- 21.1. Inspection of the equipment as Accsys deems necessary;
- 21.2. Maintenance and, if necessary, repair of equipment;
- 21.3. Replacement on non-consumable parts (see 21.4 below).

The contract excludes:

- 21.4. Consumables, i.e. items that cannot be repaired including, but not exclusively, fingerprint / badge reader, keypad, switches, sirens and batteries;
- 21.5. Any damage caused by:
- 21.6. An Act of God, e.g. lightning strikes, earthquakes;
- 21.7. Power surges, failures, outages or the like;
- 21.8. Temperature and or humidity fluctuations;
- 21.9. Normal wear and tear;
- 21.10. Misuse or abuse on the part of the Client, its employees or its agents;
- 21.11. Transportation to another location without written approval of Accsys.
- 21.12. Alterations, maintenance, or repairs carried out by persons other than Accsys employees, or specified third parties;
- 21.13. All travel costs and time to and from site.

The following items are not, inter alia, manufactured by Accsys: turnstile frames, spindles, mechanisms, springs and locking gear, boom poles, housing, motors and electronic switching devices. Sites beyond 100km distance from the applicable Accsys office carry a 5% country loading. Service shall be carried out at the Client's premises, or at Accsys discretion, in their workshop. If the Client requires service outside normal working hours (i.e. 8h00 – 17h00 Monday through Friday), Accsys shall be entitled to charge the standard then prevailing rate for overtime service. Parts replaced become the property of Accsys.

22. EXTENDED WARRANTY

An extended 30 month warranty (i.e. total of 36 months) is offered on Suprema Original Equipment Manufacturer ("OEM") readers provided by Accsys. The warranty is effective from delivery date, and the option required is specified on acceptance of quotation. This is payable annually in advance, for 3 years.

The contract includes:

- 22.1. 24 business hour replacement of readers in the event of failure; or
- 22.2. 48 business hour replacement of readers in the event of failure.

The contract excludes:

- 22.3. Damage caused by:
- 22.4. An act of God, e.g. lightning strikes, earthquakes;
- 22.5. Power surges, failures, outages or the like;
- 22.6. Temperature and or humidity fluctuations;
- 22.7. Normal wear and tear;
- 22.8. Misuse or abuse.
- 22.9. Alterations, maintenance, or repairs carried out by persons other than Accsys employees, or specified third parties;
- 22.10. All time and travel costs to and from site.

Sites beyond 100km distance from the applicable Accsys office carry a 5% country loading. Service shall be carried out at the Client's premises, or at Accsys discretion, in their workshop. If the Client requires service outside normal working hours (i.e. 8h00 – 17h00 Monday through Friday), Accsys shall be entitled to charge the standard then prevailing rate for overtime service. Parts replaced become the property of Accsys.

The following terms and conditions apply:

- Readers to be returned in original packaging;
- Loan readers will be put in place according to the timelines selected (i.e. either 24 / 48 hours during the work week), there by ensuring continuity of clocking information;
- Accsys returns the original readers once repaired / replaced by the Supplier;
- Accsys reserves the right not to accept readers not returned in original packaging.

The replacement loan unit will:

- Be delivered to site in original packaging;
- Installed on site, and tested for successful operation, by an Accsys Technician, which installation and test should be signed off by the Client;
- On return of the original warrantied reader, the loan unit must be returned to Accsys in original condition. Failing this, penalties will be charged of the value of 10% of the reader / repair cost (whichever is the greater).

Should no extended Warranty be purchased, a standard 6 month warranty applies. In the event of failure of a unit after this date, loan units are available for rent at a monthly fee.

23. DOMICILIUM AND NOTICES

The Parties choose their respective domicilium addresses for all purposes hereunder at the addresses set out hereunder:

- Accsys: 789 – 16th Road, Randjespark, South Africa, Attention: Group Manager: Legal Services.
- Client: As per Acceptance of Proposal.

- 23.1. Any Party may from time to time, by written notice to the other(s), vary its domicilium address to any other address within the Republic of South Africa which is not a post office box or poste restante.
- 23.2. All notices given in terms of this Agreement shall be in writing and any notice given by any Party to another ("the addressee") which:
- 23.3. is delivered by hand shall be deemed to have been received by the addressee on the date of delivery;
- 23.4. is transmitted by telefacsimile, shall be deemed to have been received by the addressee on the first working day after the date of receipt of the receiving instrument;

2016/01/10

For and behalf of **Accsys**

Initial: _____

Witnesses: _____

© Business Connexion (Pty) Limited, February 2013

The People Management Specialists

For and behalf of **Client**

Initial: _____

Witnesses: _____

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- 23.5. is posted by pre-paid registered post from an address within the Republic of South Africa to the addressee at its domicilium address shall be deemed to have been received by the addressee on the 10th (tenth) working day after the date of such posting.
- 23.6. It shall not be permissible to give any notice relating to a dispute, demand, breach, legal proceedings, renewal, cancellation or termination by e-mail.

24. GENERAL

- 24.1. This Agreement constitutes the entire Agreement between the Parties with regard to the subject matter hereof.
- 24.2. No alteration or variation to, or consensual cancellation of this Agreement shall be of any force or effect, unless it is recorded in writing and signed by all the Parties.
- 24.3. No failure or delay by a Party to enforce any provision of this Agreement shall constitute a waiver or suspension of such provision or affect in any way a Party's right to require performance of any such provision at any time in the future, nor shall the waiver of any right arising from any subsequent breach nullify the effectiveness of the provision itself.
- 24.4. Neither Party may cede its rights and/or delegate its obligations under this Agreement without the prior written consent of the other Party, provided that Accsys shall be entitled to cede its rights and/or delegate its obligations under this Agreement to any company in the Business Connexion Group without the consent of the other Party. For the purposes of clauses 24.4 and 24.8, "Business Connexion Group" means Business Connexion Group Limited, Registration Number 1988/0005282/06, and its subsidiaries from time to time (as such terms are defined in the Companies Act, 2008).
- 24.5. Except as expressly provided in this Agreement no warranty, condition, undertaking or term, express or implied, statutory or otherwise as to the condition, quality, performance, merchantability or fitness for purpose of the items supplied or any part thereof is given by Accsys.
- 24.6. Accsys specifically states that whilst all reasonable care has been taken to exclude known viruses from the format or media on which the Software is supplied, no warranty is given that the Software is virus free.
- 24.7. In the event that any of the terms of this Agreement are found to be invalid, unlawful or unenforceable, such terms will be severable from the remaining provisions, which shall remain of full force and effect. If any invalid term is capable of amendment to render it valid, the Parties agree to negotiate in good faith an amendment to remove the invalidity.
- 24.8. Unless otherwise agreed in writing between the Parties, neither Party shall for the duration of this Agreement and for a period of 12 (twelve) months after expiry or termination thereof for its own benefit or as a representative of or agent for any third party, persuade, induce, encourage, procure or solicit (or procure such persuasion, inducement, encouragement, procurement or solicitation of) the personnel of the other Party or of the Business Connexion Group:
 - 24.8.1. to become employed, or interested, directly or indirectly in any manner whatsoever, by it or in any business which is in competition with the business carried on by the other Party or by the Accsys or the Business Connexion Group; or
 - 24.8.2. to terminate his/her employment with the other Party or with the Accsys or Business Connexion Group; or
 - 24.8.3. to disclose any Intellectual Property of the other Party or the Accsys or the Business Connexion Group to any person not authorised by the owner of the Intellectual Property to receive it.
- 24.9. Each Party acknowledges that it does not enter into this Agreement on the basis of and does not rely on any representation, warranty or other provision, whether express or implied, except as expressly provided in this Agreement. All conditions, warranties or other terms implied by statute or common law are excluded to the fullest extent permitted by the law of the Republic of South Africa.
- 24.10. Each Party warrants that it is acting as principal and not as agent for any other person, whether disclosed or otherwise.
- 24.11. This Agreement shall be governed by, construed and interpreted in accordance with the laws of the Republic of South Africa.
- 24.12. If any Party is awarded costs by an arbitrator or court, he shall be entitled to be reimbursed by the other Party on the basis of Attorney and own client charges.
- 24.13. If the Client fails to pay any undisputed amount due and payable to Accsys in terms of this Agreement, then Accsys may, without prejudice to any other rights it may have, suspend the rendering of further services until payment thereof.
- 24.14. If any conflict arises in respect of the provisions contained in these terms and conditions and the Quote, the provisions contained in these terms and conditions shall prevail.
- 24.15. The terms and conditions contained on the Client's purchase order, order acceptance forms and/or invoices shall not apply to supplement or supersede any provision of this Agreement;
- 24.16. Information or documents sent to Accsys by e-mail shall be deemed to have been received by Accsys only once Accsys has acknowledged receipt thereof in writing.
- 24.17. Accsys does not expressly or impliedly give any warranty or guarantee in respect of any third party software, including warranties or guarantees as to functionality, fitness for a particular purpose, uninterrupted use, merchantability or absence of any error of code or media and any warranties imposed by law are similarly excluded. Accsys accepts no liability of any nature arising out of or caused by any defect or failure in/of such software.
- 24.18. The provisions of this Agreement have been settled by negotiation and each Party was free to secure independent legal advice. The rule of construction that clauses must be interpreted against the Party principally responsible for drafting does, will therefore not apply in the interpretation of this Agreement.
- 24.19. The parties hereby submit to the exclusive jurisdiction of the High Court of the Republic of South Africa in respect of all and any matters, claims or disputes arising out of or in connection with this Agreement.
- 24.20. The use of any expression in this Agreement covering a process available under South African law such as a winding-up (without limitation eiusdem generis) shall, if any of the parties to this Agreement is subject to the law of any other jurisdiction, be construed as including any equivalent or analogous proceedings under the law of such defined jurisdiction.
- 24.21. The parties wish to be bound by the terms of this agreement and not by the United Nations Convention on Contracts for the International Sale of Goods. The parties, therefore, exclude the United Nations Convention on Contracts for the International Sale of Goods from this agreement and any transaction implemented pursuant to this Agreement.
- 24.22. This agreement has been concluded in the English language. In the case of any conflict between the English version of this agreement and any other translation version, the English version shall prevail. All notices required in terms of this agreement must be given in the English language.
- 24.23. The parties warrant to each other that they have taken or caused to be taken all steps, actions and corporate proceedings necessary to cause this agreement to be binding on themselves. Either party shall, if requested by the other party, furnish to the latter sufficient evidence of the authority of the person or persons who shall, on behalf of the party so requested, take any action or execute any documents required or permitted to be taken or executed by such person under this agreement.

SIGNED at _____ on _____ of _____

20__

For: Accsys (Proprietary) Limited

Name: _____

Capacity: _____

Who warrants that he/she is authorised to do so

Signature

SIGNED at _____ on _____ of _____

20__

For: **Client**

Name: _____

Capacity: _____

Who warrants that he/she is authorised to do so

Signature