

STANDARD TERMS AND CONDITIONS FOR PROVISION OF GOODS AND SERVICES

ENTERED INTO BY AND BETWEEN:

ACCSYS PROPRIETARY LIMITED

Registration Number: 1998/011208/07

(hereinafter referred to as "Accsys")

and

THE CLIENT

(identified in the Quote attached hereto as Schedule 1)

(hereinafter referred to as the "Client")

1. INTERPRETATION

1.1. In this Agreement, unless the context otherwise indicates:

- 1.1.1. the singular shall include the plural and vice versa;
- 1.1.2. reference to the masculine gender shall include the feminine gender and vice versa;
- 1.1.3. natural persons shall include created entities (corporate or unincorporated) and vice versa;
- 1.1.4. the headings in this Agreement are used for the sake of convenience, and shall not govern the interpretation hereof;
- 1.1.5. all expressions contained in the Master Agreement shall have the same meaning in all of the Schedules and/or Annexures, and any documents incorporated by reference;
- 1.1.6. in the event of conflict the provisions of this Agreement are to be read in the following order of precedence in relation to that conflict:
 - 1.1.7. in respect of provisions detailing the Hardware, Software and/or Services:
 - 1.1.7.1. the Schedules and Annexures;
 - 1.1.7.2. the Master Agreement; and
 - 1.1.7.3. any document incorporated by reference;
 - 1.1.8. in respect of other provisions:
 - 1.1.8.1. the Master Agreement;
 - 1.1.8.2. the Schedules and Annexures; and
 - 1.1.8.3. any document incorporated by reference;
- 1.1.9. no Annexure or Schedule shall be of any force or effect between the parties until it has been signed by the parties duly authorised representatives and appended to this agreement;
- 1.1.10. termination of any one Annexure or Schedule by effluxion of time or otherwise, shall not affect the continued operation of this Agreement or any other Annexure or Schedule to it;
- 1.1.11. if any provision in a definition is a substantive provision conferring rights or imposing obligations on either Party, notwithstanding that it is only in the definitions clause, effect shall be given to it as if it were a substantive provision of the Agreement;
- 1.1.12. words and expressions defined in any clause shall, unless the application of any such word or expression is specifically limited to that clause, bear the meaning assigned to such word or expression throughout this Agreement;
- 1.1.13. defined terms appearing in this Agreement in title case shall be given their meaning as defined, while the same terms appearing in lower case shall be interpreted in accordance with their plain English meaning;
- 1.1.14. a reference to any statutory enactment shall be construed as a reference to that enactment as at the Effective Date or Commencement Date, as the case may be, and as amended or substituted from time to time;
- 1.1.15. unless specifically otherwise provided, any number of days prescribed shall be determined by excluding the first and including the last day or, where the last day falls on a Saturday, Sunday or public holiday, the next succeeding business day;
- 1.1.16. where figures are referred to in numerals and in words, and there is any conflict between the two, both the words shall prevail;

- 1.1.17. no provision herein shall be construed against or interpreted to the disadvantage of a Party by reason of such Party having or being deemed to have structured, drafted or introduced such provision;
- 1.1.18. the provisions of Electronic Communications and Transactions Act, No. 25 of 2002, are expressly excluded from the Agreement in respect of communications which are required to be delivered in writing and which pertain to or involve time periods which must be met. Any such communication shall only be valid if either written or printed in a paper based form. For clarity, day-to-day (operational) communications may be sent via e-mail and the recipient shall be deemed, unless the contrary is proven, to have received the e-mail within 24 (twenty four) hours of the sender having sent the e-mail; and
- 1.1.19. It is expressly recorded that Accsys, or a formally recognised Accsys partner, shall be the exclusive provider of the Services to the Client. The Client shall not utilise the services of any other service providers or third parties, at any stage, should it require an instance of the Services.

2. DEFINITIONS

2.1. In this Agreement:

- 2.1.1. **“Agreement”** shall mean this agreement and all of the Schedules and Annexures attached hereto from time to time, and any other document specifically incorporated herein by reference;
- 2.1.2. **“Annexure”** or **“Schedule”** shall mean any document attached hereto, marked “Annexure” or “Schedule” and signed by both of the Parties hereto;
- 2.1.3. **“Business Day”** means a day which is not a Saturday, Sunday or public holiday in South Africa;
- 2.1.4. **“Confidential Information”** in relation to a party means information of a confidential nature including information about either Party and/or its Affiliates business, operations, strategy, administration, technology, affairs, clients, customers, employees, contractors or suppliers, but does not include any information which is in the public domain other than through a breach of confidence;
- 2.1.5. **“Data”** means any data, including personal data, as defined in ECT, POPI and any other legislation related to the protection of data, supplied to Accsys by the Client or stored, collected, collated, accessed or processed on behalf of the Client by Accsys;
- 2.1.6. **“Defects”** means any failure of the Software, Service or Deliverable to comply with its Functional Specifications;
- 2.1.7. **“Delivery Date”** means any date and time for delivery of the Hardware, Software and/or Services as stated in Schedule 1 or as otherwise advised by the Client from time to time;
- 2.1.8. **“Develop”** shall mean in connection with a thing, to develop, create, add, enhance, reduce, adapt or prepare derivative works based on that thing;
- 2.1.9. **“Developed Software”** shall mean any Software and related Documentation which is Developed by Accsys, as described in Schedule 1 as the case may be, and includes any customisations, configurations or other modifications of any Licenced Software and any related Documentation;
- 2.1.10. **“Documentation”** shall mean any training manuals, user manuals, operating manuals, technical manuals, reports or other documentation specified in Schedule 1 or provided by Accsys to the Client as part of the Services and any other documentation which is necessary for the effective installation, operation, Use, modification and Development of any Hardware or Software supplied by Accsys;
- 2.1.11. **“ECT”** shall mean the Electronic Communications and Transactions Act number 25 of 2002;

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- 2.1.12. **“Effective Date”** shall mean the date on which this agreement is signed by the last Party to do so;
- 2.1.13. **“Fees”** shall mean the amounts payable by the Client under this Agreement for the Hardware, Software and/or Services (as applicable), calculated in accordance with **Error! Reference source not found.**
- 2.1.14. **“Fix”** means the permanent correction of a Defect and includes the provision to the Client of any amendments to, or replacements of, any Documentation that are required as a result of such correction;
- 2.1.15. **“Hardware”** shall mean the hardware (including, where applicable, operating systems, middleware and firmware) specified in Schedule 1 as the case may be, procured, supplied and/or maintained by Accsys to the Client from time to time;
- 2.1.16. **“Intellectual Property”** shall include any know-how, patent, copyright, registered design, trademark or other industrial or intellectual property rights, whether registered or not and whether or not capable of being registered, and any application for any of the aforementioned;
- 2.1.17. **“Law”** means any applicable statute, regulation, by-law, ordinance, policy or subordinate legislation in force from time to time in South Africa, whether made by National, Provincial or a Local government, and includes the common law as applicable from time to time, and any mandatory standards or industry codes of conduct;
- 2.1.18. **“Licenced Software”** means any Software and related Documentation owned by Accsys or licenced to Accsys by a third party which is:
- (i) in existence prior to the date of this Agreement; or
 - (ii) comes into existence otherwise than pursuant to this Agreement,
- as further described in **Error! Reference source not found.** as the case may be, and includes any New Release, or Fix of that software;
- 2.1.19. **“Manufacturer”** shall mean the OEM or Accsys as the case may be;
- 2.1.20. **“New Release”** means any new release or version of any Software issued from time to time, including any update, enhancement, extension or replacement of the functionality of such Software (other than a Fix);
- 2.1.21. **“OEM”** shall mean the original equipment manufacturer of the Hardware or Software, as applicable;
- 2.1.22. **“Party”** or **“Parties”** shall mean the Parties to this Agreement or either of the Client or Accsys, as the case may be;
- 2.1.23. **“Personnel”** means a party’s officers, employees, secondees, agents, consultants, contractors and subcontractors, and, in the case of Accsys, includes Key Personnel;
- 2.1.24. **“POPI”** shall mean the Protection of Personal Information Act number 4 of 2013;
- 2.1.25. **“Pre-Existing Materials”** means all things, materials, documents, information and items developed by or on behalf of Accsys or the Client independently of this Agreement but excludes the Software;
- 2.1.26. **“Services”** means any of the services to be provided by Accsys under this Agreement, the details of which are set out more fully in clause 12 read together with Schedule 1;
- 2.1.27. **“Site”** means any site or Premises for delivery of the Hardware, Software and/or Services as specified in **Error! Reference source not found.** as the case may be, or as advised by the Client from time to time;
- 2.1.28. **“Software”** means:

(iii) each item of Licenced Software to be supplied by Accsys to the Client, including any Third Party Software; and

(iv) each item of Developed Software to be developed by Accsys and supplied to the Client, as further described in **Error! Reference source not found.**;

2.1.29. **“Training”** means the training required to be provided by Accsys in accordance with **Error! Reference source not found.**;

3. SCOPE

These terms and conditions set out the basis upon which Accsys shall supply Hardware, Software and Services to the Client.

4. SERVICES

Accsys shall render the services described in Schedule 1 read together with clause 12, to the Client, on the terms and conditions set out in this Agreement.

5. TERM AND TERMINATION

5.1. This Agreement shall become effective on the Effective Date and shall continue until terminated in accordance with this Agreement.

5.2. Either Party shall be entitled to terminate this Agreement at any time, by furnishing the other Party with 90 (ninety) days' prior written notice. This notice is to be acknowledged, in writing, by the other party. For purposes of clarity, it is recorded that termination of this Agreement shall result in termination of any and all Annexures and/or Schedules hereto.

5.3. The relevant Software Licences, as set out in Schedule 1, shall commence on the Effective Date and, subject to the provisions of clauses 20.4 below, shall endure for one (1) year (“initial period”). The relevant Software Licences shall automatically renew for one (1) year periods, until terminated by the either party giving at least 90 (ninety) days prior written notice.

5.4. The provision of Hardware and/or Services shall commence on the Effective Date and, subject to the provisions of clauses 19.4 below, shall be effective during the contract term until terminated by Accsys on at least 90 (ninety) days prior written notice..

5.5. This Agreement may be terminated by Accsys with immediate effect by written notice to the Client if the Client:

5.5.1. 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

5.5.2. allows any judgment against it to remain unsatisfied for a period of 14 (fourteen) days after it becomes aware thereof; or

5.5.3. compromises or attempts to compromise any debt owing by it to its creditors generally; or

5.5.4. being a natural person, takes any steps to surrender his estate or is finally sequestrated; or

5.5.5. being a uristic person, is provisionally or finally liquidated or takes any action for voluntary winding up; or

5.5.6. dies, the performance of any obligation hereunder being personal to him.

5.6. In the event that this Agreement is terminated as described herein, each Party shall forthwith return to the other all papers, materials, and other properties of the other then in its possession, save to the extent that these are needed to carry out the Services in respect of this Agreement.

6. INSTALLATION

- 6.1. Accsys shall deliver the Hardware and/or Software, to the Client, as the case may be, subsequent to this Agreement becoming effective.
- 6.2. Accsys shall not be bound to deliver the Hardware and/or Software, as the case may be, on any specific date or at any specific time unless such specific date or time is expressly agreed to in writing by Accsys .
- 6.3. Accsys shall install the Hardware and/or Software, from time to time, as agreed between the parties, the details of which to be set out in Schedule 1 hereto.
- 6.4. Accsys shall be entitled to make any changes to the Hardware and/or Software, as the case may be, without incurring any liability or obligation to the Client, to ensure successful installation of the Hardware and/or Software, as the case may be.
- 6.5. The Hardware shall be deemed to be successfully installed once it has booted up without any error messages being reported from its internal diagnostics. The Software shall be deemed to be successfully installed once its installation wizard reports that the installation was complete or successful.
- 6.6. Accsys shall be entitled to deliver the latest release of Software, without incurring any liability or obligation to the Client. Accsys reserves the right to charge the Client any costs it may incur in making such release/s of the Software available to the Client.

7. CLIENT RESPONSIBILITIES

- 7.1. The Client shall afford Accsys' Personnel access to the Site(s), at reasonable times, for the purpose of Accsys performing in terms of this Agreement, provided Accsys shall conform to the Client's reasonable safety and security measures.
- 7.2. The Client shall promptly supply information to Accsys and allow Accsys Personnel access to the Client's staff, equipment, data and items supported including the Hardware and/or Software, as the case may be, in order to enable Accsys to perform its obligations under this Agreement.
- 7.3. For the purposes of Accsys providing the Services and during any period of such support:
 - 7.3.1. The Client shall appoint and authorise representatives, who shall have the authority to require Services and other assistance from Accsys. Any of the Client's Personnel who make use of or furnishes Accsys with an electronic signature shall be deemed to authorised representatives of the Client.
 - 7.3.2. The Client shall ensure that its authorised representatives are sufficiently trained to use the Hardware and/or Software, as the case may be, and to ensure that the Services are sufficiently provided.
 - 7.3.3. The Client shall not during the period of the Services, allow any item of the Services, to be interfered with, altered, modified or added to without Accsys' prior written consent.
 - 7.3.4. It is the Client's responsibility to operate items for which 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.
 - 7.3.5. The Client shall at its own expense, provide a secure internet connection at each Site to enable Accsys to remotely connect to and access any Server upon which any items for which Services have been contracted. The Client shall be liable for all costs of Accsys which shall be invoiced to and payable by the Client, monthly in arrears.

8. HARDWARE AND INSTALLATION REQUIREMENTS

- 8.1. 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.
- 8.2. The Client is required at its own expense to have secure internet connection to enable Accsys to remotely connect to, and access, any server upon which any items for which 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.
- 8.3. Data cabling: the price for data cabling is subject to a site survey, for which there will be a separate quotation.
- 8.4. 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.
- 8.5. Accsys shall 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 shall be charged to the Client at Accsys' prevailing rate.
- 8.6. Civil works: Accsys shall not undertake any civil works, and it is the responsibility of the Client to attend to any 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.

9. SOFTWARE UPGRADES, UPDATES, NEW RELEASES

In the event the Client has contracted for Services, Accsys shall make available to the Client any Updates, Upgrades or New Releases of the Software. Failing which, Accsys shall not make available to the Client, any such Updates, Upgrades or New Releases of the Software.

10. CLOUD SERVICES

Accsys Cloud services include the following:

- 10.1. Updates loaded onto Cloud servers and databases monthly, as available, Clients notified in advance of downtime;
- 10.2. Windows and Security patches installed and maintained;
- 10.3. Backups – taken daily at 23h GMT+1, 7 day rolling backup;
- 10.4. Specific period backups made on request (e.g. prior to tax year end closure, prior to month end closure), chargeable to Client account;
- 10.5. Backup storage on Cloud available on request.

11. SOFTWARE – LICENCE GRANT AND CONDITIONS

- 11.1. 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, sites and tax countries.
- 11.2. Software Licence for third party Software shall be agreed to and complied with by the Client and where applicable signed and passed to the relevant licensor via Accsys.

- 11.3. 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.
- 11.4. 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.
- 11.5. Accsys will not provide support (including Updates, Upgrades or New Releases) for Third Party Software unless specifically agreed to in a Services Schedule.
- 11.6. The Software Licence granted in terms of this Agreement is subject to the Client abiding by the terms and conditions of this Agreement; and in the event of Accsys providing the Client with a Software Licence to any third party Software, the terms and conditions governing the use of the third party Software, including, any claims which the Client might have in relation to the Third Party Software.
- 11.7. Non-payment of any Software Licence in terms of this Agreement shall result in automatic termination of the Software Licence without notice.
- 11.8. 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.
- 11.9. Any Software Licence shall not include any Source Code for the Software.
- 11.10. 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.
- 11.11. The Client undertakes:
- 11.11.1. not to reverse engineer, disassemble, translate or in any way or decompile the whole or any part of the Software;
 - 11.11.2. 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;
 - 11.11.3. 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.
- 11.12. The Client may make 1 (one) copy of the Software and Documentation for back up purposes and 1 (one) copy for disaster recovery purposes.
- 11.13. 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.

11.14. 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.

11.15. The Client irrevocably undertakes and agrees that upon termination of this Agreement for whatever reason, it shall:

11.15.1. 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

11.15.2. 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).

11.16. 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.

11.17. Any breach by the Client of any provision of this clause 11 shall be deemed to be a material breach of this Agreement.

12. DESCRIPTION OF SERVICES

12.1. Unless otherwise expressly agreed by Accsys, the Services shall be provided between South African time zone (insert standard time zone) 8.00 a.m. to 5.00 p.m. during normal business hours, Monday to Friday, excluding Public Holidays.

12.2. Accsys warrants that it shall use all reasonable endeavours to carry out the Services in a professional and workmanlike manner.

12.3. Electronic transfer of programs and/or data are not included in Services and will be charged to the Client at Accsys' prevailing rates.

12.4. Services – Hardware and/or Software:

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

12.4.1.1. Any Updates, Upgrades or New Releases which Accsys has undertaken to provide as part of the Services for Software may include legislative updates the scope of which may 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 Services for Software, notwithstanding anything seemingly to the contrary contained in this Agreement.

12.4.1.2. Accsys may at its option choose to service the Hardware and/or Software remotely and/or on site. On receipt of a telephone request from the Client regarding any fault with the Hardware and/or Software, Accsys shall log the call and endeavour to identify the cause of the problem as either a Software problem or a Hardware problem.

12.4.1.3. Accsys shall, if appropriate to the problem reported, despatch a technician/consultant to the Site concerned. Accsys shall 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.

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- 12.4.1.4. Fault Resolution or Error correction, as the case may be, is provided on a reasonable effort basis, and Accsys cannot guarantee that it will be able to correct any error within any given timescale or all errors for that matter.
- 12.4.1.5. 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.
- 12.4.1.6. The Services shall not include the correction of faults, errors or problems due to:
- 12.4.1.6.1. abnormal wear and tear;
 - 12.4.1.6.2. abnormal or excessive operation of the Hardware and/or Software;
 - 12.4.1.6.3. failure of equipment or other software not covered by this Agreement;
 - 12.4.1.6.4. faults in the main electrical supply, irregular voltage or surges;
 - 12.4.1.6.5. operator error;
 - 12.4.1.6.6. corruption of data;
 - 12.4.1.6.7. operation of the Hardware and/or Software by persons who have not been properly trained in its use;
 - 12.4.1.6.8. air conditioning, humidity or other environmental conditions;
 - 12.4.1.6.9. failure to operate the Hardware and/or Software within any manufacturer's environmental or operating specifications or as have been notified to the Client by Accsys or contained in any Documentation;
 - 12.4.1.6.10. accident, neglect, misuse, abuse or default of the Client (including its employees, servants or agents) or any third party;
 - 12.4.1.6.11. acts of God, flood, lightning, war, acts of violence or any similar occurrence;
 - 12.4.1.6.12. any attempt by any person, other than Accsys, to install, alter, modify or maintain the Hardware and/or Software otherwise than in the case of trained Client staff carrying out normal system functions; and
 - 12.4.1.6.13. relocation of the Hardware and/or Software by persons other than Accsys;
 - 12.4.1.6.14. installation of any add-ons, peripherals, updates or upgrades to Hardware and/or Software;
 - 12.4.1.6.15. cable, connector or any other network malfunctions; or
 - 12.4.1.6.16. manufacturer's design or inherent defects.
- 12.5. 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.
- 12.6. Accsys shall, if contracted for, provide Updates, Upgrades and New Releases from time to time.
- 12.7. 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.
- 12.8. Accsys shall have the right to levy additional charges for Services, which are required due to the Client failing to install such items correctly.
- 12.9. 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.

- 12.10. Services for Hardware cover normal wear and tear and assume that the Hardware is operated during normal working hours and within manufacturer's specifications.
- 12.11. Where Accsys has to carry out Site visits for the Services, 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.
- 12.12. Accsys reserves the right, at its sole discretion, to charge the Client a surcharge over and above the Annuity for Services for Hardware, to support Hardware 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.
- 12.13. 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 Hardware.
- 12.14. Services for Hardware 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 Services for Hardware.
- 12.15. The Client shall not move any supported item of Hardware 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.
- 12.16. 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 Services for any older version or release, then Accsys shall not be obliged to do so, and shall further be entitled to terminate such Services at any time on 30 (thirty) days' notice to the Client.

13. HARDWARE WARRANTY

- 13.1. All Accsys Hardware supplied by Accsys is guaranteed by Accsys. The guarantee period runs from the delivery date for a period of 6 months.
- 13.2. An extended 30 month warranty (i.e. total of 36 months) is offered on certain 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.
- 13.3. The contract includes:
- 13.3.1. Twenty-four (24) business hour replacement of readers in the event of failure; or
- 13.3.2. Forty-eight (48) business hour replacement of readers in the event of failure.

The contract excludes:

- 13.4. The Warranty shall not be applicable in cases of Damage caused by:
- 13.4.1. An act of God, e.g. lightning strikes, earthquakes;
- 13.4.2. Power surges, failures, outages or the like;
- 13.4.3. Temperature and or humidity fluctuations;
- 13.4.4. Normal wear and tear;
- 13.4.5. Misuse or abuse.
- 13.4.6. Alterations, or repairs carried out by persons other than Accsys employees, or specified third parties;

13.4.7. All time and travel costs to and from site.

13.5. The following terms and conditions apply:

13.5.1. Readers to be returned in original packaging;

13.5.2. Loan readers will be put in place according to the timelines selected (i.e. either 24 / 48 hours during the work week), thereby ensuring continuity of clocking information;

13.5.3. Accsys returns the original readers once repaired / replaced by the Supplier;

13.5.4. Accsys reserves the right not to accept readers not returned in original packaging.

13.5.5. Sites beyond 100km distance from the applicable Accsys office carry a 5% country loading. Service shall be carried out at the Clients 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.

13.6. The replacement loan unit will:

13.6.1. Be delivered to site in original packaging;

13.6.2. Installed on site, and tested for successful operation, by an Accsys Technician, which installation and test should be signed off by the Client;

13.6.3. 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

13.7. 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, on Client request.

14. CO-OPERATION

It is the responsibility of the Client and the Client shall at all times, co-operate with Accsys in providing any equipment or assistance as Accsys may require from time to time, to install any Hardware and/or Software and/or in providing any Services .

15. OWNERSHIP AND RISK

15.1. Rights, Title and interest in any Hardware supplied by Accsys shall remain with Accsys until such time as the Client has paid the purchase price in full.

15.2. 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 Hardware still owned by Accsys.

15.3. Risk shall pass to the Client as follows:

15.3.1. In the Hardware on the Delivery Date; and

15.3.2. In the Software on the date of installation

16. PRICING AND PAYMENTS

- 16.1. The Client shall pay or reimburse Accsys for all such taxes (excluding tax on Accsys' income) tariffs or levies, which shall 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.
- 16.2. Prices and Annuities shall be invoiced and payable as follows:
- 16.2.1. The Price for Hardware shall be invoiced and payable as follows:
- 16.2.1.1. 90% (ninety percent) of the Price on signed order;
- 16.2.1.2. 10% (ten percent) of the Price against installation of the Software or the Hardware as more fully described in clause 12.
- 16.3. Accsys reserves the right to charge an administration fee for changes to licence requirements, and non-standard licence requests.
- 16.4. In respect of Services:
- 16.4.1. 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 12;
- 16.4.2. The balance of the Price of installation Services shall be invoiced and payable on a Cash on Delivery ("COD") basis;
- 16.4.3. 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;
- 16.4.4. The Price for any other Services (for the sake of clarity, other than installation Services) shall be invoiced and payable on a COD basis;
- 16.4.5. All Training and media (e.g. payslips, clock cards, proximity cards, etc.) are payable on a COD basis.
- 16.5. The fees for any Software Licence shall be invoiced and payable:
- 16.5.1. 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 the Client shall make payment of the first 3 (three) months Annuity fees in one lump sum on the Delivery Date;
- 16.5.2. 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.
- 16.5.3. 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.
- 16.6. The fee in respect of the 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.
- 16.7. The Price in respect of all other Services shall be invoiced and payable on a COD basis.

- 16.8. Unless otherwise specified all other charges shall be invoiced and payable monthly in arrears.
- 16.9. 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.
- 16.10. 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.
- 16.11. 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:
- 16.11.1. within South Africa will be for the account of and invoiced to the Client who will pay the invoice on presentation; and
- 16.11.2. outside of South Africa is booked and paid for by the Client in advance.
- 16.11.3. a per diem amount will be levied for any overnight travel.
- 16.12. 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.
- 16.13. Accsys reserves the right to increase the Annuity for Software, Third Party Software and Services on thirty (30) days prior written notice, provided that such increase shall be limited to the greater of:
- 16.13.1. 10% (ten percent); or
- 16.13.2. the percentage increase in the CPI during the 12 (twelve) month period immediately prior to the increase.
- 16.14. 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. Client shall be liable for and pay (or reimburse, to the extent that Accsys is liable to make the payment) all value-added tax tariffs and duties.

17. INCIDENT MANAGEMENT

- 17.1. To the extent that any complaints are received by the Client from its personnel in relation to:
- 17.1.1. the direct or indirect use by the Client's personnel of the Hardware and/or Software and/or Services;
or
- 17.1.2. a service provided by the Client into which the Hardware and/or Software and/or Services are integrated, the Client shall notify Accsys (insert).

17.2. Accsys hereby agrees, on receipt of a written notice from the Client to the effect that an incident has arisen, to:

- 17.2.1. engage with the Client in good faith with a view to resolving such incident as expediently as reasonably practicable; and
- 17.2.2. to take any and all reasonable steps required to adapt the Hardware and/or Software and/or Services and/or the manner in which same are rendered, in each case as applicable, to address the cause of the incident and mitigate the risk of similar incident being made in future.

17.3. Upon investigation and Accsys furnishing the Client with proof thereof, any incident caused as a result of: the Client's operational issues; any environmental issues; or force majeure, the costs to fix, resolve and/or rectify the incident shall be for the Client's account.

18. INTELLECTUAL PROPERTY

18.1. Licence to use Licenced Software

- 18.1.1. Except as otherwise set out in this Agreement, all Intellectual Property Rights in the Licenced Software remain vested in Accsys or its licensors.
 - 18.1.1.1. Where Accsys supplies the Client with any Licenced Software, the Client shall be entitled to use the Licenced Software during the licence term and in accordance with the class of licence as set out in **Error! Reference source not found.**;
- 18.1.2. The Client acknowledges that it has no right, title or interest in the Licenced Software except as set out in this clause **Error! Reference source not found.**

18.2. Restrictions on Use

- 18.2.1. The Client shall comply with any restrictions on the use of the Licenced Software or any additional licence terms specified in **Error! Reference source not found.**
- 18.2.2. Except as otherwise permitted under this Agreement, the Client shall not:
 - 18.2.2.1. sell, lease, transfer, assign, sub-licence, licence or otherwise part with possession of any Licenced Software;
 - 18.2.2.2. attempt to disassemble, decompile or otherwise reverse engineer any Licenced Software, except as permitted under Law; or
 - 18.2.2.3. remove, obliterate or alter any proprietary notice on any Licenced Software.

18.3. Developed Software

- 18.3.1. All Intellectual Property Rights in any Developed Software will, upon creation, automatically vest in Accsys and the Client absolutely and unconditionally assigns, and must procure that the Client's Personnel assigns, to Accsys all Intellectual Property Rights in any Developed Software immediately upon creation, free of all third party rights.
- 18.3.2. Accsys grants to the Client a royalty free, non-exclusive, non-transferable licence for the Term of this Agreement, to use the Developed Software only to the extent required, in providing the Developed Software and Services, without the right to grant a further sub-licence.

18.4. Pre-Existing Material

- 18.4.1. Accsys grants to the Client a non-exclusive, non-transferrable, royalty free licence for the Term to use Accsys Pre-Existing Materials only to the extent required, in the provision of the Hardware, Software and/or Services to the Client, without the right to grant a further sub-licence.

18.5. Documentation

- 18.5.1. Accsys grants to the Client a non-exclusive, non-transferable, royalty free licence for the Term to use the Documentation only to the extent required, in performing its obligations under this Agreement, without the right to grant a further sub-licence.

19. CONFIDENTIALITY

- 19.1. Each Party (in this context, the "Undertaking Party") acknowledges that –

- 19.1.1. the Confidential Information of the other Party (in this context, the "Protected Party") is a valuable, special and unique asset of the Protected Party; and
- 19.1.2. that such Protected Party may suffer irreparable harm or substantial economic and other loss in the event of such Confidential Information being disclosed or used by the Undertaking Party other than for purposes contemplated in this Agreement.

- 19.2. Each Undertaking Party irrevocably and unconditionally agrees and undertakes –

- 19.2.1. not to use the Confidential Information of a Protected Party, whether directly or indirectly –

- 19.2.1.1. for the Undertaking Party's benefit, except in the manner permitted or contemplated in this Agreement; or

- 19.2.1.2. for the benefit of any person other than the Protected Party, except in the manner permitted or contemplated in this Agreement;

- 19.2.2. to treat and safeguard the Confidential Information of a Protected Party as strictly private and confidential;

- 19.2.3. not to use, disclose or divulge, directly or indirectly, the Confidential Information of a Protected Party in any manner to any third party for any reason or purpose whatsoever (except in the manner permitted or contemplated in this Agreement), without the prior written consent of such Protected Party, which consent may be granted or withheld in the sole and absolute discretion of the Protected Party in question;

- 19.2.4. to take all such steps as may be reasonably necessary to prevent Confidential Information of a Protected Party from falling into the hands of unauthorised third parties.

- 19.3. Subject to the provisions of clause 19.6, the undertakings given by an Undertaking Party in clause 19.2 shall not apply to any Confidential information of a Protected Party which –

- 19.3.1. is or becomes generally available to the public other than by the negligence or default of the Undertaking Party or by the breach of this clause 19 by the Undertaking Party;

- 19.3.2. has been supplied to the party to whom it is disclosed by a third party who is under no obligation to maintain such information in confidence; or

- 19.3.3. is disclosed pursuant to a requirement or request by operation of law, to the extent of compliance with such requirement or request only and not for any other purpose,

- 19.4. provided that –

- 19.4.1. the onus shall at all times rest on the Undertaking Party to establish that such information falls within such exclusions;

- 19.4.2. information shall not be deemed to be within the foregoing exclusions merely because such information is embraced by more general information in the public domain or in the Undertaking Party's possession; and
- 19.4.3. any combination of features shall not be deemed to be within the foregoing exclusions merely because individual features are in the public domain or in the Undertaking Party's possession, but only if the combination itself is in the public domain or in the Undertaking Party's possession.
- 19.5. The determination of whether information is Confidential Information shall not be affected by whether or not such information is subject to, or protected by, common law or statute related to copyright, patent, trade marks or otherwise.
- 19.6. If an Undertaking Party is uncertain as to whether any information is Confidential Information of a Protected Party, such Undertaking Party shall treat such information as confidential until the contrary is agreed by the Protected Party in writing.
- 19.7. In the event that an Undertaking Party is required to disclose Confidential Information of a Protected Party pursuant to clause 19.3.3, it shall –
- 19.7.1. advise the Protected Party thereof prior to disclosure, if possible;
- 19.7.2. take such steps to limit the disclosure to the extent that it lawfully and reasonably can;
- 19.7.3. afford the Protected Party a reasonable opportunity, if possible, to intervene in the proceedings; and
- 19.7.4. comply with the Protected Party's reasonable requests as to the manner and terms of any such disclosure.

20. BREACH

If the Client:

- 20.1. 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 of written notice from Accsys, calling upon the Client to do so;
- 20.2. 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:
- 20.2.1. enforce specific performance of the terms of this Agreement; or
- 20.2.2. subject to clause 16.2, cancel this Agreement; and
- 20.2.3. in either event (subject to clause 18), recover such damages as it may have sustained.
- 20.3. Accsys may cancel this Agreement immediately if the Client fails to make payment in terms of clause 20.1 above.
- 20.4. In the event of any Party ("the Defaulting Party") breaching any provision of this Agreement, excluding any payment obligation and failing to rectify such breach within 10 Business Days of receipt by the Defaulting Party of a written notice delivered to it by the other Party ("the Aggrieved Party"), calling upon the Defaulting Party to rectify such breach, then the Aggrieved Party shall be entitled at its election, to seek specific performance of the Defaulting Party's obligations in terms of this Agreement, or to cancel this Agreement, in either instance without prejudice to the Aggrieved Party's right to claim such damages as it may have suffered by reason of such breach.

21. LIABILITY

- 21.1. In the event the Client fails to 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.
- 21.2. In the event of termination, Accsys shall be entitled to:
- 21.2.1. the Contract value of the Works completed at the date of such determination; and
 - 21.2.2. the value of work commenced and executed but not completed at the date of such determination, the value being ascertained *mulatis mutandis*; and
 - 21.2.3. 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
 - 21.2.4. 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
 - 21.2.5. An administration fee to contribute to bank charges may also be deductible, subject to written notice to the Client.
- 21.3. Any goods returned for credit shall be subject to a 25% handling fee.
- 21.4. A Certificate signed by Accsys' Auditor specifying any of the amounts stipulated in this clause 20, due by the Client to Accsys, shall be sufficient proof of any amounts due in terms of the Contract and may be used by Accsys for the purposes of obtaining judgement whether by default or otherwise.
- 21.5. If the licence for the Software is terminated for any reason whatsoever, the Client shall not be entitled to any refund of the license fees already paid.
- 21.6. 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.
- 21.7. If the Client employs any of Accsys' staff the during the period of, or within 12 (twelve) months after termination of, this Agreement, without 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.

22. FORCE MAJEURE

- 22.1. 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*").
- 22.2. 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.

22.3. 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*.

23. DOMICILIUM AND NOTICES

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

- Accsys: Finance House, 230 Jan Smuts Avenue, Dunkeld West, Johannesburg.
- 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:

- 23.2.1 is delivered by hand shall be deemed to have been received by the addressee on the date of delivery;
- 23.2.2 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;
- 23.2.3 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.

23.3. 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. Whole Agreement

24.1.1. This Agreement constitutes the whole of the agreement between the Parties relating to the matters dealt with herein and, save to the extent otherwise provided herein, no undertaking, representation, term or condition relating to the subject matter of this Agreement not incorporated in this Agreement shall be binding on either of the Parties.

24.1.2. This Agreement supersedes and replaces any and all agreements between the Parties (and other persons, as may be applicable) and undertakings given to or on behalf of the Parties (and other persons, as may be applicable) in relation to the subject matter hereof.

24.2. Variations to be in Writing

24.2.1. No addition to or variation, deletion, or agreed cancellation of all or any clauses or provisions of this Agreement will be of any force or effect unless in writing and signed by the Parties.

24.3. No Indulgences

24.3.1. No latitude, extension of time or other indulgence which may be given or allowed by any Party to the other Party in respect of the performance of any obligation hereunder, and no delay or forbearance in the enforcement of any right of any Party arising from this Agreement and no single or partial exercise of any right by any Party under this Agreement, shall in any circumstances be construed to be an implied consent or election by such Party or operate as a waiver or a novation of or otherwise affect any of the Party's rights in terms of or arising from this Agreement or estop or preclude any such Party

from enforcing at any time and without notice, strict and punctual compliance with each and every provision or term hereof.

24.3.2. Failure or delay on the part of any Party in exercising any right, power or privilege under this Agreement will not constitute or be deemed to be a waiver thereof, nor will any single or partial exercise of any right, power or privilege preclude any other or further exercise thereof or the exercise of any other right, power or privilege.

24.4. No Waiver or Suspension of Rights

24.4.1. No waiver, suspension or postponement by any Party of any right arising out of or in connection with this Agreement shall be of any force or effect unless in writing and signed by such Party. Any such waiver, suspension or postponement will be effective only in the specific instance and for the purpose given.

24.5. Provisions Severable

24.5.1. All provisions and the various clauses of this Agreement are, notwithstanding the manner in which they have been grouped together or linked grammatically, severable from each other. Any provision or clause of this Agreement which is or becomes unenforceable in any jurisdiction, whether due to voidness, invalidity, illegality, unlawfulness or for any other reason whatever, shall, in such jurisdiction only and only to the extent that it is so unenforceable, be treated as *pro non scripto* and the remaining provisions and clauses of this Agreement shall remain of full force and effect. The Parties declare that it is their intention that this Agreement would be executed without such unenforceable provision if they were aware of such unenforceability at the time of execution hereof.

24.6. No Assignment

24.6.1. Accsys shall be entitled, by giving written notice to that effect to the Client, to cede all or any of its rights and/or to delegate all or any of its obligations arising out of or in connection with this Agreement. Such entitlement will extend to the cession of any rights notwithstanding that such cession results in a splitting of claims against the Client such that more than 1 (one) party can hold or pursue such claims.

Neither this Agreement nor any part, share or interest herein nor any rights or obligations hereunder may be ceded, delegated or assigned by the Client without the prior signed written consent of Accsys