

# ACCPICKPOS

AccpickPos Terms and Conditions

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## **TERMS AND CONDITIONS/SOFTWARE LICENCE AGREEMENT FOR ACCPICK POS ("HEREIN AFTER CALLED ACCPICK")**

### ***Software Licence Agreement for AccpickPOS Pty Ltd 2019/376506/07 ("herein after called Accpick")***

Your right to use the software (hereinafter referred to as "software" or "the Accpick programme") (in object code only) and its associated printed and electronic documentation ("Product") is subject to the terms and conditions set out in this licence agreement ("Agreement"). Breaking the seal to open the CD case, installing the software, or, using any part of the electronic or printed material accompanying the product, signifies your acceptance of the terms and conditions set out below. Therefore please read them carefully before breaking the seal or using the materials provided. If you do not agree to be bound by the terms and conditions of this Agreement, you should promptly return the unopened CD, the Accpick programme in whichever format, together with all packaging and associated documentation unused and in good condition to your reseller for a refund under the terms of its refund policy (if you purchased from your reseller), or to us within 30 days of purchase (if you purchased direct from Accpick). Prior to returning the product, you should telephone Accpick on +27 333 436000 and request a reference number to be sent with your return so that it can be identified. Provided that you promptly follow our returns procedure we shall refund the price paid by you direct to us for the Product.

Acceptance of these terms cancels and replaces all and any prior rights obtained by you in respect of the Accpick programme and any and all agreements entered into between us.

1. In this Agreement. Should you contravene any term of these terms Accpick is irrevocably authorised to cancel your right to use the Accpick programme and disable your use of the Accpick programme, without any prior notice or refund to you.

1.1. "Use" means to load, execute, store, transmit, display, (for the purposes of loading, execution, storage, transmission or display) or otherwise utilise the Product for your legitimate business purposes; and

1.2. "us", "we" and "our" means Accpick and "you" and "your" mean the person, business or company purchasing the Licence.

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1.3. the headings are for convenience only and shall not affect its construction or interpretation;

1.4. "including" and "includes" shall be understood to mean "including without limitation" and "includes without limitation" respectively, and

1.5. words of a technical nature shall be construed in accordance with general trade in the computer industry of "South Africa".

## 2. Our Licence to you

21. In consideration of your acceptance of the terms of this Agreement, we grant you non-exclusive, non-assignable right to Use the Product for which you have paid the relevant monthly/annual licence fee ("Licence"), for a period of 10 (ten) years. You do not obtain ownership of the Accpick programme or any portion thereof. You do not obtain the right to duplicate in any form, distribute, add to or in any way alter the Accpick programme.. The Product is activated using an activation key. The Product will alert you of the need for an activation key and this can be obtained from us provided your account is up to date. In order to produce such an activation key we will require information from you. You acknowledge that without such data we cannot provide the necessary activation key. Upon payment of the annual Licence Fee, Accpick may elect, in its sole discretion, to renew the Licence for successive periods Any such renewal will be subject to the terms and conditions of this Agreement, or any subsequent agreement that Accpick, at its own discretion, may impose on such renewal;

### 2.2. You may Use the Product:

2.2.1. on a single personal computer tablet or laptop (but not on both, unless you have purchased a Second Copy Licence for Use by the same single user with the same data as is installed on the main installation) if you have purchased a "Single User Licence"; or

2.2.2. on a single local area network or Virtual Private Network (VPN) (which is under your control and used by your group of companies or businesses and not relating to any other third party use of the Product) with up to the specified maximum number of concurrent users, if you have purchased a "Network User Licence"; and 2.2.3. in connection with a single set of data only, such data being your data only, whether this is for a company or business unless you have purchased a licence to allow you to work with multiple sets of data up to a specific number which shall not be exceeded (such multiple sets of data being data of your group of companies or business and not

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relating to any other third parties) and the Product is used on one system and only at your premises if you have purchased a "Multi-Company Licence". For the avoidance of doubt, a Multi Company Licence does not alter or amend the maximum number of concurrent users Licensed under this Licence; or

2.2.4. on a bureau basis as an independent contractor (and for use by your staff only up to the specified maximum number of concurrent users and not by third parties) either at your premises or externally on your laptops, on behalf of and in relation to the data of the number of companies or businesses for which you have purchased a licence, if you have purchased a "Bureau Licence".

2.3. In relation to clauses 2.2.1 and 2.2.2 above you may transfer each licensed copy of the Product from one computer to another owned by you within a single location,

provided it is not Used on more computers at any one time than your licence permits. Such transfer may only be done by a technician in the employ of Accpick, at Accpick's usual charge. Please see clause 2.1 regarding the need for an activation key in order to do this. For the avoidance of doubt, you may not continue to Use the Product on the computer from which you have transferred the Product.

2.4. In relation to clauses 2.2.3 and 2.2.4 above, the total number of companies or businesses whose data may be processed by the software is limited to the number of companies or businesses for which the software is licensed to you. In particular, such number may not be exceeded by the loading of the data of any further companies or businesses in replacement of the data of the number of unique/discreet companies or businesses for which you have purchased your licence.

2.5. If you wish to use the Product otherwise than as provided for by the type of Licence you have purchased, you must purchase the appropriate type of licence or additional licences (and associated activation key) prior to commencing any such use.

2.6. Other than as permitted under this Agreement you shall not and shall not allow anyone else to:

2.6.1. Use, copy, transfer, sell, sub-licence, lease, mortgage, rent, loan, publish, distribute or otherwise make the Product (or any part of it) available to any other person, whether or not for commercial gain;

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2.6.2. Use the Product (or any part of it) for the provision of any remote hosting or ASP services or in any other configuration that permits a third party to use the Product other than under the provisions of a valid licence with us,

2.6.3. disable any licensing or control features of the product;

2.6.4. Use the "demonstration" or free-for-trial evaluation version of the Product (or any part of it) for any purposes other than feature and functionality evaluation purposes. For the sake of clarity only, use of the demonstration version of the Product for commercial gain either for training purposes or for the delivery of any service other than product evaluation, is specifically prohibited;

2.6.5. other than to the extent permitted by law, alter, adapt, modify, translate, reverse engineer or de-compile, disassemble, create derivative works of the Product (or any part of it), except with our prior written consent, nor

2.6.6. remove, change or obscure any of our or any third party proprietary notices, labels or marks associated with the Product. 2.7.

You acknowledge that you have only purchased the licence to use the Accpick programme as set-out herein, and that we shall retain ownership of the intellectual property rights in and to the Product and any amendments made to it by us regardless of form, including any back-up copies that you make, and, subject to the Licence, you shall not have any right to use them,

2.6.7 you have only purchased the licence to use the features and functions of the Accpick programme agreed upon by us, and not all features and functions of the Accpick programmes;

2.6.8 all updates, improvements, additions, new features or upgraded programme provided to you without payment by you for it, is provided subject to Accpick's right to withdraw, cancel or in any other way disable such items at Accpick's sole discretion without prior notice to you.

### 3. How this Licence can be terminated

3.1. We may terminate the Licence, disable your use of the Accpick programme without prior notice to you or a refund:

3.1.1. if you fail to make payment within our payment terms from the date the purchase was made or any other contract with Us or any international or local subsidiary of Accpick.; or

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3.12. immediately if we are notified that any finance arrangement you have made with a third party for the payment of the licence fee for the Product has ended for any reason,

3.1.3 you permit any technician which is not in the employ of Accpick to provide any update, maintenance or any service of whatever nature in relation to Accpick, at Accpick's usual price

3.2. Your Licence to Use the Product will terminate automatically if you fail to comply with any term of this Agreement, you become bankrupt, go into liquidation, suffer or make any winding up petition, make an arrangement with your creditors, have an administrator, administrative receiver or other receiver appointed, or if you suffer or file any similar action in consequence of debt.

3.3. Within 2 (two) working days of the termination of the Licence for any reason you shall uninstall the Product and return it to us (including any copies you have made of the Product (or any part of it)) and provide a certificate signed by your duly authorised representative to confirm compliance with this clause 3.3.3.4. You irrevocably authorise Accpick to disable the use of the Accpick programme should you fail to pay your monthly or Annual Licence Fee, fail to pay any amount due by you to Accpick, the software will revert to view-only mode and you will not be able to transact until payment has been made.

## 4. Our warranties to you

4.1. We warrant that the Product, when used in accordance with our operating instructions, will provide the functions and facilities and will perform substantially as described in the associated documentation supplied to you as part of the Product.

4.2. We warrant that during the 30 day period:

communications or representations with respect to the Product

9.6. No variations of any of these terms and conditions are valid if not confirmed in writing by Us or Our authorised representative.

9.7. Should you purchase a Product as an upgrade of another Product, then your licence agreement in the original upgraded Product ceases. You are not entitled to sell the original Product, nor can you continue to make use of the original Product, except for archival purposes. If you do use the original Product for archival purposes, then the terms and conditions in this licence apply in so far as they are relevant.

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9.8. No variations of any of these terms and conditions are valid if not confirmed in writing by Us or Our authorised representative.

9.9. This Agreement shall be governed by and construed in accordance with "South African" law. The parties hereby submit to the exclusive jurisdiction of the "South African" Courts unless otherwise agreed in writing. This agreement precedes the agreement. Should any provision/clause of these terms and conditions be unenforceable then such provision/clause will be severable without effecting the validity of any other provision/clause hereof.