



SOFTWARE THAT WORKS THE WAY YOU THINK

**User Licence, Support Agreement and Operator Agreement**

<b>The Company and/or Operator</b>  <b>Accfin Software</b>  <b>P O Box 51559</b>  <b>Raedene, 2124</b>	<b>Accfin Software (Pty) Ltd</b>	
	<b>Signature:</b>	
	<b>Name:</b>	
	<b>Designation:</b>	

<b>The User and/or Responsible Party</b>		
	<b>Signature:</b>	
	<b>Name:</b>	
	<b>Designation:</b>	

<b>Sky Products and services</b>	<b>ACCFIN SKY SERIES</b>	
	<b>Modules</b>	<b>SKY TAX</b>
		<b>SKY SEC</b>
		<b>SKY TIME</b>
		<b>SKY DEBTORS</b>
	<b>Annual licence Period:</b>	<b>1 JULY - 30 JUNE</b>
	<b>Effective Date:</b>	

## **TERMS AND CONDITIONS**

### **1. Definitions:**

- “Agreement” means this agreement between the Company and the User, consisting of these terms and conditions, the details set out on the first page hereof and the appendices attached hereto, as may be amended in accordance with Clause 15;
- “Company” means Accfin Software (Pty) Ltd
- “User” means the firm, its directors and any of its employees or any of the individuals named on the first page of this Agreement licensed to use the Sky Product:
- “Territory” means South Africa;
- “Sky Product” means the computer programs specified on the first page of this agreement, distributed to the User in object code, as amended or updated in accordance with this agreement;
- “Modules” means the sub components of the Sky Product as specified on the first page;
- “Server” means the computer server system(s) upon which the Sky Product is installed under the control of the user;
- “Effective Date” means the date of this Agreement as set out on the first page of this Agreement;
- “Initial Licence Fee” means the charge made to the User for the initial supply and licence of the Sky Product and Documentation as set out on the first page of this documentation;
- “Annual Licence Fee” means the annual charge to cover the continued use of the Sky Product and Documentation and becomes due 30 days prior to the end of the Annual licence Period;
- “Annual Licence Period” means the period for which the annual licence fee entitles the Sky Product to be used
- “Documentation” means the user manuals and any related paperwork supplied by the Company or its authorised dealer;
- “Working Hours” means the hours of 8:30am to 5.00pm, Monday to Friday, South African time, with the exception of all official public holidays;
- “Technical Support” means the provision of technical advice or problem solving of user queries in regard to the operating of the Sky Products. Technical support does not include onsite training or training over the telephone.
- “Call Outs” means when technical staff of the company are called out to deal with problems, user queries and training. Call outs are chargeable at the current call out rates, except when a call out is to deal with a critical problem caused by an Accfin update. Call outs can also be on an on-line basis.
- “Accfin Cloud” is the delivery of different software services from the Accfin Virtual Server through the Internet, including data storage, servers, databases, networking, and software.
- “Operator” in terms of popia a person who processes or stores personal information for a responsible party in terms of a contract or mandate, without coming under the direct authority of that party. The Company will only be the defined as the operator when the user runs Sky Software in the Accfin Cloud.
- “Responsible Party” the responsible party is the public or private body or any other person, which alone or in conjunction with others, determines the purpose of and means for processing

personal information. Where the user uses the Accfin Cloud the user will be the responsible party.

This agreement sets out the basis upon which the Company licences the User to use the Sky Product and the Documentation and includes the clauses required by POPIA. Such use of the software is subject to the User's compliance with these terms and conditions and the Agreement as a whole. This agreement replaces all other agreements between the Company and the User.

## **2. Relationship of Parties**

The Company does not act as the Users agent nor is there any relationship of joint venture or partnership between the parties.

The Parties hereby acknowledge that they are in a position where each would have access to confidential information of the other and be in a position to affect the others business negatively and as such undertake to act towards each other with the utmost good faith in strict confidence and in terms of the Protection of Personal Information Act no. 4 of 2013 (POPIA) as amended.

## **3. Company Operator Agreement with User**

When the Company functions as an operator for the User (responsible party) In terms of s20 in terms of the Protection of Personal Information Act no. 4 of 2013 (POPIA), it will only process and store the personal information of the User's data for the purposes of the standard functionality of the Sky Software system.

The Company will not use any sub-contractors (sub-operators) for the purpose of processing personal information of the Users data.

The Company will not transfer personal information outside of South Africa.

Company will use reasonable security measures and inform its Users (responsible parties) of any actual or suspected security compromise as set out in the 'Security' clause below.

The Company will maintain the confidentiality of the personal information as set out in the 'Confidentiality' clause below.

## **4. Security**

As required by s19 of POPIA, Accfin as the operator will use reasonable security in a manner consistent with the act. This includes consistent assessment of security threats, identifying and implementing safeguards to protect against threats to security and confidentiality.

Accfin shall provide the User with relevant Access Codes in order to access the Accfin Sky System. These Access Codes constitute an electronic signature in terms of the Electronic Transactions Act No. 25 of 2002.

The User will ensure that the security of all Access Codes relating to Accfin Sky are maintained according to the higher standard of care that is due when dealing with personal information transactions and will promptly inform Accfin should it suspect that any Access Codes have or could have been compromised.

The User shall be required to set up and maintain adequate security procedures and standards as advised by the Company from time to time from the Commencement Date onwards. This includes necessary antivirus and firewall software programs, physical security and security of information including authentication and encryption.

The Parties shall immediately bring to the attention of the other Party any breach or attempted breach of security of which it becomes aware as required by s22 of POPIA. Either Party may fully investigate such breach or attempted breach and the other Party shall give its full co-operation with such investigation. The Parties shall immediately upon detecting a breach or attempted breach, take such steps as are necessary to prevent a recurrence thereof and to mitigate the effects of such breach. The Company will provide guidelines on the procedure for reporting security breaches which the parties must comply with.

Accfin will from time to time advise the User of the minimum requirements which are required to use Accfin Sky. These minimum requirements include minimum specifications relating to computer hardware, computer software and telecommunications services which the User must have in order to be able to use Accfin Sky.

## **5. Confidentiality Undertaking**

Each party agrees to hold the Confidential Information in confidence during and after the termination of this Agreement in a manner which is consistent with POPIA. Each party agrees that unless required by law (including a subpoena, discovery demand or similar compulsory process) it will neither make the Confidential Information available to any third party nor use the Confidential Information for any purpose other than the performance of this Agreement. Each party agrees to use all reasonable efforts to ensure that the Confidential Information is not disclosed or distributed by its employees or agents in violation of the terms of this Agreement.

The Parties shall take appropriate measures to ensure that all employees, agents and/or subcontractors employed and/or contracted by either Party sign confidentiality agreements containing, inter alia, the provisions set out above.

## **6. Licence to use**

Subject to the User's compliance with this Agreement, the User is hereby granted a non-exclusive, non-transferable licence to use the Sky Product and Documentation within the Territory on the Server from the Effective Date and thereafter during the Annual licence period. This Agreement only permits the use of the Sky Product on the Server or in the Accfin Cloud and in the Territory of the Modules as indicated.

The User is responsible for the correct use of the Sky Product, including the regular security and integrity of the data. The Company takes no responsibility for the effects of misuse or the malfunctioning of the Server or the misuse by the User. The Company shall not be liable for any loss

or damage whether direct or consequential arising from misuse of the Sky Product or the malfunction of the Server. The User is also responsible for the training and general suitability of the individual members of staff operating the Sky Product. The User shall not permit any third party to use or have access to the Sky Product or Documentation either on the User's behalf or for its own benefit. Use of the Sky Product and Documentation is restricted to use for the User's own internal purposes, except that,

- I. the User may not reverse engineer, disassemble, translate or in any way decode the Sky Product;
- II. the User may not loan, rent, assign, lease, sub-licence, transfer or otherwise provide electronically or in any other way, the Sky Product or any copy or part thereof to any third party;
- III. the User undertakes not to modify the whole or any part of the Sky Product 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 without the Company's prior written consent.

If the User wishes to transfer or dispose of the Server on which the Sky Product resides, the User shall ensure that all Sky Product and copies thereof have been deleted from the Server prior to such transfer or disposal and if requested certify to the Company in writing that such has been done.

The User acknowledges that it is only licensed to use the Sky Product and Documentation in accordance with the express terms of this Agreement and not further or otherwise.

## **7. Fees and payment**

The Initial Licence Fee will become payable to the Company on the Effective Date of this Agreement. On or before the start of the Annual Licence Period set out on the first page of this Agreement and annually thereafter, 30 days prior to the start of the new period, the User shall pay to the Company the Annual Licence Fee, the amount of which shall be set out in the Company's invoice sent to the User at any time up to 4 months before the relevant date. Any other amounts which become due to the Company hereunder shall be paid on the presentation of the Company's invoice. All Fees and other charges are given exclusive of any VAT imposed by law which shall be added thereto and paid by the User at the rate and in the manner prescribed for at the time by law. The Annual Licence Fee will be subject to an annual escalation.

License fees are calculated in accordance with the usage, in the licence period preceding the new period for each individual module type as set out in Accfin's latest price list and detailed on the Company's invoice sent to the user

## **8. Property Rights**

No rights whatsoever in respect of the Sky Product or Documentation or any modification and/or enhancements made to the Sky Product specifically for the User shall pass from the Company to the User.

## **9. Liability**

The Company warrants that the Sky Product will conform generally in accordance with its specification as set out in the Documentation. The Company does not guarantee that the Sky Product is fit for the purpose of its purchase and that the Sky Product is free from defects. The User by accepting this agreement limits the aggregate total liability of the Company to a maximum figure of the Initial Licence Fee.

Except as expressly provided in this Agreement no warranty, condition, undertaking or term, express or implied, as to the condition, quality, performance, merchantability or fitness for purpose of the Sky Product or support service or any part thereof shall be assumed by the Company, and except as expressly provided for in this Agreement all such warranties, conditions, undertakings and terms are hereby excluded.

Notwithstanding any other provision of this Agreement in no event shall the Company be liable to the User for any incidental, special, indirect or consequential loss of whatever nature, including but not limited to loss of use and/or loss of profits and/or loss or spoiling of data, howsoever caused, whether occurring in contract, delict, negligence or otherwise.

## **10. The Company's Obligation**

The Company agrees to support the Sky Product on a reasonable endeavours basis as herein set out for the currency of this Agreement from the date of delivery for the duration of this Agreement, subject always to the User complying with all the terms of this Agreement. The Company will provide telephone support for the Sky Product during Working Hours. The Company will use all reasonable endeavours to respond to any request by the User within eight working hours of receiving notification of such need from the User.

The purpose of the service shall be to endeavour to provide corrections for any errors found in either the Sky Product or Documentation relating thereto. Error correction is provided on a reasonable effort basis, and the Company cannot guarantee to correct any error within any given timeframe. The User shall endeavour to provide written notification and appropriate examples supporting any error found. As part of the support service the Company may provide updates and releases from time to time to the Sky Product. It is the User's responsibility on their own server to install corrections, updates and releases to the Sky Product and for ensuring that its staff has the capability of doing so. The Company shall have the right to make additional charges for services which are required due to the User failing to install such items correctly or at all in accordance with Company's instructions.

In the event of the Company not being able to effect correction of an error by telephone, the Company may attend the User's Location or on an online basis but shall only do so after informing the User of such intentions and obtaining authorisation in writing to do so, as such attendance, together with any travelling time and expenses, shall be chargeable to the User over and above the Annual Licence Fee at the current call out rates of the Company

The company reserves the right not to deal with, or to make additional charges for, errors in Sky Products which:

- Are the results of failure of equipment or other software either of which are not covered by this Agreement, faults in main electrical supplies or operator error,
- Are the results of an inadequate internet speed or a faulty internet line,
- Are, or could be reasonably construed as, a lack of knowledge of the Sky Product or related documentation due to insufficient training;
- Are reported as errors which prove not to be so;
- Are caused by air conditioning, humidity or other environmental conditions;

- Are caused by accident, neglect, misuse or default of the User or any third party;
- Are due to acts of God, war, acts of violence or any similar occurrence;
- Results from any attempt by any person, other than the Company, to modify or maintain the Sky Product otherwise than in the case of only trained User staff carrying out normal system functions;
- Are caused by failure of fixed or removable storage media;
- Are caused by cable or connector malfunction or breaks;

Time spent by the Company investigating such errors shall be chargeable as an additional cost. Furthermore, if the User shall require any support and maintenance other than that covered herein such shall be chargeable by the Company as an additional cost at the Company's then current rates of service and travelling on a time and materials basis.

The Company agrees to endeavour to keep the Sky Product up to date with government legislative changes;

The Company hereby indemnifies the User against any claim that the normal use or possession of the Sky Product and Documentation infringes the copyright of any third party provided the Company or its licensors are given immediate and complete control of any such claim, and that the User gives the Company or its licensors such assistance as they may reasonably require to settle or oppose any such claim provided that they shall meet the User's reasonable cost of so doing.

The Company reserves the right to replace or change all or any part of the Sky Product in order to avoid infringement or alleged infringement of any third party. The Company shall however at all times endeavour to ensure that the User is left with fully operational and functional equivalent Sky Product.

The User shall indemnify the Company and/or its licensors against any claims of infringement of any intellectual property right of any third party by the Sky Product to the extent that such infringement or alleged infringement is the result of misuse by the User of the Sky Product contrary to this Agreement including but not limited to the licence to use granted hereunder. A Sky Product is deemed to be misused in circumstances where the User fails to comply with the Agreement or act in accordance with the Documentation.

## **11. The User's Obligations**

The User at all times during the period of this Agreement agrees:

11.1 To keep necessary master copies of the Sky Product and the Documentation safe and always at the Location;

11.2 To keep all Documentation and knowledge of the operation or design of the Sky Product confidential;

11.3 To appoint a manager within the User as a supervisor through whom all correspondence and communications with the Company must be directed;

11.4 To select only suitable staff for operation of the Sky Product;

11.5 To train or get trained by the Company or its authorised dealers the staff operating the Sky Product;

11.6 To allow the technical staff of the Company or any authorised representative access to the Machine, the Sky Product and the data generated by the Sky Product at will, on site;

11.7 To process daily and month end backups where the user runs on its own server ensuring that there is always a month end or daily backup available for inspection by the Company if the need arises

11.8 Where they run on their own server to institute any new releases or error fixes and versions of Sky Product in line with the Company's recommendations, and to keep Machine-operating software up-to-date, and to pay all costs associated therewith (excluding all bug fixes and error corrections, which are covered by the Annual Licence Fee)

7.9 To report all potential malfunctions or malfunctions in writing by facsimile or email setting out examples of what the User considers to be a fault.

## **12. Term and Termination**

12.1 This Agreement commences on the Effective Date and continues until the 30 June immediately following the effective date, continuing thereafter for further 12 month periods unless or until terminated as provided in this Clause;

12.2 After the initial period of this Agreement, either party may terminate this Agreement by giving to the other at least 6 months' notice in writing of its wish to terminate, termination being effective from the end of the annual period in which such notice period ends;

12.3 The Company may terminate this Agreement forthwith if:

- I. The User breaches any term of this Agreement and fails to remedy same within 10 days of the date of formal notification of such breach and/or;
- II. The User fails to pay the Annual Licence Fee in accordance with this Agreement and/or
- III. The User does or allows to be done anything which may reasonably be considered by the Company to jeopardise any right of the Company and/or its licensors in the Sky Product and Documentation or any part thereof, including but not limited to if the User shall make or allow to be made any unauthorised copy of the Sky Product or Documentation or any part thereof or imparts or divulges the contents of the Sky Product or any part thereof to a third party without the prior written consent of the Company;

12.4 This Agreement may be terminated by either party with immediate effect by written notice to the other if the other shall become bankrupt or insolvent or enter into any scheme of administration with its creditors or enters into business rescue or liquidation, take any action for voluntary winding up other than for the purpose of a solvent reconstruction or amalgamation, or cease to carry on business or being a partnership be dissolved;

12.5 Upon termination, howsoever caused, the User shall return the Sky Product and Documentation and all copies thereof to the Company within 7 days of the date of such termination. The User must remove all copies of the Sky Product from the Machine and any other location and cease all use of the Sky Product and Documentation. User shall, if requested by the Company, certify that it has complied with this sub-clause. This sub-clause shall survive any termination of this Agreement.

### **13. Employee Placement Fee**

Should an employee of the Company take up employment with the User whilst this contract is in force, or within one (1) year of its' termination then the User shall pay over to the Company an employee placement fee of 15% (excluding VAT) of the total annual remuneration payable by the User to the employee. Total annual remuneration, for the purpose of this clause, shall mean basic salary, commission, bonus, housing allowance, motor vehicle allowance, entertainment allowance, contributions made on behalf of the employee to any benefit fund and the cash value of any other fringe benefit enjoyed by the employee. It is accepted that the placement fee is in line with current employment agency placement fees.

### **14. Force Majeure**

In the event that either party is unable to perform any obligation hereunder due to any circumstances beyond its control, including the action, intervention, or decree of any Government, and such circumstances are not caused by fault of a party, such party shall give prompt notice thereof to the other party and shall have no liability for any loss, damage, injury or expense (whether direct or consequential) suffered by the other party due to the affected performance of its obligations. Such party shall use all reasonable efforts to avoid or overcome the cause affecting performance and shall fulfil all outstanding obligations as soon as it becomes practical to do so.

### **15. Notices**

15.1 The parties choose the addresses set out in page 1 of this agreement as their domicilia citandi et executandi for all purposes under this agreement, whether in respect of the payment of money, the service or delivery of Court process, notices or other documents or all other communications.

15.2 Any notice or communication required or permitted to be given in terms of this agreement will be valid and effective only if it is in writing, but, where, in terms of this agreement, any communication is required to be in writing, the term "writing" will include communications by telefax.

15.3 Any party may by written notice to the other party change its telefax number or the address chosen as its domicilium citandi et executandi, to another telefax number or address which is not constituted exclusive by a post office box address. The change will become effective on the fifth business day from the deemed receipt of the notice by the addressee.

15.4 Any notice to a party sent by prepaid registered post (by airmail if appropriate) in a correctly addressed envelope to it at its domicilium citandi et executandi will be deemed to have been received on the fifth business day after posting.

15.5 Any notice to a party delivered by hand to a responsible person during ordinary business hours at its domicilium et executandi will be deemed to have been received on the day of delivery.

15.6 Any notice to a party sent by telefax to its chosen telefax, will be deemed to have been provided, unless the contrary is proved, immediately upon issuance, by the transmitting telefax machine, of a report confirming correct transmission of all the pages of the document containing the notice.

15.7 Notwithstanding anything to the contrary herein contained a written notice or communication actually received by a party will be an adequate written notice for communication to it notwithstanding that it was not sent to or delivered as its chosen domicilium citandi et executandi.

**16. Headings**

Headings have been included for convenience only and shall not be used in construing any provisions herein.

**17. Severability**

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 terms, which will continue to be valid and enforceable. If any invalid term is capable of amendment to render it valid, the parties agree to negotiate an amendment to remove the invalidity.

**18. Whole Agreement**

This Agreement constitutes the entire agreement between the Company and the User as to the subject matter hereof, and supersedes all prior communications, representations and agreements relating to the subject matter hereof, whether written or oral, and the parties hereto hereby acknowledges that no reliance is placed on any communication, representation or agreement made but not embodied in this Agreement. In particular the User hereby agrees that any terms and conditions purported to be incorporated in this Agreement set out on any purchase order or other correspondence of the User in connection with this agreement shall not apply.

**19. Amendment**

Any amendment to this Agreement must be in writing, referenced hereto and signed by the duly authorised representatives of both parties.

**20. Arbitration**

16.1 Should any dispute arise between the parties in connection with the interpretation or application of the provisions of this agreement or its breach or termination or the validity of any documents furnished by the parties pursuant to the provisions of this agreement, that dispute will, unless resolved amongst the parties, be referred to and be determined by arbitration in terms of this clause.

16.2 Any part to this agreement may demand that a dispute be determined in terms of this clause by written notice given to the other party.

16.3 This clause will not preclude any party from obtaining interim relief on an urgent basis from a Court of competent jurisdiction pending the decision of the arbitrator.

16.4

16.4.1 The arbitration will be held in accordance with the formalities and procedures settled by the arbitrator, and may be held in an informal and summary manner on the basis that it will not be necessary to observe or carry out the usual formalities or procedures pleadings and discovery or the strict rules of evidence, it being the intention that the arbitration will be held and completed as soon as possible; and

16.4.2 On the basis that the arbitrator will be entitled to decide the dispute in accordance with what he considers to be just and equitable in the circumstances.

16.5 A single arbitrator will be mutually agreed upon by the parties, failing such agreement be appointed at the request of either party by the Chairperson for the time being of the Johannesburg Bar Council.

16.6 The decision of the arbitrator will be final and binding on the parties to the dispute and may be made an Order of Court to which jurisdiction the parties are subject at the instance of any of the parties to the dispute. and

16.7 The arbitrator will be entitled to make such award, including an award for specific performance, an interdict, damages or a penalty or otherwise as he in his sole discretion may deem fit and appropriate and to deal as he deems fit with the question of costs, including if applicable, costs on the attorney and client scale, and his own fees.

16.8 The provisions of this clause

16.8.1 constitutes an irrevocable consent by the parties to any proceeding in terms hereof and no party will be entitled to withdraw therefrom or claim at any such proceeding that it is not bound by such provision;

16.8.2 are severable from the rest of this agreement and will remain in effect despite the termination of or in validity for any reason of this agreement.

16.9 The arbitration will be held with only the legal and other representatives of the parties to the dispute present.

## **21. Governing Law**

The construction, validity and performance of this agreement shall be governed by the laws of South Africa.