

TERMS OF USE

This document sets forth the terms and conditions of the use by any User of the Software owned and operated by Fincon Information Technologies (Pty) Ltd. By accessing or using the Software, the User agrees that it has read, understood, and consents to the terms and conditions set forth herein, and that these terms and conditions are applicable to the use of the Software, or any services offered by Fincon in relation to the Software.

1. DEFINITIONS AND INTERPRETATION

- 1.1. In these Terms, unless otherwise indicated by context, the following words and expressions bear the meanings assigned to them and cognate expressions bear corresponding meanings:
- 1.1.1. **“Confidential Information”** means any and all information that is disclosed by one party to the other party and that relates to the parties’ business relationship hereunder, including, but not limited to, information relating to the business methods, finances, systems, proprietary interests, marketing plans and any and all information exchanged between the parties pursuant to these Terms;
 - 1.1.2. **“Fincon”** means Fincon Information Technologies (Pty) Ltd, a company incorporated in terms of South African law under registration number 1993/001647/07 with address at Unit 3, Lenchen Avenue South, Lenchen Park, Centurion, Pretoria, Gauteng, 0157;
 - 1.1.3. **“License Fee”** means the fee payable by the User to Fincon as consideration for the grant of the license to use the Software for the applicable Usage Period (and in line with the selected Payment Frequency);
 - 1.1.4. **“Payment Frequency”** means the frequency with which the User seeks to pay the Licensing Fee to Fincon, and collectively refers to:
 - 1.1.4.1. **“Quarterly Payments”** – payment of the Licensing Fee every 3 (three) months;
 - 1.1.4.2. **“Biannual Payments”** – payment of the Licensing Fee every 6 (six) months; or
 - 1.1.4.3. **“Annual Payments”** – payment of the Licensing Fee every 12 (twelve) months.
 - 1.1.5. **“Software”** means Fincon Accounting software, including any updates made to such software from time to time;
 - 1.1.6. **“Terms”** means the terms and conditions contained in this document, together with any annexures hereto;
 - 1.1.7. **“Usage Period”** means (as the case may be):
 - 1.1.7.1. 3 (three) months if the User has selected Quarterly Payments as the Payment Frequency;
 - 1.1.7.2. 6 (six) months if the User has selected Biannual Payments as the Payment Frequency; and
 - 1.1.7.3. 12 (twelve) months if the User has selected Annual Payments as the Payment Frequency;
 - 1.1.8. **“User”** means any natural or juristic person who installs, accesses, or uses the Software in any manner whatsoever;
 - 1.1.9. **“VAT”** means value added tax, as levied under the Value Added Tax Act 89 of 1991 (as amended).
- 1.2. In these Terms:

- 1.2.1. Clause headings and the heading of the Terms are for convenience only and are not to be used in its interpretation;
- 1.2.2. An expression which denotes:
 - 1.2.2.1. Any gender includes the other gender;
 - 1.2.2.2. A natural person includes a juristic person and *vice versa*;
 - 1.2.2.3. The singular includes the plural and *vice versa*;
 - 1.2.2.4. A Party includes a reference to that Party's successors in title and assigns allowed at law; and
 - 1.2.2.5. A reference to a consecutive series of two or more clauses is deemed to be inclusive of both the first- and last-mentioned clauses.
- 1.3. Any reference in these Terms to:
 - 1.3.1. "**business hours**" shall be construed as being the hours between 08h30 and 17h00 on any business day. Any reference to time shall be based upon South African Standard Time.
 - 1.3.2. "**days**" shall be construed as calendar days unless qualified by the word "business", in which instance a "business day" will be any day other than a Saturday, Sunday or public holiday as gazetted by the government of South Africa from time to time.
 - 1.3.3. "**laws**" means all constitutions; statutes; regulations; by-laws; codes; ordinances; decrees; rules; judicial, arbitral, administrative, ministerial, departmental or regulatory judgements, orders, decisions, rulings, or awards; policies; voluntary restraints; guidelines; directives; compliance notices; abatement notices; agreements with, requirements of, or instructions by any Government Body; and the common law, and "**law**" shall have a similar meaning.
 - 1.3.4. "**person**" means any person, company, close corporation, trust, partnership or other legal entity.
- 1.4. Any substantive provision, conferring rights or imposing obligations on a Party and appearing in any of the definitions in this clause 1 or elsewhere in these Terms, shall be given effect to as if it were a substantive provision in the body of the Terms.
- 1.5. 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 these Terms.
- 1.6. Unless otherwise provided, defined terms appearing in these Terms 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.
- 1.7. A reference to any statutory enactment shall be construed as a reference to that enactment as at the Signature Date and as amended or substituted from time to time.
- 1.8. 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 day that is not a business day, the next succeeding business day.
- 1.9. If the due date for performance of any obligation in terms of these Terms is a day which is not a business day then (unless otherwise stipulated) the due date for performance of the relevant obligation shall be the immediately preceding business day.
- 1.10. Where figures are referred to in numerals and in words, and there is any conflict between the two, the words shall prevail, unless the context indicates a contrary intention.
- 1.11. The rule of construction that these Terms shall be interpreted against the Party responsible for the drafting of these Terms, shall not apply.

- 1.12. No provision of these Terms shall (unless otherwise stipulated) constitute a stipulation for the benefit of any person (*stipulatio alteri*) who is not a Party to these Terms.
- 1.13. Any reference in these Terms to "**these Terms**" or any other agreement or document shall be construed as a reference to these Terms or, as the case may be, such other agreement or document, as amended, varied, novated or supplemented from time to time.
- 1.14. In these Terms, the words "**clause**" or "**clauses**" and "**annexure**" or "**annexures**" refer to clauses of and annexures to these Terms.

2. RELATIONSHIP OF THE PARTIES

- 2.1. The relationship of the parties, *inter se*, shall be governed by the terms of these Terms and nothing contained herein shall be deemed to constitute a partnership, joint venture, employer/employee agreement or the like between them nor to constitute one party being the agent of the other for any purpose. No party shall by reason of the actions of any of the other parties incur any personal liability as a co-partner to any third party and no party shall be entitled to authorise, represent or to hold out to any third party that the relationship between the parties is that of a partnership, joint venture, same brand, agency or the like as aforesaid.

3. APPLICABILITY OF TERMS

- 3.1. These Terms shall apply to the User at all times while the Software is installed on any hardware system belonging to the User, and shall further apply to any access to or use of the Software by the User.
- 3.2. Fincon reserves the right to update, change, amend, or replace any part of these Terms from time to time in line with their requirements. Such updated, changed, amended, or replacement Terms will come into effect on a date stipulated by Fincon when they notify you in writing of any such update, change, amendment, or replacement.

4. USER ONBOARDING PROCESS

- 4.1. Upon receiving an indication from the User that they are interested in subscribing for the use of the Software, Fincon shall contact the User and schedule a discovery session which shall enable Fincon to learn more about the User's requirements and specific needs.
- 4.2. After the discovery session, Fincon shall provide the User with an invoice for the licensing fees applicable in line with the User's desired Payment Frequency and/or Usage Period for the Software.
- 4.3. Upon receipt of payment of the Licensing Fee as contained in an invoice as set forth in greater detail in clause 6 below, Fincon shall create the User's administrator account for the Software and shall provide the User with Fincon's Getting Started Guide. The Getting Started Guide is designed to assist the User in installing, managing, and using the Software. Should the User require further assistance in installing, managing and/or using the Software, the User shall have access to guidance through videos (which may be found [here](#)), and the User may further contact Fincon's support team as set out in clause 7 below.
- 4.4. The User shall be required to register their copy of the Software in order to unlock the Software's full functionality.
- 4.5. The User shall be responsible for installing the Software on its hardware and software infrastructure. The User shall, however, have access to reasonable support in this process as set out in clause 7 below.
- 4.6. The User shall be solely responsible for creating and maintaining subordinate user accounts on the Software.

5. GRANT OF LICENSE

- 5.1. Subject to receipt of payment in full of the Licensing Fee for the Software as set forth in greater detail in clause 6 below, Fincon hereby grants to the User the non-exclusive, non-transferable, revocable right and license to use the Software for the specified Usage Period only ("**the License**"). The License includes:

- 5.1.1. full access to the Software as installed by the User on a single server environment;
 - 5.1.2. access to regular updates to the Software as set out in greater detail in clause 6 below; and
 - 5.1.3. support services as stipulated in clause 6 below.
- 5.2. It is specifically provided that the License, in addition to and not in substitution for any other restrictions set out in these Terms, shall only entitle the User to install the Software on a single server environment. Any other installations required by the User shall require a discrete, separate license. Copying or cloning the Software, or otherwise circumventing Fincon in any manner in relation to the Software, shall constitute a breach of these Terms, and may result in the institution of appropriate legal proceedings and, dependent on the nature of the breach, criminal liability.

6. LICENSING FEES AND PAYMENT TERMS

- 6.1. In consideration for the grant of the License as set out in these Terms, the User shall make payment of the License Fee to Fincon in advance within 5 (five) days after receipt of the invoice provided to the User as set out in clause 4.2 above.
- 6.2. The User shall make payment of the License Fee to Fincon via electronic funds transfer into an account nominated by Fincon for that purpose in the invoice, or as otherwise indicated by Fincon in writing.
- 6.3. All amounts shall be inclusive of VAT where applicable, but will be exclusive of any other applicable taxes/fees, unless otherwise stated and required by law.

7. UPDATES AND SUPPORT

Updates

- 7.1. From time to time, and as they become available in accordance with Fincon's update schedule, Fincon shall make updates to the Software available on the updates page on their website, accessible through the Registration menu in the Software.
- 7.2. It is the responsibility of the User to ensure that the Software is regularly updated. The User accepts that failure to do so may result in the Software no longer working as intended, or at all. The User accordingly indemnifies Fincon from and against any damages or costs suffered by the User as a result of the Software not working due to the User's failure to keep it updated.

Support

- 7.3. Fincon offers two levels of support to its Users:
 - 7.3.1. Level 1 Support: in terms of this level of support, Fincon shall provide the User with access to Fincon Knowledge Base, and further access to support agents telephonically or via email.
 - 7.3.2. Level 2 Support: in terms of this level of support, and subject to the User following the procedure set out in clause 7.6.2 below, Fincon shall provide the User with support in relation to integrity issues, lost data issues, and/or any other support that may require Fincon to access the User's database.
- 7.4. It is specifically provided that Fincon does not provide support or maintenance in relation to any third-party applications (including, without limitation, email or antivirus software).
- 7.5. Fincon reserves the right to:
 - 7.5.1. insist that the User updates the Software in full prior to any support being provided; and
 - 7.5.2. direct the User to a resource in Fincon Knowledge Base if, in Fincon's discretion, the resource in Fincon Knowledge Base is sufficient to solve the User's support request.
- 7.6. The User shall only be able to access Level 2 Support through the following procedure:
 - 7.6.1. the User shall contact a Fincon Level 1 Support Agent and explain the issue that the User requires support for;

7.6.2. the Support Agent shall, if they are unable to assist the User through Level 1 Support, provide the User with a link to book an appointment for the provision of Level 2 Support.

7.7. No deviations from the procedure set out in clause 7.6.2 above shall be allowed by Fincon, except in cases of extreme emergency (which will be determined in Fincon's sole discretion on a case-by-case basis).

7.8. Fincon reserves the right to charge a fee for the provision of Level 2 Support resulting from the User's negligence. Fincon shall advise the User in writing of the estimated amount of any such fee prior to the provision of support. Any invoice issued by Fincon to the User for support fees shall be payable upon presentation thereof, in the manner set out in clause 6.2 above.

7.9. The User agrees that under no circumstances will it harass, abuse, assault (whether verbally or otherwise), or otherwise cause harm to any employee of Fincon.

8. INTELLECTUAL PROPERTY AND RELATED OBLIGATIONS OF THE USER

8.1. All material, information, policies, data, software, icons, text, graphics, lay-outs, images, sound clips, advertisements, video clips, trade names, logos, trade-marks, designs, copyright and/or service marks (as well as the organisation and layout of the Software) together with the underlying software code ("**the intellectual property**") are owned (or co-owned or licenced, as the case may be) by Fincon, its members, associates and/or partners, whether directly or indirectly, and as such, are protected from infringement by domestic and international legislation and treaties.

8.2. Subject to the rights afforded to the User in these Terms, all other rights to all intellectual property in the Software are expressly reserved. The User may not copy, download, print, modify, alter, publish, broadcast, distribute, sell or transfer any intellectual property, editorial content, graphics or other material in the Software or the underlying software code whether in whole or in part, without the written consent of Fincon first being granted, which consent may be refused at the discretion of Fincon. No modification of any intellectual property or editorial content or graphics is permitted.

8.3. Fincon reserves the right to make improvements or changes to the intellectual property, information, artwork, graphics and other materials in the Software at any time, or otherwise to suspend or terminate the Software subject to reasonable prior notice to the User.

8.4. Where any of the Software's intellectual property has been licensed to Fincon or belongs to any third-party, all rights of use will also be subject to any terms and conditions which that licensor or third-party imposes from time to time and the User agrees to comply with such third-party terms and conditions.

8.5. If, at Fincon's request, the User sends certain specific submissions (for example contest entries) or, without a request from Fincon, the User sends creative ideas, suggestions, proposals, plans, or other materials, whether online, by email, by postal mail, or otherwise (collectively, "**comments**"), the User agrees that Fincon may, at any time, without restriction, edit, copy, publish, distribute, translate and otherwise use in any medium any comments that the User forwards to Fincon, or implement any ideas or suggestions that the User submits in relation to the Software. Fincon is, and shall be under, no obligation to:

8.5.1. maintain any comments in confidence;

8.5.2. pay compensation for any comments, whether they are included in any updates to the Software or not; or

8.5.3. respond to any comments.

8.6. Any enquiries regarding any of the above relating to intellectual property must be directed to Fincon at christiaan@fincon.co.za.

9. INFRINGEMENTS AND UNLAWFUL USE OF THE INTELLECTUAL PROPERTY

9.1. The User agrees not to use the Software for the purposes of any unlawful, illegal, or immoral activities, or for the promotion of such activities.

- 9.2. The User shall under no circumstances access the accounts of any licensee of Fincon's without the express written permission of such licensee, or access or interfere (or attempt to interfere) with Fincon's management, administrative, or other privileges held by Fincon in relation to the Software.
- 9.3. The User agrees that they shall never circumvent, interfere, or attempt to circumvent or interfere with any security or data integrity features of the Software.
- 9.4. If at any time during the use of the Software, the User becomes aware of any infringement or illegal use, reproduction, exploitation and/or exercise of rights in relation to the Software or any aspect of Fincon's intellectual property by any unauthorised third party, the User must immediately provide Fincon with notice containing full details of such infringement or illegal use.

10. CONFIDENTIALITY

- 10.1. Unless otherwise agreed to in advance, in writing, or except as expressly permitted by these Terms, the parties will not, except as required by law or court order, use Confidential Information belonging to the other party or disclose any Confidential Information to any third party.
- 10.2. The parties shall use the same degree of care to avoid disclosure of the other party's Confidential Information as that party employs with respect to its own Confidential Information of like importance, but not less than a reasonable degree of care.
- 10.3. Upon the termination or expiration of these Terms for any reason, or upon the other party's earlier request, each party will deliver to the other party all of the Confidential Information in tangible form that the party may have in its possession or control which belongs to the other party and provide a warranty that all other Confidential Information has been destroyed.

11. WARRANTIES AND ACKNOWLEDGEMENTS

- 11.1. The parties' warranties and representations in respect of the subject matter of these Terms are expressly set out in these Terms. To the maximum extent permitted by applicable law, no other warranties or representations concerning the subject matter of these Terms will be implied into these Terms or any related contract.
- 11.2. The User acknowledges that complex software is never wholly free from defects, errors and bugs and, subject to the other provisions of these Terms, Fincon gives no warranty or representation that the Software will be wholly free from defects, errors and bugs.
- 11.3. The User acknowledges that complex software is never entirely free from security vulnerabilities and, subject to the other provisions of these Terms, Fincon gives no warranty or representation that the Software will be entirely secure.
- 11.4. The User acknowledges that the Software is only designed to be compatible with software specified as compatible in the Software Specification, and Fincon does not warrant or represent that the Software will be compatible with any other software.
- 11.5. The User acknowledges that Fincon will not provide any legal, financial, accounting, or tax-related advice under these Terms or in relation to the Software and, except to the extent expressly provided otherwise in these Terms, Fincon does not warrant or represent that the Software or the use of the Software by the User or any third party will not give rise to any legal liability on the part of the User or any other person.

12. DISCLAIMERS AND INDEMNIFICATIONS

- 12.1. The User agrees that under no circumstances shall Fincon incur liability to or in favour of the User in relation to:
 - 12.1.1. any liabilities, losses, or damages arising out of the unauthorised use by any third party of the User's username, password, and/or account (or the username, password, and/or account of any subordinate User);
 - 12.1.2. any liabilities, losses, or damages arising out of the User's negligence in using the Software; and/or

12.1.3. establishment or maintenance of the User's software and hardware infrastructure.

12.2. The User hereby unconditionally and irrevocably indemnifies (and shall keep indemnified) Fincon against all losses (including loss of reputation), damages, costs (including attorney and associated costs), interest and expenses which the User may, or be likely to, sustain as a result of any claim (contingent or otherwise) arising out of, in connection with or relating to, whether directly or indirectly, the use of the Software and/or any intellectual property inherent therein by the User.

12.3. Each of the parties hereby indemnifies the other party from and against all losses (including loss of reputation), damages, costs (including attorney and associated costs), interest and expenses which such other party may, or be likely to, sustain as a result of any claim (contingent or otherwise) arising out of, in connection with or relating to, whether directly or indirectly, the breach by a party of its obligations or warranties under these Terms.

13. BREACH

13.1. Either party ("**the innocent party**") shall be entitled without notice, in addition to any remedy available to it in law or under these Terms, including obtaining an interdict, to claim specific performance of any obligation whether or not the due date for performance has arrived, in the event that:

13.1.1. on written notice to that effect by the innocent party should the other party ("**breaching party**") commit any breach or permit the commission of any breach of any material obligation or warranty contained in these Terms and, in respect of such a breach capable of remedy, fail to remedy that breach within 5 (five) business days after the giving of written notice to that effect by the innocent party to the breaching party; or

13.1.2. the breaching party repeatedly breaches any of the terms and/or conditions of these Terms in such a manner as to justify the innocent party in holding that the breaching party's conduct is inconsistent with the intention or ability of the breaching party to carry out the provisions of these Terms.

14. DISPUTE RESOLUTION

14.1. Should any dispute, disagreement or claim arise between the parties ("**dispute**") concerning these Terms, the parties shall meet within 14 (fourteen) days of such notice and negotiate in good faith to resolve such dispute.

14.2. Should the parties fail to resolve such dispute in the aforesaid manner or within such further period as the parties may agree to during their negotiation, the parties will approach an independent industry expert who shall mediate the discussion.

14.3. The parties both agree that in no circumstance will either party publicize the dispute on any public platform, including social media platforms. The parties understand that any publicity of this nature can cause serious damage to the other party, which damage may result in a financial claim.

15. DATA PROCESSING

15.1. Fincon understands and agrees that it may, during the User's use of the Software, operate as a "operator" and/or "processor" of personal information, as defined in the Protection of Personal Information Act, 2013 ("**POPI**") and/or the EU's General Data Protection Regulation, 2017 ("**GDPR**") respectively.

15.2. Accordingly, Fincon warrants that it shall adhere to all applicable duties and obligations of a "processor" and/or "operator" as defined and required under POPI and/or the GDPR respectively, as applicable, when processing any personal information it derives from the User and/or its data subjects, pursuant to its administration of the Software.

15.3. Further, both parties expressly indemnify the other party against any third-party claims which may be brought against either party for the party's failure to adhere to their duties as prescribed under GDPR/POPIA related to their role as either or both the relevant data controller and/or processor.

15.4. Fincon is also aware that the User is not necessarily the "Responsible Party" and/or the "Data Controller", as defined by POPI or GDPR respectively, when processing the personal data of its

customers or clients, and as such, Fincon may be required to engage a third party to ensure that its duties under POPI and/or the GDPR are satisfied.

- 15.5. Should the User have any additional particular terms and conditions relating to how exactly Fincon must process personal information provided to it by the User, such additional conditions of processing must be contained in a distinct Data Processing Agreement between the parties.
- 15.6. Fincon also warrants to the User that they have no criminal convictions or judgments recorded against them which relates to crimes relating to fraud, unlawful use of personal information or any crime related to illegal use or processing of personal information in any way,
- 15.7. Fincon also understands and agrees that for data continuity and risk-mitigation purposes, should these Terms be terminated for any reason, and unless otherwise provided for in another data processing agreement between them and the User, Fincon will immediately cease all processing of personal data provided to them by the User, as well as permanently delete/destroy any personal data of the User's on/within their systems. To assist each other in this process, the User will provide Fincon with whatever information or tools are needed in order to action this destruction as required.
- 15.8. The parties each warrant that the other party's personal data will be processed by them in accordance with their respective POPI- and/or GDPR-compliant Privacy Policies.

16. SERVICE ADDRESS

- 16.1. The parties choose *domicilium citandi et executandi* for the purposes of the giving of any notice, the payment of any sum, the serving of any process and for any other purposes arising from these Terms at their respective addresses as follows:
 - 16.1.1. Fincon at Unit 3, Lenchen Avenue South, Lenchen Park, Centurion, Pretoria, Gauteng, 0157; and
 - 16.1.2. The User at the email address stipulated by the User in writing during the onboarding process.
- 16.2. The User hereby consents to receive communications in electronic form for the purposes of the Electronic Communications and Transactions Act 25 of 2002 (as amended).

17. GENERAL

- 17.1. **Entire Agreement and Variation:** No alteration, consensual cancellation, variation of, or addition to these Terms shall be of any force or effect unless reduced to writing and signed by both parties. These Terms contains the entire agreement between the parties and neither party shall be bound by any undertakings, representations, warranties, promises or the like not recorded herein.
- 17.2. **Further Assurance:** The parties shall co-operate with each other and execute and deliver to the other of them such other instruments and documents and take such other actions as may be reasonably requested of either of the parties from time to time in order to carry out, evidence and confirm its rights and the intended purpose of these Terms.
- 17.3. **Cumulative Rights and Remedies:** The rights and remedies of the parties under these Terms are cumulative and in addition to any rights and remedies provided by law.
- 17.4. **Indulgences:** No indulgence, leniency or extension of time which any party ("**the grantor**") may grant or show to the other shall operate as an estoppel or in any way prejudice the grantor or preclude the grantor from exercising any of its rights in the future.
- 17.5. **Governing Law:** These Terms shall be governed by and interpreted in accordance with the law of the Republic of South Africa. All disputes, actions and other matters in connection with these Terms shall be determined in accordance with such law.