

## Action Assist Terms and Conditions of Use Agreement

The terms and conditions of this Agreement govern the use of Action Assist and are binding and enforceable against all persons that access Action Assist or any part thereof in terms of section 11(3) of the ECT Act.

If any subscriber does not agree to the terms and conditions of this Agreement, the Subscriber must stop using Action Assist, as further use will automatically bind Subscriber to this Agreement. If at any time any Subscriber does not accept this Agreement in full, the Subscriber is not permitted to use Action Assist or any part thereof.

If any Subscriber Accesses Action Assist via a third-party Business Partner, then the Subscriber will be bound to terms of such third-party Business Partner and to this Agreement. On termination of any contract with such third-party Business Partner, should the Subscriber continue to use Action Assist, then the Subscriber will be bound to the whole of this Agreement, which is then applicable.

Action iT (Pty) Ltd may at any time amend this Agreement without notice. Subscribers are responsible for reviewing this Agreement on each occasion that Subscriber accesses Action Assist and, if the Subscriber continues to use Action Assist after changes are made, the Subscriber is deemed to have accepted the amended Action Assist Terms and Conditions of Use Agreement.

This Agreement is concluded between Action iT (Pty) Ltd (Registration Number 2006/035434/07) whose registered office is at 33 Nautilus Circle, Atlantic Beach Estate, Melkbosstrand, 7441, South Africa and the Subscriber, the person and / or, organisation, using Action Assist and shall to the extent relevant, include all the employees of the Subscriber or Subscriber Business Partners accessing Action Assist.

This Agreement constitutes the entire agreement between the Subscriber and Action iT (Pty) Ltd and supersedes all other documentation, information and other communication. Any failure by Action iT (Pty) Ltd to exercise or enforce any right or provision of this Agreement shall in no way constitute a waiver of such right or provision. In the event that any term or condition detailed herein is found to be unenforceable or invalid for any reason, such term(s) or condition(s) shall be severable from the remaining terms and conditions of this Agreement. The remaining terms and conditions shall remain enforceable and applicable.

### 1. Definitions

- 1.1. "**Action Assist**" means Action iT (Pty) Ltd software accessed through the Action iT (Pty) Ltd. The website is accessible at <https://assist.action4u.co.za> (and such other URLs as may be publicised from time to time), permitting the remote access and use of Action Assist. Action Assist includes any white-labelled version of the Product;
- 1.2. "**Active Users**" means those users that the Administrator has not terminated on the Product by the 25th day of the calendar month;
- 1.3. "**Administrator**" means the Database Administrator;
- 1.4. "**Agreement**" means the agreement set out in this document together with any Annexures to this document and referred to in the Action Assist Subscription Agreement;
- 1.5. "**Business Partner**" means a business, independent of Action iT (Pty) Ltd, which is an authorised provider of Action Assist;

- 1.6. **"Company"** means Action iT (Pty) Ltd and includes the subscription offering on the Website;
- 1.7. **"Company Code"** means the Company Code assigned by the Company to the Subscriber;
- 1.8. **"Company Data"** means any data inputted by the Subscriber and / or Business Partner into Action Assist;
- 1.9. **"Company's Website"** means <http://actionassist.co.za> (and such other URLs as may be publicised from time to time);
- 1.10. **"Confidential Information"** includes all information exchanged between the parties to this Agreement, whether in writing, electronically or orally, including on Action Assist and the website but does not include information which is, or becomes, publicly available other than through unauthorised disclosure by the other party or is received from a third party who lawfully acquired it and who is under no obligation restricting its disclosure or is in the possession of the receiving party without restriction in relation to disclosure before the date of receipt from the disclosing party or is independently developed or received without access to the Subscriber Business Partner;
- 1.11. **"Database Administrator"** means the person that the Subscriber appoints for taking on the responsibility of managing the Subscriber User data and the selection of products subscribed for on the Website. The Database Administrator is also an User and needs to comply with the obligations for a User;
- 1.12. **"Due Date"** means the first working day of the calendar month;
- 1.13. **"ECT Act"** means the Electronic Communications and Transactions Act, 25 of 2002 (as amended from time to time);
- 1.14. **"Effective date"** means the date of acceptance of this agreement by the Company;
- 1.15. **"Initial subscription"** means the initial subscription of the products selected on the Company's Website;
- 1.16. **"Intellectual Property"** means any content, domain names, patent, trademark, service mark, copyright, moral right, right in a design, know-how, software, database, text, graphics, icons and hyperlinks and any other intellectual or industrial property, anywhere in the world whether or not registered;
- 1.17. **"Monthly Fee"** means the monthly subscription fee including VAT (Value Added Tax);
- 1.18. **"Page"** means a website page of Action Assist, unless specified otherwise;
- 1.19. **"Password"** means the password that is assigned to the user to gain access to the Website;
- 1.20. **"Product"** means the subscription products as listed on the Company's Website;
- 1.21. **"RIC Act"** means the Regulation of Interception of Communications and Provision of Communication-Related Information Act, 70 of 2002 (as amended from time to time);
- 1.22. **"Subscriber"** means you, the subscriber, and includes the organisation that the Subscriber represents;
- 1.23. **"Subscriber Business Partner"** means any individual / organisation permitted by the Subscriber to use Action Assist;

- 1.24. **"Subscriber Database"** means the database created for the Subscriber on which the Subscriber data is stored;
- 1.25. **"Subscription Fee"** means the subscription fees payable by Subscriber in accordance with the fee schedule set out on the Company's website (which Action iT (Pty) Ltd may change from time to time);
- 1.26. **"Subsequent subscription"** means the subsequent change in subscription of the products on the Company's Website;
- 1.27. **"User"** means the person whom has logged onto the Website and is using the subscription service;
- 1.28. **"User Details"** means the contact, personal and similar information of the Subscriber and / or Business Partner using the Website;
- 1.29. **"Username"** means the username assigned to a User of the Website;
- 1.30. **"Website"** means Action Assist available at <https://assist.action4u.co.za> (and such other URLs as may be publicised from time to time); and
- 1.31. **"Working hours"** means the hours of 08h30 to 16h30 on a Monday to Friday, South African Standard Time, excluding official South African Public Holidays.

## **2. Intellectual Property Rights**

- 2.1. All right, title, ownership, benefit and interest in and to, and all Intellectual Property in Action Assist, the design and content of Action Assist and any documentation relating thereto remain the property of the Company. The exclusive right to authorise or prohibit the direct or indirect, temporary or permanent reproduction of the Intellectual Property by any means and in any form, in whole or in part, and to make the Intellectual Property available to the public, and to distribute any copyright protected material in Action Assist shall remain with the Company.
- 2.2. All rights, not expressly granted, are reserved to the Company. To obtain permission for the commercial use of any content on the Website, contact our Webmaster on [info@actionassist.co.za](mailto:info@actionassist.co.za). All the content, trademarks, the website and data on this web site, including but not limited to software, databases, text, graphics, icons, hyperlinks, private information, designs and agreements are the property of, or licensed to, the Company and as such are protected from infringement by local and international legislation and treaties. The Company retains the right, title and interest in ownership of the copyright and all other intellectual property rights in the product and the documentation.
- 2.3. Action Assist may incorporate technical and other protective measures designed to prevent unauthorised and / or illegal use of Action Assist. The Subscriber agrees to the incorporation of any such measures in Action Assist.
- 2.4. Clauses 2.4 and 2.5 state Subscriber's exclusive remedy in connection with any claim or threatened claim in relation to the Intellectual Property rights of a third party.

## **3. The Subscriber Database**

- 3.1. A separate database is created and hosted for each Subscriber;
- 3.2. Action Assist is hosted, controlled and operated from the Republic of South Africa and therefore the South African law enforced by the South African courts governs the use of the Action Assist, its content, services, software and this Agreement.

- 3.3. When the Subscriber subscribes to the Website, the Company will issue the Users with a Username, a Company Code and a Password. By using the username and password to access the subscription service offered by the Company, the Subscriber will be signifying their acceptance of these terms and conditions of use, which is a binding agreement between the Company and the Subscriber. This agreement constitutes the whole agreement between the parties. No variation, addition or variation of this agreement or any waiver of any rights shall be of any force unless reduced to writing and signed by both the parties.
- 3.4. The Subscribers agree that they are bound to the terms and conditions of this Agreement, which is concluded in Cape Town, South Africa at the time the Subscriber enters any Action Assist database for the first time or after the Subscriber has accepted this Agreement.
- 3.5. The Administrator is responsible for maintaining the confidentiality of the Subscriber's Company Data.
- 3.6. The Administrator is also a User in his / her own right and agrees to accept the responsibility for all activities that occur under his / her Username and Password.
- 3.7. The User is responsible for maintaining the confidentiality of his / her Username, Company Code and Password and for restricting access to any device used to access the Website, and the User agrees to accept responsibility for all activities that occur under their Username and Password.

#### **4. Subscription Agreement and Acceptable use of Action Assist**

- 4.1. The Company requires Subscribers to register before the Company will supply any services via the website. When a Subscriber registers, the Subscriber agrees to provide, true, accurate, up-to-date and complete User Details as required.
- 4.2. The Subscriber can activate the subscription to Action Assist by following the relevant process as explained on the Company website. Should Subscriber subscribe to use Action Assist (whether prior to or after the expiry of any free trial period), the Subscriber shall be bound to this agreement for the full duration of the subscription period.
- 4.3. The Subscriber confirms and warrants to the Company that the Subscriber is authorised to accept this Agreement on behalf of the Organisation which the Subscriber represents.
- 4.4. It is impossible to provide an exhaustive list of exactly what constitutes acceptable and unacceptable use of Action Assist. In general, the Company will not tolerate any use of Action Assist which damages or is likely to damage our reputation, the availability or integrity of Action Assist or which causes us or threatens to cause us to incur any legal, tax or regulatory liability.
  - 4.4.1. The Company requires Subscribers to treat Action Assist with respect, and not to use same for any illegal purpose, or in such a way as to infringe or breach other's rights or to cause or threaten to cause us damage.
  - 4.4.2. The Company requires Subscribers to comply with any relevant notices, policies and terms imposed by third parties who subscribes to products or services the Subscriber accesses through the Website.
  - 4.4.3. Subscribers must not use the Action Assist for posting or disseminating any material unrelated to the use of Action Assist including: offers of goods or services for sale, files that may damage any other person's computing devices or software, content that may be offensive to any of our other users, or material in

violation of any law (including material that is protected by copyright or trade secrets which Subscriber do not have the right to use).

- 4.4.4. The Company Ltd reserves the right to remove any communication posted on Action Assist, suspend the use of Action Assist and generally or block a Subscriber's access to any part thereof and / or to suspend or terminate a Subscriber's rights to use same or any part of it if the Company suspects misuse at any time at the Company's sole discretion.
- 4.4.5. The Company Ltd shall report any misuse of Action Assist to the relevant enforcement or other authorities.
- 4.4.6. The Company further reserves the right to disclose any evidence the Company may have which relates directly or indirectly to misuse.
- 4.5. The Company does not recommend or endorse any other entity, including any third parties who make Action Assist available to Subscriber - if a Subscriber wishes to engage with such an organisation, the Subscriber should investigate its experience, skills and qualifications. No third party is appointed or authorised by us as our servant or agent, nor has any authority, either express or implied, to amend this Agreement, or to enter into any contract, provide any representation, warranty or guarantee with or to Subscriber on our behalf, or otherwise make commitments for us in any way whatsoever. Subscribers agree that the Company will not be responsible for any act or omission of any third party including any services provided by it in relation to the Action Assist, including any administration of it.
- 4.6. If a Subscriber is registering to access and use Action Assist for the first time in the capacity of an employee or contractor of a separate corporate entity, partnership or similar business entity, the Subscriber must have the authority of that business entity to:
  - 4.6.1. Use Action Assist for that entity's business; and
  - 4.6.2. Accept this Agreement on behalf of that entity.

## **5. Company Obligations**

- 5.1. The Company will provide the Subscriber with access to Action Assist (which access may not necessarily be uninterrupted) as described on the Company's Website.
- 5.2. The Company shall use reasonable endeavours to support the Product during the term of this agreement by providing online, telephonic and e-mail support during Working Hours for all support call logged through the Company defined processes.
- 5.3. The Company shall use reasonable means to ensure the security of data contained in the Subscriber Database.
- 5.4. The Company, at its sole discretion, reserves the right to update the versions of the Products on the Website.
- 5.5. The Company will provide access to the number of users as identified on the signed Action Assist Subscription Agreement form.
- 5.6. The Company may electronically collect, store and use Subscriber information and agrees not to disclose any personal information with third parties.

## 6. Subscriber Obligations

- 6.1. The Subscriber will assign an Administrator to deal with all correspondence, communication, account queries, product selection, user activation and maintenance on the Subscriber Database created for the Subscriber.
- 6.2. The Subscriber will ensure that all Users will not disclose their Username and Password to any other person for any reason whatsoever and will maintain the confidentiality thereof.
- 6.3. The Subscriber agrees not to give any unauthorised third parties access to the Products on the Website who do not comply with the subscription requirements.
- 6.4. The Subscriber agrees to:
  - 6.4.1. ensure that Subscriber User Details and other information given in relation to Subscriber's use of Action Assist are maintained to be, true and accurate;
  - 6.4.2. use Action Assist for own lawful internal business purposes, in accordance with this Agreement;
  - 6.4.3. comply with the Subscriber contractual obligations to the Business Partner through which the Subscriber has been granted access to Action Assist, if applicable;
  - 6.4.4. ensure that all account credentials required to access Action Assist are kept secure and confidential and to immediately notify the Company of any unauthorised use of Subscriber account credentials or any other breach of security. In such instances it shall be the Subscriber's obligation to immediately reset the Subscriber's password and to maintain security. In any event, it is deemed good practice to regularly reset Subscriber passwords to maintain data security;
  - 6.4.5. notify the Company, if, at any time Subscriber becomes aware of any unauthorised use of the account credentials of the Subscriber or the Subscriber Business Partners, or any other security-related matter with Action Assist, and to co-operate with the Company to the extent reasonably necessary to rectify the security breach;
  - 6.4.6. ensure that the Subscriber Business Partners who access Action Assist on Subscriber's account comply with the terms of this Agreement;
  - 6.4.7. only store the maximum amount of data, if any, as may be prescribed from time to time on Action Assist. If at any time Subscriber exceeds the amount of any specified limit, for so long as Subscriber does so, the Company may charge the Subscriber at its then-standard rates for additional storage.
- 6.5. Except as expressly permitted by another clause of this Agreement or by separate written arrangement with the Company, the Subscriber agrees not to and agrees to ensure that no Subscriber Business Partners:
  - 6.5.1. permit any other person, directly or indirectly, to access, use or otherwise exploit the right and ability to use Action Assist in any way, including by permitting Action Assist to be either
    - 6.5.1.1. re-sold, distributed, sublicensed, loaned, transferred or provided to others in a similar way; or
    - 6.5.1.2. used as a hosted, bureau, outsourcing, or similar service;

- 6.5.2. use or copy (irrespective of the extent of copying) the whole or any part of the graphic user interface of Action Assist for incorporation into or the development of any software or other product or technology.
- 6.6. When accessing and using Action Assist, the Subscriber must:
  - 6.6.1. not attempt to undermine the security or integrity of the Company's systems or networks or, where Action Assist is hosted by a third party, that third party's systems and networks;
  - 6.6.2. not use, or misuse Action Assist in any way which may impair the functionality of Action Assist, or impair the ability of any other user to use Action Assist;
  - 6.6.3. not attempt to gain unauthorised access to any materials other than those to which Subscriber have been given express permission to access or to the computer system on which Action Assist is hosted;
  - 6.6.4. not transmit, or input into Action Assist, any files that may damage any other person's devices or software, content that may be offensive, or material or User Details or Company Data in violation of any law (including data or other material protected by copyright or trade secrets which Subscriber do not have the right to use);
  - 6.6.5. not modify, translate, or create derivative works based on Action Assist, nor reproduce, reverse assemble, decompile or reverse engineer Action Assist, whether in whole or in part, or otherwise attempt to derive the source code, underlying ideas, algorithms, file formats, programming of Action Assist or any files contained in or generated by Action Assist, nor shall the Subscriber permit any third party to do so; and
  - 6.6.6. not merge or combine the whole or any part of Action Assist with any other software or documentation without the prior written consent of the Company.

## **7. Administrator Obligations**

- 7.1. The Administrator is responsible for the set-up of the Users on the Subscription Service, the completion of Change Forms when the number of active Users change, notification to the Company of any changes to the bank account details in the Debit Order Details contained in this agreement.
- 7.2. The Subscriber agrees to pay to the Company an administration fee of R350 for each and every instance that a debit order payment is rejected by the Subscriber's bankers.
- 7.3. The Administrator will ensure that the product is suitable for the intended purpose. The Company's preferred medium of correspondence and communication with the Subscriber will be by means of e-mail.
- 7.4. The Administrator is responsible for supplying the Company with a valid e-mail address and notifying the Company of any changes in this e-mail address from time to time.

## **8. Subscription Fees and Rates**

- 8.1. In consideration for the license to use Action Assist granted hereunder, the Subscriber will pay us the monthly Subscription Fees which shall, for the sake of clarity, be payable in respect of each month/year from the date of subscription. The Subscriber shall be liable in respect of all Subscription Fees regardless of the extent to which Subscriber has used Action Assist.

- 8.2. The Company has the right to revoke the Subscribers license to use Action Assist should the Subscriber fail to pay the agreed Subscription Fees within the time periods stipulated herein, in which event the Subscriber will be unable to use Action Assist.
  - 8.2.1. In the event that Subscriber fails to pay any Subscription Fees and as a consequence thereof the Subscriber's license to use Action Assist is revoked in accordance with clause 9.2 above, and at a later stage the Subscriber elects to reinstate the Subscription to Action Assist, the Subscriber shall be liable for the following:
    - 8.2.1.1. payment of the Subscription Fees for the period between the date on which Subscriber stopped paying the applicable Subscription Fees until the date on which the subscription was reinstated; and
    - 8.2.1.2. the monthly/annual Subscription Fees for the ensuing periods from the date of reinstatement.
- 8.3. The Company will not keep a separate record of the contract relating to any specific subscription for Action Assist, so it will not be available from us. The Company will supply the Subscriber with a tax invoice, either directly or through appointed Business Partner, transmitted via email. The transmitted electronic document will constitute the original tax invoice. No other tax invoice, credit or debit note will be issued in respect of the specific supply, unless as a copy of the original document.
- 8.4. The Company grants Subscriber a non-exclusive and non-assignable licence to access and use Action Assist strictly via the Company's Website with the module(s) and user numbers according to the Subscription Agreement.
- 8.5. For so long as the Subscriber pays the Subscription Fee and any other applicable charges, the Subscriber may permit the agreed number of Users to access and use the relevant subscription for Action Assist.
- 8.6. From time to time, the Subscriber may change the identity of the individuals who are using Action Assist. The Company reserves the right to limit the number of times, or the frequency with which Subscriber can do this. The Company may consult with Subscriber before exercising this right.
- 8.7. If a User is not an employee of the subscriber to Action Assist, the Subscriber must ensure that such User:
  - 8.7.1. complies with this Agreement; and
  - 8.7.2. uses the relevant Company Data in Action Assist in accordance with that subscriber's instructions.
- 8.8. Notwithstanding anything to the contrary in this Agreement, where a Business Partner is utilising Action Assist to provide consulting or other similar services on behalf of an organisation, then in such circumstances, where the Organisations Data relates to that of an organisation other than that of the Business Partner, the Company reserves the right, in its sole and absolute discretion, to transfer such Company Data to an alternate subscription, and the Business Partner shall have no recourse against the Company in this regard.



## **9. Invoicing and Payment**

- 9.1. Payment shall be made in accordance with the payment section on the Company's website.
- 9.2. If the Subscriber pays the Subscription Fees or any other subscription charges to an entity separate from the Company (e.g. if Subscriber obtained access via a Business Partner), the Subscriber agree to nonetheless remain to be bound by the terms of this Agreement.
- 9.3. The Subscriber shall pay to the Company all amounts due in terms of this Agreement on the Due Date as selected in this Agreement. The Subscriber agrees that the monthly payment will be the higher of the Active users or the amount reflected on the latest signed Action Assist Subscription Agreement received by the Company. If the Subscriber agrees to payment by debit order, he / she agrees not to cancel the debit order for the duration of the agreement. The Subscriber agrees to comply with the Monthly Fees as identified on the Action Assist Subscription Agreement.
- 9.4. The fees listed in this agreement exclude any fees payable in respect of consulting services, non-online support and any other customisation. These will be invoiced to the Subscriber based on time spent by the Company at the then current rates of service and traveling on a time and material basis.
- 9.5. The Company shall be entitled to increase the monthly subscription fee and other fees from time to time. Details of such increases will be published on the Company's Website and the Subscriber will be notified in advance.
- 9.6. Failure by the Subscriber to pay any amounts due in terms of the Agreement on the Due Date, shall entitle the Company, without prejudice to any other remedies, to suspend the Subscriber's access to the Website.
- 9.7. The Subscriber agrees to receive tax invoices and other documents in electronic form.

## **10. Termination**

- 10.1. The Subscriber may terminate the Agreement on a notice period of 30 days, unless otherwise agreed in writing.
- 10.2. In the event that this Agreement is terminated, and the Subscriber wishes to enter into a new agreement, the Subscriber will be charged such amounts as would be applicable to a new agreement.
- 10.3. The Company may terminate this Agreement at any time by written notice, effective immediately, if the Subscriber:
  - 10.3.1. materially breaches any term(s) of this Agreement and either that breach is incapable of remedy or the Subscriber has not remedied that breach within 7 (seven) days after receiving written notice requiring Subscriber to remedy it;
  - 10.3.2. fails to pay when due, any charges payable to Action iT (Pty) Ltd or stops paying for use of Action Assist; or
  - 10.3.3. are liquidated provisionally or finally, placed under judicial management, commit an act of insolvency or enters into, or attempts to enter into a compromise with Subscriber's creditors.
- 10.4. Subject to clause 11.3, upon termination of this Agreement however caused, the Company will stop the Subscriber's ability to access Action Assist, so that the Subscriber will no longer be able to access and use Action Assist. The Subscriber acknowledges that he / she may no longer be able to access Subscriber's Company Data via Action Assist from this time.

- 10.5. If this Agreement is terminated and Subscriber notifies the Company at the time of notice of termination that Subscriber requires further access to Subscriber's Data, the Company may provide Subscriber with access to Action Assist for a period of 5 (five) working days in order that Subscriber may print out Subscriber's Data, subject to the following:
  - 10.5.1. it is possible that the Company may have deleted Subscriber Data, and not be able to provide it to Subscriber; and
  - 10.5.2. the Company may charge the Subscriber for providing Subscriber with access to Subscriber Data; and
  - 10.5.3. if Subscriber account remains in arrears for 120 (One-hundred-and-twenty) days, the Company may delete Subscriber's Data.
- 10.6. If the Company terminates this Agreement in accordance with clause 11.1, the Company may irretrievably delete the Subscriber's Data (Action Assist database) from the effective date of termination.
- 10.7. Any termination of this Agreement will not affect any accrued rights or liabilities of either party, nor shall it affect the coming into force, or the continuance in force, of any provision of this Agreement which is expressly or by implication intended to come into force or continue in force on or after termination.

## **11. Disclaimers and Liabilities**

- 11.1. The User uses the Website at their own risk.
- 11.2. This Website is provided by the Company on an "as is" and "as available" basis.
- 11.3. Unless otherwise explicitly stated, the content on this website is provided "as is", "with all faults", and is for commercial use only.
- 11.4. No advice or information, whether oral or written, obtained by the User from the Company or from the Website will create any warranty or condition not expressly stated in the terms.
- 11.5. The Company's employees are not authorised to vary any of the terms.
- 11.6. The Company will use reasonable endeavours to ensure that Action Assist will give the functionality and levels of service as described on the Company's website, when used in accordance with it and this Agreement. If a Subscriber believes that our provision of Action Assist does not conform to this undertaking, the Subscriber should notify us by email at [info@actionassist.co.za](mailto:info@actionassist.co.za).
- 11.7. The Company does not warrant:
  - 11.7.1. that Action Assist will be continuously available, or that Subscribers use thereof will be uninterrupted or error or bug free, or that the Action Assist server will be free from attack;
  - 11.7.2. that all the information the Company provides on Action Assist is correct and complete, but the Company nevertheless undertakes to use our reasonable endeavours to ensure that all the information the Company provides on Action Assist is correct and complete at the time of the last update to the relevant page;
  - 11.7.3. that Action Assist will meet the Subscribers requirements, and, for this purpose, it is specifically recorded that Action Assist is provided "as is" and it is the Subscribers responsibility to satisfy themselves that it meets the Subscriber's requirements and is compatible with the Subscriber's hardware and software prior to making use thereof;

- 11.7.4. that Action Assist results of use will be correct, accurate or reliable;
- 11.7.5. that any defects in the Action Assist can or will be corrected.
- 11.8. Subject to the provisions of any applicable legislation and save as otherwise provided in this Agreement, the Company (including its directors, employees, third-party Contractors, business partners, Internet service providers and agents) shall not be liable for any damage, loss or liability of any nature incurred by whomever and Subscriber agree to indemnify us and keep us indemnified against all costs (including the costs of enforcement), expenses, liabilities (including any tax liability), injuries, direct, indirect or consequential loss (all three of which terms include, but are not limited to, pure economic loss, loss of income, loss of profits, loss of data, anticipated savings, loss of business, loss or depletion of goodwill, interruption of business and loss similar to all the preceding types of loss), damages, claims, demands, proceedings and judgments which the Company incur or suffer in any way arising from the following:
  - 11.8.1. access to the Action Assist;
  - 11.8.2. inability to access Action Assist;
  - 11.8.3. inability to access Action Assist linked to the Company's website;
  - 11.8.4. services or software available from the Company's website (including Action Assist);
  - 11.8.5. content available on Action Assist;
  - 11.8.6. downloads and use of content on Action Assist;
  - 11.8.7. any failure to perform our obligations in this Agreement due to causes beyond our reasonable control including any interruption to or failure of any Company computer, associated supporting system not provided by us and used by the Subscriber, telecommunications services, third-party and / or electricity supply service not provided by us, including the Internet;
  - 11.8.8. Subscribers breach of any of the terms of this Agreement;
  - 11.8.9. use of Action Assist other than in accordance with this Agreement; or
  - 11.8.10. any other reason not directly related to the Company's gross negligence.
- 11.9. To the maximum extent permitted by law all undertakings and warranties given by us under this Agreement are exclusive and all other terms, warranties, representations, undertakings and conditions, express or implied, statutory or otherwise are excluded.
- 11.10. To the extent that the Company is liable, our total liability shall not exceed the amount of charges actually paid by the Subscriber to use Action Assist in the year prior to the date the circumstances causing such liability first arose.

## **12. Jurisdiction**

- 12.1. This Agreement shall be construed and interpreted in accordance with the laws of South Africa and the phrases, words and clauses defined in the definitions shall apply in the entire Agreement.
- 12.2. In the event of the Company instituting legal proceedings against the Subscriber to recover amounts due to the Company or taking any other legal steps arising out of this Agreement, the Subscriber shall be liable for legal costs on the scale as between attorney and own client and for any costs incurred in the collection of the outstanding amount.

### **13. Confidentiality, Privacy of Company Data and User Information and Interception of Communications**

- 13.1. The Company undertakes to take all reasonable steps to protect the personal information of Subscribers and to comply with all applicable legislation.
- 13.2. In respect of access to Company Data and User Details the Company Data entered, or imported on instruction, by the Subscriber, remains Subscribers property and the Company will not use nor make available for use any of this information without the Subscribers permission.
- 13.3. The Company will use Subscriber User Details, for exercising our rights and for performing our legal obligations under this Agreement. The Company may use it to contact the Subscriber, via Subscriber relevant or nominated personnel or our Business Partners, about our other relevant products and services, to conduct research about our customers and to track and record the manner in which Subscriber and Subscriber Business Partners use Action Assist. Contact may be made via our third-party Business Partners. Subscriber acknowledge that there is certain information that the Company must use in order to be able to provide Action Assist, including names and email addresses of Subscribers or Subscriber Business Partners. If for any reason the Company is not permitted to use such information, the Company may not be able to perform our obligations in this Agreement. The Subscriber acknowledges that in such circumstances the Subscriber will still be obliged to pay our charges.
- 13.4. The Company will only use Subscriber Company Data stored via Action Assist to the extent necessary for us to provide Action Assist for performing our rights and obligations in this Agreement and for performing our legal obligations.
- 13.5. The Company acknowledges that Subscriber Company Data is the Subscribers proprietary and confidential data and that under no circumstances may the Company exploit that data for our own purposes not specifically relating to providing the Subscriber Action Assist, save where Subscriber has consented to the contrary.
- 13.6. The information, which the Subscriber submits and stores via Action Assist, may be stored on the Company's computer servers which servers may be controlled, hosted and managed by third party Contractors who shall be bound to these confidentiality and privacy provisions.
- 13.7. The Company will disclose Subscriber User Details and other relevant information (including User Details of Subscribers or Subscriber Business Partners, if necessary) to our third-party Business Partners who assist us to provide Action Assist, who shall be bound to these confidentiality and privacy provisions.
- 13.8. Subscribers agree to bring this Agreement to the attention of their Users or Subscriber Business Partners, to help ensure that they understand and consent to our use of their information, including User Details. This is so that the Company may provide Action Assist to them on the Subscribers behalf.
- 13.9. The Company may access and use non-identifying and aggregated usage information and transaction volumes in order to better understand how our customers are using Action Assist so that the Company can improve the system design and where appropriate have the system prompt users with suggestions on ways to improve their own use of the system.

- 13.10. The Company may collect information via Action Assist by means of cookies and use cookies to allow Subscriber to enter Subscriber password less frequently during a session, to help analyse our Company page flow, measure promotional effectiveness, and promote trust and safety, to offer certain features that are only available through the use of a cookie and to allow us to provide information that is targeted to the Subscriber's interests. Subscriber hereby authorise us to use cookies.
- 13.11. All other information not dealt with in this clause shall constitute Confidential Information and shall not be disclosed to any other party without the prior written consent of the owner of such information first being obtained.
- 13.12. The Company owns and retains all rights to non-personal statistical information collected and compiled by Action Assist.
- 13.13. All comments, communications, ideas, and other content disclosed, submitted or offered to the Company on or by this Website or otherwise disclosed, submitted or offered in connection with the Users' use of this Website remain the property of the Company. Such disclosure, submission or offer of any information shall constitute an assignment to the Company of all worldwide rights, titles and interests in all copyrights and other intellectual properties in the information submitted.
- 13.14. The Company will own exclusively all such rights, titles and interests and shall not be limited in any way in its use, commercial or otherwise of any information submitted.
- 13.15. The Company is and shall be under no obligation:
  - 13.15.1. to maintain any information submitted in confidence;
  - 13.15.2. to pay to the User any compensation for any information submitted; or
  - 13.15.3. to respond to any User comments.
- 13.16. The User agrees that no comments submitted to the Website will violate any right of any third party, including copyright, trademark, privacy or other personal or proprietary right(s).
- 13.17. The Subscriber gives the Company permission to list the Subscriber as a Subscriber on the Company's Website.
- 13.18. Subject to the provisions of the RIC Act the Subscriber agrees to the Company right to intercept, block, filter, read, delete, disclose and use all communications which the Subscriber sends or posts to Action Assist and the Company and its employees. The Subscriber acknowledge that this consent and the Subscriber's use of Action Assist satisfy the "writing" requirement as required in the RIC Act.

#### **14. Notices and Address**

- 14.1. The following terms and conditions shall apply to any Action Assist Subscriber (including any demo / free trial period user):
  - 14.1.1. Subscriber communication with us must be by email to our email address contained on the Company's website;
  - 14.1.2. Our communication with the Subscriber shall be via those details provided on registration;
  - 14.1.3. All legal notices given under this Agreement shall be in writing to the physical address of such party delivered by hand. Legal notices under this Agreement

addressed specifically to either of us will be effective on actual receipt by the intended recipient;

- 14.1.4. As a condition of this Agreement, if Subscriber use any communication tools available through Action Assist, the Subscriber agrees only to use such communication tools for lawful and legitimate purposes in accordance with the acceptable use provisions of this Agreement.

## **15. Links to Other Websites**

- 15.1. Links to the Action Assist are permitted, subject to first obtaining our prior written consent although the Company. The Company reserves the right to withdraw such consent at any time.
- 15.2. Website links to other websites may not be under the control of the Company and / or not maintained by the Company.
- 15.3. The Company provides these links to the user only as a convenience.
- 15.4. Where the Company has no control over such sites and resources, the User acknowledges and agrees that the Company is not responsible for the availability of such external sites or resources and does not endorse and is not responsible or liable for any content, advertising, products, or other materials on or available from such sites or resources.
- 15.5. The Company will not be responsible or liable, directly or indirectly, for any damage or loss caused or alleged to be caused by or in connection with use of or reliance on any such content, goods or services available on or through any such site or resource.
- 15.6. Subscribers are not entitled (nor shall Subscriber assist others) to set up links from the Subscribers own database by deep-linking, framing or otherwise, without our prior written consent, which consent may be withheld at our absolute discretion, and without the need to provide a reason.

## **16. Disclosures required by Section 43 of the ECT Act**

- 16.1. Access to the services, content, software and content downloads available from the Action Assist is classified as "electronic transactions" in terms of the ECT Act and therefore Subscriber have the rights detailed in Chapter 7 of the ECT Act and Action iT (Pty) Ltd has the duty to disclose the following information:
  - 16.1.1. Full name and legal status of Action Assist: Action iT (Pty) Ltd.
  - 16.1.2. Street Address: 33 Nautilus Circle, Atlantic Beach Estate, Melkbosstrand, 7441.
  - 16.1.3. Postal address: PO Box 50503, West Beach, 7449, South Africa.
  - 16.1.4. Physical address for the receipt of legal notices: 33 Nautilus Circle, Atlantic Beach Estate, Melkbosstrand, 7441.
  - 16.1.5. Official email address of the Action iT (Pty) Ltd: info@actionassist.co.za.
  - 16.1.6. Manual published in terms of section 51 of the Promotion of Access to Information Act 2 of 2000 may be viewed on <http://www.actionassist.co.za>
  - 16.1.7. The costs associated with the access and use of Action Assist is available from the Action iT (Pty) Ltd website.
  - 16.1.8. Alternative Dispute Resolution: Subject to urgent and / or interim relief, all disputes regarding:
    - 16.1.8.1. access to the website hosting Action Assist;
    - 16.1.8.2. the inability to access the Subscribers Action Assist database;

16.1.8.3. the services and content available from Action Assist; or

16.1.8.4. this Agreement,

Shall be referred to arbitration in terms of the expedited rules of the Arbitration Foundation of South Africa and such arbitration proceedings shall be conducted in Cape Town in English. The arbitration ruling shall be final and the unsuccessful party shall pay the costs of the successful party.

16.1.9. Cooling off period:

16.1.9.1. Under section 42(1)(g) of the ECT Act the cooling-off period set out in section 44 of the Act does not apply to an electronic transaction where audio or video recordings or computer software Action iT (Pty) Ltd re unsealed by the consumer.

16.1.9.2. Under section 42(1)(d) of the ECT Act the cooling-off period set out in section 44 of the Act does not apply in respect of services, which began with the consumer's consent before the end of the seven-day period referred to in section 44(1).

16.1.9.3. Under section 42(1)(f) of the ECT Act the cooling-off period set out in section 44 of the Act does not apply where the goods:

16.1.9.4. are made to the consumer's specifications;

16.1.9.5. are clearly personalised;

16.1.9.6. by reason of their nature cannot be returned; or

16.1.9.7. are likely to deteriorate or expire rapidly.

16.1.10. Users may lodge complaints in respect of the Action Assist via email to [info@actionassist.co.za](mailto:info@actionassist.co.za).

**Last Updated: 9 April 2018**