

1. DEFINITIONS
    - 1.1 "Act" means the Consumer Protection Act, 68 of 2008;
    - 1.2 "Active Eye" means Active Eye Monitoring (Pty) Ltd, registration number 2017/331604/07;
    - 1.3 "Agreement" means collectively the Schedule and the Terms and Conditions;
    - 1.4 "Client, Your, You" means the person identified as the client on the Schedule.
    - 1.5 "Goods" means the equipment specified in the Equipment Schedule;
    - 1.10 "Delivery Date" means the date on which the Goods are delivered to You, as specified on the Schedule;
    - 1.11 "Law" means common law, legislation, regulations and any subsidiary legislation prevailing from time to time in the Republic of South Africa;
    - 1.12 "Loss" means loss, liabilities, claims, costs, charges, damages and outgoings of every description (including legal costs and expenses), compensation payable under contracts, loss of normal operating profits, loss of opportunity, loss of goodwill, loss of revenue from related contracts and pure economic loss, tracing and collection charges, costs of investigation, interest and penalties;
    - 1.13 "Parties" means the parties to these Terms and Conditions, and "Party" means any one of them as the context may indicate;
    - 1.14 "Person" includes both natural and juristic persons.
    - 1.15 "Purchase Price" means the once-off purchase price payable by the Client to Active Eye for the Goods, as set out in the Schedule;
    - 1.16 "Schedule" means the document headed "Schedule" to which the Terms and Conditions are attached;
    - 1.17 "Service Fee" means the service fee/s payable by the Client to Active Eye in respect of the provision of Services as listed on the Service Schedule;
    - 1.19 "Services" means the services which the Client has appointed Active Eye to perform in terms of this Agreement as specified in the Schedule.
    - 1.20 "Signature Date" means the signature date to this Agreement by the last Party signing;
    - 1.21 "Terms and Conditions" means the terms and conditions contained in this document;
    - 1.22 "We/Our or Us" means Active Eye, its successors-in-title or assignees;
    - 1.24 Any reference to one gender shall be deemed to include the other and any reference to the singular shall include the plural.
  2. SALE & PURCHASE
    - 2.1 Active Eye hereby sells to the Client who hereby purchases the Goods from Active Eye on the terms and conditions set out in this Agreement.
  3. PURCHASE PRICE FOR THE GOODS
    - 3.1 The Purchase Price for the Goods is set out in the Schedule.
    - 3.2 If You have chosen the option to rent the Goods, either on a rental or rent-to-own basis, then clause 3.1 shall not apply and instead You agree:
      - 3.2.1 To ensure that the Goods are properly maintained and fully functional at all times. Should any part of the Goods be damaged or found to be faulty at the time of return, collection or de-installation (as the case may be) You will be liable for the costs of the repair and/or replacement of such Goods, subject to clause 17.1 (if applicable).
      - 3.2.2 That, in the event of a rent-to-own contract, ownership in the Goods remains vested in Active Eye for 24 months from the Signature Date, whereafter ownership of the Goods shall pass to you in the 25<sup>th</sup> month. In the event of an early termination of this Agreement, We will remove the Goods subject to the provisions of clauses 3.2.1 above and 6.3 below.
      - 3.2.3 That, in the case of a rental option, ownership remains vested in Active Eye indefinitely, subject to paragraph 4 of the Schedule. On termination of the Agreement, We will remove the Goods subject to the provisions of clauses 3.2.1 above and 6.3 below, and paragraph 4 of the Schedule.
  - 3.3 You understand and agree that the Purchase Price will still be due and payable to Us in full in the event of the Goods being damaged, destroyed, lost, stolen or no longer of any use other than as a result of bad workmanship, a fault in quality or a defence as described in the Act. The Purchase Price will be immediately payable in full in the event of termination of the Agreement.
4. PROVISION OF GOODS & SERVICES
 

The Client hereby appoints Active Eye to provide the Goods and Services in terms of the Terms and Conditions and Active Eye hereby accepts such appointment. The Goods will be delivered by Us to You on the Delivery Date.
5. SERVICE & RENTAL FEES
  - 5.1 The Service Fees payable in respect of the Services are set out in the Schedule.
  - 5.2 You will pay Us the Service Fees in accordance with the terms of the Agreement.
  - 5.3 You will pay a monthly rental fee in respect of the Goods if clause 3.2 applies, by 24 (twenty-four) equal monthly instalments starting from the Installation Date.
6. DURATION
  - 6.1 This Agreement will commence on the Signature Date and will continue for a period of 24 (twenty-four) months thereafter on the basis that You hereby expressly agree to this term.
  - 6.2 Notwithstanding the provisions of 6.1, unless the Client is a juristic person (body corporate, partnership or trust) as defined in the Act, the Client may terminate this Agreement on 20 (twenty) business days' written notice to Active Eye. Notice must be given to Active Eye via info@activeeye.co.za which must be acknowledged in writing by Active Eye prior to termination taking effect.
  - 6.3 In the event of the Client so terminating the Agreement, Active Eye will be entitled to charge 3 (three) months' cancellation fee for the termination of this Agreement together with the de-installation fee as set out in the Schedule. The cancellation fee will increase on each anniversary of the Signature Date by the CPI percentage published by Statistics South Africa. The Client shall be responsible to contact Active Eye at info@activeeye.co.za in order to arrange a suitable date for the de-installation and collection of the Goods. If the Goods are not returned then Active Eye reserves the right to charge for the replacement cost of the Goods. If the Client removes the Goods and returns them to Active Eye in good working order then no de-installation or collection fees shall be due to Active Eye.
  - 6.4 Active Eye will furnish the Client, unless the Client is a juristic person (body corporate, partnership or trust) as defined in the Act, with 2 (two) months' written notice of the impending expiry of this Agreement setting out an option to renew this Agreement and the consequences thereof. The Client acknowledges that unless written notice is received by Active Eye, not less than 20 (twenty) business days before the expiration of this Agreement, confirming or declining the expiry of this Agreement, this Agreement will automatically be renewed on a month to month basis.
  - 6.5 In the event of the Client relocating, the Goods and Services may be transferred to, and rendered in respect of, the Client's new premises. The Client will cover the cost involved in the transfer of the Goods.
  - 6.6 This Agreement may however be terminated at any time prior to the expiry thereof, by mutual agreement in writing, signed by the Client as well as a director or a duly authorized person appointed by Active Eye.
7. PAYMENT
  - 7.1 Unless otherwise stipulated in this Agreement, all amounts due in terms of this Agreement will become due and payable on the date of the invoice in respect of the Goods and/or Services concerned.
  - 7.2 Active Eye may charge interest on any amount not paid on the due date, at the prime overdraft lending rate charged by Active Eye's bankers, calculated from the date on which payment is due until the date of payment, both days inclusive, without prejudice to any other rights which Active Eye may have arising from such default.
  - 7.3 Subject to any Law to the contrary, You will not have the right to set off, deduct, defer, adjust or withhold any payment due to Us in terms of or arising out of the Agreement.
8. OWNERSHIP
  - 8.1 All risk in the Goods will pass to You on the Delivery Date.
  - 8.2 In the event that you have chosen to purchase the Goods, ownership will pass on full payment of the Purchase Price. In the event that You have chosen to rent the Goods on a rent-to-own basis, ownership will pass on the 25<sup>th</sup> month after the Signature Date.
  - 8.3 If you have elected to rent the Goods, ownership will remain vested in Active Eye indefinitely, subject to paragraph 4 of the Schedule.
9. INSTALLATION
 

Unless specifically agreed upon in writing by Active Eye and the Client, no structural or electrical work or the chasing of walls will be undertaken. It is also agreed that any repairs necessitated by structural work, including plaster, paving and painting, will be the responsibility of the Client.
10. WARRANTIES
  - 10.1 We draw Your attention to:
    - 10.1.1 The manufacturer's warranty in relation to the Goods, in terms of which you may be entitled to have the Goods, or any part thereof, repaired or replaced subject to the terms of the warranty if the period of the warranty has not expired and you are not in breach of the terms thereof; and
    - 10.1.2 The implied warranty of quality in terms of section 56 of the Act, in terms of which, if the Goods fail to meet the requirements and standards contemplated in section 55 of the Act, you may be entitled to return the Goods to Us, without penalty and at Our risk and expense, and to direct us to repair or replace any failed, unsafe or defective Goods; or refund to You the price paid by You for the Goods until the date of de-installation.
  - 10.2 The rights referred to in this clause 10 will not apply in the following situations:
    - 10.2.1 Where the Goods have been altered contrary to the instructions, tampered with, misused or abused or used for a purpose for which they were not intended;
    - 10.2.2 The instructions have not been followed (as contained in the instruction manual received with the Goods); or
    - 10.2.3 Where the Goods are in a particular condition on the Delivery Date and the Client has been expressly informed thereof and the Client has expressly agreed to accept the Goods in that condition.
  - 10.3 If the Client has a complaint and wishes to return the Goods pursuant to the provisions of this clause, please contact Us via info@activeeye.co.za.
  - 10.4 Active Eye shall have no liability or obligation to the Client with respect to any Goods which have been subjected to abuse, misuse, improper use, improper testing, negligence, accident, alteration, tampering or faulty repair, or as a result of ordinary wear and tear at the hands of the Client and the Client hereby indemnifies Active Eye accordingly.
  - 10.5 In the event of the Client exercising its rights to return the Goods pursuant to the provisions of this clause 10, Active Eye shall still be entitled to charge a reasonable fee for use of those Goods in the meanwhile in terms of its rights to do so as set out in the Act.
11. INSPECTION
  - 11.1 You are entitled to inspect the Goods.
  - 11.2 You may inspect the Goods by way of a detailed representation on www.activeeye.co.za.
  - 11.3 Such inspection will be "inspection for purposes of the Act" and unless the Goods delivered to You do not correspond to the visual images or samples made available to You, this will be inspection of the Goods in terms of Your rights in the Act.
  - 11.4 To the extent that You have been expressly informed by Us that particular Goods are offered in a specific condition and it is expressly agreed to accept the Goods in that condition, or You knowingly act in a manner consistent with accepting the Goods in that condition, then You will be deemed to have accepted the Goods in that condition and shall have no claim against Us in respect of the nature and quality of the Goods.
  - 11.5 In the event that You have altered the Goods contrary to the instructions after they have left our control, You can no longer claim against Us in respect of any Loss that arises in respect of the Goods, their sale or use.
12. COOLING-OFF PERIOD
  - 12.1 Where this Agreement was entered into by direct marketing or where a Client was personally approached by Active Eye, the Client will have 5 (five) business days from the Signature Date to cancel this Agreement. Returned Goods will be refunded at the price set out in the Equipment Schedule, provided that the Goods are still in their original condition.
13. INSURANCE
 

We are not responsible for getting any insurance in respect of the Goods and should You wish to acquire such insurance, You must do so yourself.
14. LIABILITY
  - 14.1 Active Eye will not be liable for any delay in rendering any, or the rendering of poor quality, Services pursuant to this Agreement or any failure to render such Services as a result of any strike, protests, flood, riot, boycott, fire, explosion, traffic congestion and road closures, heavy rain storms, electrical blackouts, high signal volumes, software flaws/or faults, act of God or other circumstances beyond the control of Active Eye.
  - 14.2 The Client will defend, indemnify and hold harmless Active Eye against all Loss arising from:
    - 14.2.1 The nature of the Goods, except and only to the extent that the Loss is caused by Active Eye's gross negligence;
    - 14.2.2 Any breach of obligation by the Client;
    - 14.2.3 The negligence, in any degree, of the Client.
  - 14.3 Notwithstanding anything to the contrary contained in the Agreement, Active Eye will not be held responsible for any consequential damage or loss arising by reason of any defect or fault in the Goods from any cause whatsoever.
  - 14.4 To the extent that Active Eye may be liable pursuant to the provisions of the Act in respect of the provision of the Services or Goods, such liability shall be limited to a maximum of 10% of the charges and fees due and/or still to fall due under the Agreement for that year in respect of which the liability arises.
  - 14.5 Active Eye will not be liable for any damage to the premises, which may be caused by the installation, inspection, checking, re-setting, maintenance, repair or removal of the Goods and/or checking of the premises. However, it agrees to use all reasonable care in installing, inspecting, checking or re-setting, maintaining, repairing or removing the Goods and checking the premises as the case may be.
  - 14.6 In the event of the Goods being installed by a third party, Active Eye cannot be held responsible for maintenance or repairs resulting from fault in pre-existing third party equipment owned by the Client which does not form part of the Goods.
15. OBLIGATIONS OF THE CLIENT IN RESPECT OF THE GOODS
 

Insofar as the Goods is concerned, it is Your responsibility to:

  - 15.1 Ensure that the Goods are not tampered with and are kept in good working order and are housed under suitable conditions;
  - 15.2 Not alter or modify the Goods or allow any alteration or modification in respect thereof by any third party;
  - 15.3 Operate the Goods in accordance with the instructions given by Active Eye;
  - 15.4 Not allow the Goods to become subject to any lien, hypothec, pledge or any other encumbrance or judicial attachment, nor let, part with possession of, nor abandon same, nor offer nor attempt to do any of the foregoing. Should the Goods become subject to any lien, hypothec, pledge or any other encumbrance, You will immediately procure the release thereof and indemnify Us accordingly. This sub-clause will not apply to an outright purchase where the Purchase Price has been paid in full;
  - 15.5 Be responsible to ensure that the Goods are operational;
  - 15.6 Inform Active Eye of any faults or problems in or in respect of the Goods as soon as possible after any such fault or problem is discovered;
  - 15.7 Bear all costs associated with the supply of data and electricity, and reticulation thereof, to any of the Goods;
  - 15.8 Keep, at Your expense, the premises in a condition which is conducive to the proper operation of the Goods;
  - 15.9 Keep the Goods, at Your expense, in good working order;
  - 15.10 You understand and agree that failure by You to comply with the provisions of this clause 15 will result in You losing any claim against Active Eye in respect of the quality and durability of the Goods.
16. SERVICES
  - 16.1 The Client understands and agrees that Active Eye may have to and will be entitled to suspend the Services:
    - 16.1.1 During any technical failure, modification or maintenance of Active Eye's systems; or
    - 16.1.2 If the Client fails to comply with any of the Terms and Conditions and fails to remedy such breach within 20 (twenty) days of receiving notice thereof.
  - 16.2 The Client acknowledges that the Service quality and coverage available will be limited to that provided by the Client's co-operation and from time to time the provision of Services may be adversely affected by external factors and that Active Eye unilaterally does not have control over the provision thereof.
  - 16.3 The Client agrees that it will:
    - 16.3.1 Not use the Services for any improper or unlawful purpose; and
    - 16.3.2 Comply with all relevant Law and regulations and all instructions issued by Active Eye regarding the use of the Goods and Services.
17. BRIEF DESCRIPTION OF SERVICES
 

Installation & Swap-Out

  - 17.1 Active Eye will render an installation and swap-out service when requested to do so by the Client, in accordance with the Service Schedule. This service is available the Clients on both the rent and rent-to-own contract options, but not the once-off purchase option. The installation-aspect includes four call-outs during the 24 months, while the swap-out leg covers the cost of replacement of any faulty or malfunctioning Goods (or part thereof), or Goods (or part thereof) lost, damaged or destroyed as a result of an accident or misfortune. We reserve the right to determine the means of assessing whether loss, damage or destruction, as the case may be, was brought about by an accident or misfortune.
  - 17.2 Active Eye will render a once-off installation service when requested to do so by the Client, in accordance with the Service Schedule. This service is available to Clients on all rental and purchase options. The installation covers the cost of travelling to and from the premises at which the Goods are to be installed and carrying out the installation.
  - 17.3 Active Eye will provide call-out services when requested to do so by the Client, in accordance

- with the Service Schedule. This service is available to Clients on all rental and purchase options. Depending on the nature of the call-out, the service may include travelling to and from Your premises, examining and/or testing the Goods in respect of which You called for assistance, and/or effecting the necessary changes, repairs, alterations or replacements.
- 17.4. Only Active Eye, its sub-contractors or agents may attend to such changes, repairs, alterations or replacement of the Goods. In the event that the Client attends to such repair or replacement himself or through an unauthorised party, the Client indemnifies Active Eye with regard to any defect, hazard or failure that may occur as a result thereof.
- 17.5. In the event that Active Eye attends to such a change, repair, alteration or replacement and the Goods suffer a further defect, hazard or failure, then the Client may lodge a written claim with Active Eye and return such Goods within 3 (three) months after it has been repaired for a refund or exchange.
- 17.6. Any of the aforesaid installations, swop-outs, repairs or replacements will be effected by Active Eye during normal business hours i.e. 08:00 to 17:00 on weekdays, excluding Saturdays, Sundays and public holidays. In the event of any such work being undertaken outside the normal business hours, the Client will be responsible for payment of a reasonable additional cost.
- 17.7. The Client agrees that the cost of any additional parts, not forming part of the Goods, that may be required to give effect to any of the abovementioned installations, swop-outs, replacements or repairs, falls beyond the costing referred to in the Schedule, and that the Client will accordingly be invoiced and liable therefor.
18. **BREACH**
- 18.1. In the event that You do not comply with Your obligations under this Agreement and You do not correct your failure to comply after receiving a notice from Active Eye requesting You to comply within 20 (twenty) business days, then Active Eye may in addition to any other remedies that it may have in terms of the Agreement or in common law:
- 18.2. Immediately terminate this Agreement without notice and:
- 18.2.1. Demand that the Client returns the Goods to Active Eye's premises with immediate effect;
- 18.2.2. Retain all payments made by the Client in terms of this Agreement;
- 18.2.3. Claim the full outstanding sum of the Agreement, comprised of the charges, other fees and/or costs due or still to fall due under the Agreement; and/or
- 18.2.4. Institute a claim for damages against the Lessee.
19. **ENFORCEMENT**
- If You default in Your obligations under this Agreement, You will be liable for collection costs incurred by Us in exercising Our rights arising out of the breach of Your obligations in terms hereof. This includes tracing fees, legal costs on the attorney and own client scale, and collection commission.
20. **DISPUTES OR COMPLAINTS**
- 20.1. In the event of a dispute or a complaint in respect of the Goods or Services, You should first refer the matter to Us. A dispute can be lodged with Use via any of the below options:
- 20.2. In writing, delivered:
- 20.2.1. By hand, to our business address;
- 20.2.2. By post, to Active Eye's PO Box address;
- 20.2.3. Via email, at [info@activeeye.co.za](mailto:info@activeeye.co.za).
- 20.3. Telephonically, by contacting the Active Eye local branch as set out in the Schedule.
- 20.4. You must ensure that You receive a formal acknowledgment notification.
- 20.5. In the unlikely event that We cannot resolve your complaint within 20 (twenty) business days, You will receive a letter of resolution/conclusion on Our position or an indication when We expect to reach such a resolution.
- 20.6. If we are not able to resolve Your dispute or complaint, the matter may be referred to an independent conciliation, mediation or arbitration.
- 20.7. If you are not entirely satisfied with the resolution/conclusion, You are invited to take the matter further and contact the applicable regulatory body on the contact details below:  
National Consumer Commission: 0860 266 786  
National Consumer Tribunal: 012 663 5615
21. **CERTIFICATE OF INDEBTEDNESS**
- A certificate signed by a manager of Active Eye (proof of his/her appointment or position not necessary) will be sufficient proof of any amount owed by the Client to Active Eye in terms of the Agreement, for purposes of obtaining judgment against it – including provisional sentence and summary judgment.
22. **AUTHORITY**
- In the event of the Client being a juristic person, any natural person signing on behalf of such a juristic person hereby warrants his/her authority to sign this Agreement, it being within the scope of his/her powers, objects and authority.
23. **PERSONAL INFORMATION**
- 23.1. We are in possession of information that identifies You ("Your Personal Information") to:
- 23.1.1. Verify Your identity and accuracy and completeness of the information that You to provide Us;
- 23.1.2. Open, administer and service this Agreement;
- 23.1.3. Inform You of any new aspects of the Services or Goods or services and/or goods provided by our affiliates;
- 23.1.4. To develop and improve our products and use in statistical analysis.
- 23.2. We will keep your Personal Information confidential and only give it to others for the above purposes, including:
- 23.2.1. To our agents and subcontractors, acting for Us, to use for the purpose of operating Our business and obtaining payment;
- 23.2.2. To financial institutions or payment collection agencies for purposes of payment collections; and
- 23.3. Your Personal Information may also be used for other purposes required by any relevant Law.
- 23.4. In terms of the Act and section 45 of the Electronic Communications and Transactions Act, 25 of 2002, You understand that You have the option to opt out of any mailing list maintained by Active Eye for commercial and marketing communications.
- 23.5. You authorise Us, subject to any applicable Law, to access from credit bureaux your personal information concerning financial risk and payment habits for purposes of fraud prevention and debtor tracing, and to disclose information regarding your payment profile to such credit bureaux.
24. **AMENDMENTS TO THE TERMS AND CONDITIONS**
- 24.1. We have in the drafting of this Agreement used Our best endeavours to comply with applicable Laws, including without limitation, the Act. To the extent that this Agreement may require further amendment in order to comply with the Act, by Your signature hereto You agree to such amendment which will be set out in a schedule to these Terms and Conditions to the extent applicable.
- 24.2. The amendments will be effected from the date of notice of amendment or the monthly statement setting out the amendments. Any amendments to the Terms and Conditions will be set out in your monthly invoice or by way of notice of amendment.
25. **CONTACT DETAILS**
- 25.1. Any contact details You give telephonically, in writing or otherwise as part of the Schedule, for all purposes, will be regarded as the legal address where notices and statements can be delivered to You. Your contact details include cellular phone number, physical address, employment address, email address and home telephone numbers.
- 25.2. You may change Your contact details by delivering to Us written notice of the new contact details by hand, registered mail, fax or electronic mail to Active Eye's offices. It is the responsibility of the Client to verify with Active Eye that such notice has been received.
- 25.3. We choose the address in paragraph 1 of the Schedule as Our address for legal and other notices.
- 25.4. Any notice to a Party:
- 25.4.1. Sent by registered post shall be deemed to have been received on the fifth business day after posting (unless the contrary is proved);
- 25.4.2. Delivered by hand, shall be deemed to have been received on the day of delivery; or
- 25.4.3. Sent by email, shall be deemed to have been received on the date of dispatch (unless the contrary is proved).
- 25.5. You agree that notwithstanding anything to the contrary herein contained, a written notice of communication actually received by You will be adequate written notice or communication to You notwithstanding that it was not sent to or delivered at Your chosen address.
26. **YOUR UNDERTAKINGS**
- By signing this Agreement, You:
- 26.1. Accept all of the terms and conditions of the Agreement;
- 26.2. Acknowledge that We are relying on the information that You have given Us and that We will not be liable in respect of any errors or omissions therein;
- 26.3. Acknowledge that You understand Your rights and obligations under the Agreement;
- 26.4. Agree to inform Us immediately by written notice if You are placed under administration order, debt review, sequestration, business rescue or other form of insolvency;
27. **GENERAL**
- 27.1. We reserve the right to cede or transfer Our rights and obligations in respect of the Agreement to a subsidiary company or associate company or any third party. You may not cede or encumber any of Your rights nor delegate any of Your obligations under this Agreement.
- 27.2. This Agreement is the complete agreement between You and Us, and there are no additional unspoken or implied terms or conditions, and no variation, amendment, extension of time, waiver of rights, relaxation or termination of any provisions contained in this Agreement will in any way be of force or constitute a basis to rely on an estoppel unless agreed to in writing by the Parties.
- 27.3. In the event of any one or more of the provisions of this Agreement being unenforceable then such provisions shall be severed from the remaining provisions of this Agreement which shall in no way be affected and shall remain in full force and effect.
- 27.4. No indulgence which We may grant to You shall constitute a waiver or novation of any of Our past or future rights.
- 27.5. You agree that an electronically scanned and stored version of the Agreement will constitute sufficient evidence of its content and signature by You and Active Eye.
- 27.6. This Agreement shall be governed by the laws of the Republic of South Africa.