

## CONFIDENTIALITY AND NON-DISCLOSURE AGREEMENT

entered by and between

| SYNAQ (PTY) LIMITED  |  |
|----------------------|--|
| Registration number: |  |
| Physical address:    |  |
| Postal address:      |  |
| Telephone number:    |  |
| Email address:       |  |

and

| [NAME]                         |  |
|--------------------------------|--|
| ID/Entity registration number: |  |
| Physical address:              |  |
| Postal address:                |  |
| Telephone number:              |  |
| Email address:                 |  |

|                   |            |
|-------------------|------------|
| Commencement Date | [Add Date] |
|-------------------|------------|

## RECORDAL

**WHEREAS** the Parties are, or desirous of, entering into a commercial Relationship with one another;

**WHEREAS** the Parties have disclosed or intend to disclose Confidential Information between each other in terms of the prospective relationship.

**AND WHEREAS** the Parties have a proprietary interest in its Confidential Information that it wants to share and is entitled and wish to protect and to preserve their respective Confidential Information by means of the undertakings provided for in this Agreement;

**AND WHEREAS** unauthorised disclosure and/or use of the Disclosing Party's Confidential Information is likely to cause the Disclosing Party to suffer, amongst other things, loss of goodwill, damages and material financial loss;

**NOW THEREFORE** the Parties agree that any dealings between them shall be subject to the terms set out below in this Agreement.

## 1. DEFINITIONS AND INTERPRETATION

In this Agreement, unless inconsistent with or otherwise indicated by the context, the words and expressions set forth below shall bear the following meanings and similar expressions shall bear corresponding meanings –

- 1.1. **"Affiliate"** means, with respect to any entity, any other entity which:
  - 1.1.1. is a subsidiary or a holding company or a subsidiary of the holding company of such entity. In regard to this definition the terms **"subsidiary"** and **"holding company"** shall have the meaning assigned thereto in section 1 of the Companies Act, provided that they shall also include any foreign entity which, had it been registered in terms of the Companies Act, would fall within the ambit of such term; and/or
  - 1.1.2. controls, is controlled by or is under the common control of such entity;
- 1.2. **"AFSA"** means the Arbitration Foundation of Southern Africa;
- 1.3. **"Agreement"** means this document and all annexures or schedules hereto or added hereto from time to time;
- 1.4. **"Business Day"** means any day other than a Saturday, Sunday or an official public holiday within the Republic of South Africa;
- 1.5. **"Commencement Date"** means the date as per the cover page;
- 1.6. **"Companies Act"** means the Companies Act 71 of 2008 (as amended);
- 1.7. **"Confidential Information"** means information of a confidential or proprietary nature in whatever form communicated before or after Signature Date, and without limiting the generality of the term, shall include:
  - 1.7.1. technical, scientific, commercial, financial or market information, know-how or trade secrets; data concerning business relationships, processes, internal operations, services, personnel; plans, designs, drawings, notes, studies, analysis, reports, functional and technical requirements and specifications;
  - 1.7.2. information relating to strategic objectives and planning for existing and future business plans and information technology needs;
  - 1.7.3. Intellectual Property that is proprietary to the Disclosing Party or that is proprietary to a third party and in respect of which the Disclosing Party has right of use or possession;
  - 1.7.4. agreements to which the Disclosing Party is the party to and its rights, obligations and performance thereof;
  - 1.7.5. all other information in whatever form, whether or not subject to or protected by common law or statutory laws relating to Intellectual Property;
  - 1.7.6. information which is not readily available in the ordinary course of business to the public or a competitor of either Party and/or its Interests;
  - 1.7.7. all Personal Information of the Disclosing Party, its Employees and customers;

Non-Disclosure Agreement

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- 1.7.8. information regarding the relationship, the fact that discussions are occurring concerning the relationship, any of the terms and conditions applicable to or being discussed by the Parties in relation to the relationship (including negotiations) or the existence of this Agreement; and
- 1.7.9. information which by its nature or content is identifiable as confidential and/or proprietary to the Disclosing Party and/or any third party in relation to or arising out of the relationship, or which although not directly related to the relationship is nevertheless disclosed as a result of or in connection with the Parties' discussions of the relationship.
- 1.8. "**Disclosing Party**" means either of the Parties to this Agreement or their respective Representatives or any of their Affiliates that discloses Confidential Information to the other part as contemplated by this Agreement;
- 1.9. "**ECT Act**" means the Electronic Communications and Transactions Act 25 of 2002 (as amended);
- 1.10. "**Employees**" means natural or legal person in the employment of the Receiving Party and/or natural or legal person who perform or will perform services to the Receiving Party on a continuing bases, including independent contractors, consultants and service providers;
- 1.11. "**Intellectual Property**" means (without limitation) any know-how, methodologies, patents, copyright, (including all copyright in any designs and computer programs), registered design, trade mark, service marks, designs, design rights, source codes, inventions and trade secrets, and other intellectual property rights and rights of a similar character whether registered or capable of registration and all applications and rights to apply for the protection of any of the same anywhere in the world or other industrial or intellectual property rights, whether registered or not and whether or not capable of being registered, and any application for any of the aforementioned;
- 1.12. "**Interest/s**" means the Disclosing Party's Affiliates and any other Person, joint venture, partnership, association, body corporate, trust or other entity in respect of which the Disclosing Party is a member, has an equity interest and/or any other right of interest to share in the profits or income;
- 1.13. "**Material**" means any direct or indirect expression of thought or of an idea or of a combination in material form, any direct or indirect artistic or aesthetic expression in material form or any data in material form;
- 1.14. "**PAI Act**" means the Promotion of Access to Information Act 2 of 2000 (as amended);
- 1.15. "**Parties**" means the Parties as per the cover page of this Agreement and "Party" shall mean any one of them as the context may indicate;
- 1.16. "**Personal Information**" means personal information as defined in the POPI Act;
- 1.17. "**POPI Act**" means the Protection of Personal Information Act 4 of 2013;
- 1.18. "**Processing**" means processing as defined under the POPI Act;
- 1.19. "**Purpose**" means the purposes as agreed to between the Parties under this Agreement or the Relationship;
- 1.20. "**Receiving Party**" means the Party receiving the Confidential Information;
- 1.21. "**Relationship**" means the possible business relationship to be explored, evaluated and promoted between the Parties and any subsequent agreement between the Parties or such nominee;
- 1.22. "**Representative(s)**" means any management company, directors, officers, Employees, contractors, agents and professional advisors (including, without limitation, attorneys, accountants, professional consultants, financial and other advisors) of the Parties, as the context may require;
- 1.23. "**Signature Date**" means the date on which this Agreement is signed by the Party last in signing.
- 1.24. The clause headings are for reference purposes only and shall not be used in the interpretation thereof;
- 1.25. Unless the context clearly indicates the contrary:
- 1.25.1. any reference to a gender includes the other;

- 1.25.2. any number of days prescribed in this Agreement shall be calculated excluding the first and including the last day, unless the last day is not a Business Day, in which event the last day shall be the next day which is a Business Day;
- 1.25.3. any reference to the singular includes the plural and vice versa; and
- 1.25.4. reference to a “person” shall be construed as including references to an individual, firm, company, corporation, partnership, association, unincorporated body of persons, trust, a State or any Governmental Authority or any other entity whether in an individual, financing or other capacity and to such person’s permitted successors.
- 1.26. If any provision in a definition is a substantive provision, conferring rights or imposing obligations on any part, notwithstanding that such provision is only contained in the relevant definition, effect shall be given thereto as if such provision is in body of the Agreement.
- 1.27. Expiration or termination of this Agreement shall not affect such of its provisions as expressly provide that they shall continue to operate thereafter or which of necessity must continue to have effect thereafter notwithstanding that the clauses themselves do not expressly provide for this.
- 1.28. In this Agreement the rule of construction that a contract shall be interpreted against the Party responsible for the drafting or preparation of the contract, shall not apply.
- 1.29. The *eiusdem generis* rule shall not apply and whenever a provision is followed by the word “including” and specific examples, such examples shall not be construed as to limit the ambit of the provision concerned.
- 1.30. Any communication that is required to be “in writing/written” shall include a communication which is written or produced by any substitute for writing and shall include printing, typewriting, facsimile, text message, electronic mail or any form of electronic communication or other process including WhatsApp, Skype and/or Slack communications.

## **2. RELATIONSHIP BETWEEN PARTIES**

- 2.1. For the avoidance of doubt, the Parties record and agree that, pursuant to the implementation of this Agreement, the Parties shall at all time act as independent businesses.
- 2.2. Nothing in this Agreement shall constitute an employer-employee relationship or an agency or a partnership in any shape or form between the Parties nor authorise either of the Parties to incur any liability on behalf of the other of them, save to the extent expressly provided for herein or agreed to subsequent to signing of this Agreement.

## **3. RESTRICTIONS ON DISCLOSURE AND USE OF INFORMATION**

- 3.1. The Receiving Party shall not disclose the Confidential Information to any person whomsoever other than the Representatives who are directly involved in carrying out the Receiving Party’s obligations in terms of this Agreement and then only on a need-to-know basis. Before revealing any Confidential Information to them, the Receiving Party shall procure that Representatives are made aware of the confidential nature of the Confidential Information being made available to them and that all Representatives are bound by similar undertakings of confidentiality. The Receiving Party shall not disclose the Confidential Information to any person, save its Representatives involved, in the Relationship and who have a need to know the Confidential Information and only to the extent necessary for the Relationship.
- 3.2. The Receiving Party agrees and undertakes in favour of the Disclosing Party that at all times during and after their engagement, including during contract negotiations, fulfilling any contractual duties to the other Party, client engagement, presentation, or negotiation:
  - 3.2.1. not to disclose the Confidential Information to any third party for any reason or purpose whatsoever without the prior written consent of the Disclosing Party, save in accordance with the provisions of this Agreement;

- 3.2.2. not to utilise, employ, exploit or any other manner whatsoever use the Confidential Information disclosed pursuant to the provisions of this Agreement for any purposes whatsoever other than strictly in relation to the Relationship, without the prior written permission of the Disclosing Party, and if the Confidential Information is proprietary to a third party, it shall also be incumbent upon the Receiving Party to obtain the prior written consent of such third party;
  - 3.2.3. not to (and will not attempt to) decompile, disassemble, reverse engineer, access source code of, modify, improve, create a derivative work of, reconstruct or copy any Intellectual Property contained in or related to the whole or any part of the Confidential Information;
  - 3.2.4. not to use the Confidential Information whether directly or indirectly, for the Receiving Party's benefit or the benefit of any person, other than the Disclosing Party; and
  - 3.2.5. that the unauthorised or unlawful use or disclosure of the Confidential Information may cause irreparable loss, harm and damage to the Disclosing Party.
- 3.3. The Receiving Party may only make such copies of the Confidential Information as are reasonably required for the Relationship and any such copies shall be the property of the Disclosing Party. Any such copies shall be held and possessed by the Receiving Party as the agent for the Disclosing Party.
- 3.4. The Receiving Party shall be responsible for any breach of the terms of this Agreement by any persons (including its Representatives) to whom it discloses Confidential Information of the Disclosing Party, and shall at the Receiving Party's sole expense take all reasonable measures to restrain such persons from prohibiting any unauthorised use of the Disclosing Party's Confidential Information.
- 3.5. For the avoidance of doubt, no provision of this Agreement should be construed in such a way that the Disclosing Party is deemed to have granted its consent to the Receiving Party to disclose the whole or any part of the Confidential Information in the event that the Receiving Party receives a request, for the whole or any part of the Confidential Information in terms of the provisions of the PAI Act.
- 3.6. In the event of the Receiving Party receiving a request from a third party for the disclosure of, and access to, the Confidential Information of the Disclosing Party, the Receiving Party shall, in accordance with the provisions of section 65 of the PAI Act, refuse to disclose and provide such third party with access to the Confidential Information requested.
- 3.7. The Receiving Party acknowledges that the provisions of clause 3.6 above shall not be construed in such a manner as to exclude the applicability of any other ground of refusal contained in the PAI Act which may be applicable in the event that the Receiving Party receives a request for the whole or any part of the Confidential Information in terms of the PAI Act.

#### 4. TITLE

- 4.1. All Confidential Information disclosed by the Disclosing Party to the Receiving Party is:
- 4.1.1. proprietary to the Disclosing Party or where applicable, the relevant third party proprietor; and
  - 4.1.2. not to confer or waive any rights of whatsoever nature in such Confidential Information to the Receiving Party, except as provided herein.
- 4.2. Each Party retains the sole and exclusive ownership of all Intellectual Property rights in and to its Confidential Information and no licence or any other interest in such Confidential Information shall pass to, or be granted to, the other Party in terms of hereof or by reason of the disclosure.

## **5. STANDARD OF CARE**

- 5.1. The Receiving Party agrees to:
- 5.1.1. protect the Confidential Information of the Disclosing Party by using the same standard of care that it applies to safeguard its own proprietary, secret or confidential information and taking all reasonable steps to prevent any unauthorised disclosure of such Confidential Information;
  - 5.1.2. to store and handle the Confidential Information in such a way as to prevent any unauthorised disclosure thereof; and
  - 5.1.3. take all practical steps, both before and after disclosure, to impress upon the Receiving Party's Representatives who are given access to the Confidential Information the secret and confidential nature thereof.
- 5.2. Each party shall ensure that it complies with the requirements of all legislation and regulatory requirements in force from time to time relating to the processing of Personal Information, including without limitation, the Protection of Personal Information Act 4 of 2013.
- 5.3. The Receiving Party shall take reasonable precautions to preserve the integrity of any Confidential information processed by it and to prevent any corruption or loss of such Confidential Information.
- 5.4. If either Party:
- 5.4.1. becomes aware of any unauthorised or unlawful processing of any Confidential Information or that any Confidential Information is lost or destroyed or has become damaged, corrupted or unusable;
  - 5.4.2. becomes aware of any security breach; or
  - 5.4.3. learns or suspects that any security feature has been revealed to or obtained by any unauthorised person, that Party shall, at its own expense, promptly notify the other party and fully co-operate with the other Party to remedy the issue as soon as reasonably practicable.

## **6. RETURN AND/OR DESTRUCTION OF CONFIDENTIAL INFORMATION**

- 6.1. The Disclosing Parties may, at any time by way of written notice to the Receiving Party, request the Receiving Party to return any Material and/or Data in whatever form containing, pertaining to or relating to Confidential Information and, in addition, require the Receiving Party to furnish a written statement (certified as true and correct by a director of the Receiving Party) to the effect that upon such a return, the Receiving Party has not retained in its possession, or under its control, either directly or indirectly, any such Material.
- 6.2. As an alternative to the return of the Material and/or Data contemplated in clause 6.1 above, the Receiving Party shall, at the written request of the Disclosing Party, destroy such Material and/or Data and furnish the Disclosing Parties with a written statement to the effect that all such Material and/or Data has been destroyed.
- 6.3. The Receiving Party shall comply with all requirements of this clause 6, within 7 (seven) Business Days of receipt of any such written request thereof.
- 6.4. The Receiving Party shall, in terms of this clause 6, be responsible for the return or destruction of all Material and/or Data which has been disclosed to any third party (including the Representatives of the Receiving Party) in terms of this Agreement.
- 6.5. The Receiving shall provide the Disclosing Party with a written warranty that it has returned or destroyed all of the Confidential Information and no longer possess any of it.

## **7. EXCLUDED CONFIDENTIAL INFORMATION**

- 7.1. The obligations of the Receiving Party pursuant to the provisions of this Agreement, shall not apply to any Confidential Information that:
- 7.1.1. is known to, or in the possession of the Receiving Party prior to disclosure thereof by the Disclosing Party;

- 7.1.2. is to or has become publicly known, otherwise than as a result of a breach of this Agreement by the Receiving Party;
  - 7.1.3. is developed independently by the Receiving Party in circumstances that do not amount to a breach of the provisions of this Agreement without reference to the Confidential Information of the Disclosing Party;
  - 7.1.4. was received by the Receiving Party from a third party who is entitled to disclose same, free of restrictions and without obligation (whether contractual, legal, fiduciary or otherwise), to the Disclosing Party; or
  - 7.1.5. is disclosed to a third party pursuant to the prior written authorisation from the Disclosing Party.
- 7.2. The Receiving Party may disclose the Disclosing Party's Confidential Information as is required to be disclosed by it in order to satisfy an order of court or to otherwise comply with the provisions of any law or regulation in force at the time provided that, in these circumstances, the Receiving Party shall:
- 7.2.1. inform the Disclosing Party of such disclosure prior to making such disclosure, if reasonably possible, and provide the Disclosing Party with a reasonable opportunity to defend its interests in the Confidential Information;
  - 7.2.2. disclose only that portion of the Confidential Information which is necessary to disclose;
  - 7.2.3. use its reasonable endeavours to protect the confidentiality of such information to the widest extent lawfully possible in the circumstances; and
  - 7.2.4. co-operate with the Disclosing Party if it elects to contest any such disclosure and/or defend its interests in the Confidential Information, and the Disclosing Party undertakes to cover the reasonable costs of the Receiving Party in such circumstances.
- 7.3. The onus shall at all time rest upon the Receiving Party to establish that such information falls within the abovementioned exclusions.
- 7.4. The information disclosed will not be deemed to be within the exclusions listed in clause 7.1 above merely because such information is embraced by more general information in the public domain, or in a Party's possession, and any combination of features will not be deemed to be within the exclusions listed in clause 7.1 above merely because individual features are in the public domain or in a Party's possession.

## **8. DATA PRIVACY AND PROTECTION**

- 8.1. The Parties hereby consent to the Processing of their Personal Information and any other information that a Party may provide to the other Party for all Purposes, subject to the provisions of this Agreement and of the POPI Act.
- 8.2. A Receiving Party may, with the prior written consent of a Disclosing Party, which consent a Disclosing Party may withhold at its discretion, collect Personal Information from and disclose Personal Information to its service providers, including credit bureau (in order to perform credit and background checks), banks (to process transactions), research companies (that assist the Receiving Party to understand market trends), and collection agencies or its attorneys (for the collection of outstanding accounts). Should a Disclosing Party provide such consent to a Receiving Party, the Receiving Party shall ensure that all third parties (including but not limited to the above) have signed an Operators Agreement or such agreement with similar content to this Agreement to ensure the Processing of the Disclosing Party's Personal Information in accordance with the POPI Act.
- 8.3. The Receiving Party may, from time to time, store, transfer and Process Personal Information in and to countries outside of the Republic of South Africa. The Receiving Party shall take all reasonable steps necessary to ensure that any Personal Information transferred outside of the Republic of South Africa is protected and is Processed as required by the POPI Act

and the applicable data protection laws in that country. By submitting its Personal Information to the Receiving Party, the Disclosing Party consents to the transfer, Processing or storage of its Personal Information outside of the Republic of South Africa subject to and in accordance with the POPI Act and the applicable data protection laws in that country and a written agreement between the Receiving Party and such third party in another country that may process the Personal Information.

8.4. The Receiving Party shall:

- 8.4.1. use its best efforts to keep Personal Information confidential and shall not disclose any Personal Information to any other person except as required by law, save to the extent set out herein;
- 8.4.2. utilise reasonable technical and organisational measures in accordance with best industry practice for the purpose of complying with its obligations in terms of clause 8.3;
- 8.4.3. at all times strictly comply with the POPI Act and other applicable laws, regulation or code relating to data protection in South Africa, or other requirements enforced by any relevant industry or self-regulatory body within the Republic of South Africa in compliance with its obligations in terms of this Agreement; and
- 8.4.4. not, at any time copy, compile, collect, collate, Process, mine, store, transfer, alter, delete, interfere with or in any other manner use data for any purpose other than with the express prior written consent of the Disclosing Party and/or the customer.

8.5. The Receiving Party record that all data provided by the Disclosing Party, the Data Subject and/or the customer to the Disclosing Party ("Data"), in whatever form, is the Disclosing Party, Data Subject and/or the customer's Intellectual Property. Accordingly, the Disclosing Party, Data Subject and/or the customer retains all right, title and interest in and to the Data.

8.6. The Disclosing Party acknowledge that it is primarily responsible for complying with any Data protection obligations imposed in terms of any law, including the common law, and shall obtain any consents necessary for the disclosure of Personal Information for the Purposes.

8.7. The Disclosing Party shall separate any Personal Information from any other data provided and shall designate the Personal Information as such before disclosing or otherwise making it available to the Receiving Party.

8.8. The Disclosing Party shall immediately notify the Receiving Party if there is any change to its Personal Information, or to correct any errors in the Disclosing Party's information. The Disclosing Party may at any time request access to, rectification or deletion of, the Personal Information held by Receiving Party in relation to the Disclosing Party.

8.9. The Disclosing Party is entitled to withdraw its consent to the Processing of its Personal Information by giving written notice to the Receiving Party together with the grounds therefor; provided that the lawfulness of the Processing of Personal Information before such withdrawal will not be affected or the withdrawal will not affect any Processing that:

- 8.9.1. is necessary to carry out actions for the conclusion or performance of any agreement between the Receiving Party and the Disclosing Party;
- 8.9.2. complies with an obligation imposed by law on the Receiving Party;
- 8.9.3. protects a legitimate interest of the Disclosing Party; or
- 8.9.4. is necessary for pursuing the legitimate interests of the Receiving Party or a third party to whom the Personal Information is supplied.

8.10. The Disclosing Party is entitled to –

- 8.10.1. object, by written notice to the Receiving Party, to the Processing of its Personal Information on reasonable grounds, unless legislation provides for such Processing; and



8.10.2. lodge a complaint to the Information Regulator, established or to be established in terms of the POPI Act, regarding the alleged unlawful Processing of the Disclosing Party Personal Information by the Receiving Party.

8.11. This clause 8 shall apply only in respect of Personal Information. To the extent that such Personal Information encompasses any information categorized as Confidential Information, the Receiving Party shall be required to obtain the written consent of the Disclosing Party prior to Processing (save for the receipt and storage) any such Personal Information.

## **9. INJUNCTIVE RELIEF**

9.1. Each Party acknowledges that the unauthorised use or disclosure of Disclosing Party's Confidential Information would cause Disclosing Party to incur irreparable harm and significant damages, the degree of which may be difficult to ascertain. Accordingly, each Party agrees that the Disclosing Party will have the right to obtain immediate equitable relief to enjoin any unauthorised use or disclosure of its Confidential Information, in addition to any other rights and remedies that it may have at law or otherwise.

## **10. TERM**

10.1. This Agreement shall commence upon the Commencement Date and shall, unless otherwise agreed to in writing by a duly authorised director of both Parties, remain in force in perpetuity without limit in time ("Term").

10.2. This Agreement will be subject to the terms of any prospective agreement that may be concluded including, without limitation, any provisions applicable to the acquisition or sale of the Confidential Information and any warranties in such agreement.

10.3. The termination of the negotiations and discussions between the Parties and the failure to conclude the prospective agreement shall not release the Parties from the obligations set out in this Agreement.

10.4. This Agreement shall be binding on the Parties for such time as the Confidential Information remains proprietary and confidential to the Disclosing Party and does not become excluded information in terms of clause 7 above.

## **11. NON-CIRCUMVENTION**

11.1. The Receiving Party undertakes, as it hereby does, in favour of the Disclosing Party that it shall abide by business principles regarding non-circumvention and shall not at any time, whether directly or indirectly, endeavour or to actually circumvent the Disclosing Party by dealing or negotiating directly or endeavouring to deal or negotiate directly, or indirectly, with specific suppliers, customers and business contacts or partners whose details are disclosed to the Receiving Party by the Disclosing Party or with whom it might have become acquainted with in the course of the implementation of this Agreement, or to take any action which would result in the Receiving Party dealing with such specific suppliers, customers and business contacts or partners to the exclusion of the Disclosing Party.

11.2. In the event of a circumvention of the Disclosing Party by the Receiving Party, whether direct or indirect, the Disclosing Party shall be entitled, and the Receiving Party shall be obliged, to pay to the Disclosing Party monetary compensation equal to the maximum service or profit the Disclosing Party would have realised from the proposed underlying business transaction, together with any and all expenses, which shall include without limitation, all legal fees (on an attorney and own client scale), as agreed liquidated damages flowing from the breach of these non-circumvention provisions, which measure of damages the Receiving Party accept and confirms to be fair and reasonable.

11.3. The remedy above shall not be deemed to be exclusive or all-inclusive and shall be in addition to any and all other remedies which may be available to the Parties in law or equity.

- 11.4. The provisions of this clause 11 shall be valid and binding on the Parties for a period of 12 (twelve) months following termination of this Agreement for whatever reason.

## **12. INDEMNITY**

- 12.1. The Receiving Party hereby indemnifies and holds the Disclosing Party harmless against any loss, action, expense (including reasonable legal costs and disbursements incurred), claim, prejudice, harm or damage, or whatsoever nature, suffered or sustained by the Disclosing Party pursuant to a breach by the Receiving Party or any of its Representatives to whom disclosure is made in terms of this Agreement.
- 12.2. Without prejudice to any other rights or remedies the Parties may have in law, they acknowledge and agree that damages would not be an adequate remedy for any breach of clause 3 above and the remedies of injunction, specific performances and any other equitable relief are appropriate for any threatened or actual breach of any such provision and no proof of special damages shall be necessary for the enforcement of rights under this clause 12.

## **13. NO WARRANTY OR OFFER**

- 13.1. The Parties shall during the course of their Relationship, provide various Materials and/or Data to one another containing Confidential Information and Intellectual Property. The Disclosing Party makes no representation or gives any warranty relating to the accuracy thereof or that in fact such disclosure is exhaustive. The Disclosing Party does not provide any warranty that the Materials and/or Data shall be fault free or that same shall not contain any defects of whatsoever nature. The Receiving Party shall have no claim nor shall the Disclosing Party be liable to the Receiving Party for any damages and/or losses arising from the use of Disclosing Party's Confidential Information or any inaccuracies faults or defects therein.
- 13.2. This Agreement and any Confidential Information made available during the Relationship does not, and will not, constitute an offer (or acceptance) of any kind by either Party in relation to the Relationship or any commitment by either Party.

## **14. NOTICES AND DOMICILIA**

- 14.1. The Parties choose as their *domicilium citandi et executandi* their respective addresses set out in this clause 14 for all purposes arising out of or in connection with this Agreement, at which addresses all the processes and notices arising out of or in connection with this Agreement, its breach or termination, may validly be served upon or delivered to the Parties.
- 14.2. For the purposes of this Agreement, the Parties' respective addresses shall be as per the cover page or at such other address in the Republic of South Africa of which the Party concerned may notify the others in writing provided that no street address mentioned in this sub-clause shall be changed to a post office box or poste restante. Such change of address will be effective 5 (five) Business Days after receipt of the notice of the change.
- 14.3. Any notice given in terms of this Agreement shall be in writing and shall –
- 14.3.1. if delivered by hand, be deemed to have been duly received by the addressee on the 1st (first) Business Day following the date of delivery;
  - 14.3.2. if delivered by courier service, be deemed to have been duly received by the addressee on the 1st (first) Business Day following the date of such delivery by the courier service concerned; and
  - 14.3.3. if transmitted by facsimile or email, be deemed to have been duly received by the addressee on the 1st (first) Business Day following the date of despatch.
- 14.4. Notwithstanding anything to the contrary contained in this Agreement, a written notice or communication actually received by one of the Parties from another including by way of facsimile transmission and email shall be adequate written notice or communication to such Party.

## **15. ADVERTISING AND MARKETING**

- 15.1. Neither Party shall make or issue any formal or informal announcement, advertising or statement to the press in connection with this Agreement or the subject matter hereof to any other person without the prior written consent of the other Party.

## **16. NON-SOLICITATION**

- 16.1. Neither Party shall for the duration of this Agreement and a period of 6 (six) months from termination of this Agreement without the other Party's written consent directly or indirectly entice, solicit, engage, approach, appoint, employ, offer to employ or offer to contract any individual who renders to or has rendered services to the other Party during the term of this Agreement, including Employees and independent consultants, unless specifically agreed to beforehand by the other Party, in writing.

## **17. GENERAL**

### **17.1. WHOLE AGREEMENT**

This Agreement contains the whole agreement between the Parties as to the subject matter hereof and no agreements (oral or written), representations or warranties between the Parties other than those set out herein are binding on the Parties.

### **17.2. IMPLEMENTATION**

In the implementation of this Agreement, the Parties undertake to observe the good faith and they warrant in their dealings with each other that they shall neither do anything nor refrain from doing anything which may prejudice or detract from the rights, assets or interests of any other(s) of them.

### **17.3. VARIATION**

No addition to or variation of, consensual cancellation or novation of this Agreement by any means, including but not limited to a data message (as defined in the ECT Act), shall be binding and/or be of any force or effect on the Parties unless reduced to writing and signed by both Parties or by their duly authorised representatives and no waiver of any right of either Party arising from this Agreement or its breach or termination shall be any force or effect unless reduced to writing and signed by the Party waiving its right. For avoidance of doubt, "signed" shall mean a signature executed by hand with a pen and without any electronic process or intervention.

### **17.4. RELAXATION**

No latitude, extension of time or other indulgence which may be given or allowed by either Party or the other in respect of the performance of any obligation or the enforcement of any right arising from this Agreement and no single or partial exercise of any right by either Party shall under any circumstances be construed to be an implied consent by such Party or operate as a waiver or novation of, or otherwise effect any of that Party's rights in terms of or arising from this Agreement or estop such Party from enforcing, at any time without notice, strict and punctual compliance with each and every provision or term hereof.

### **17.5. GOVERNING LAW AND JURISDICTION**

This Agreement shall be governed by and construed and interpreted in accordance with the laws of the Republic of South Africa.

The Parties to this Agreement consent and submit to the jurisdiction of the High Court of the Republic of South Africa, Western Cape Division (Cape Town) in any dispute arising from or in connection with this Agreement.

### **17.6. SEVERABILITY**

In the event of any one or more of the provisions of this Agreement being found by any court of competent jurisdiction to be invalid, defective, unlawful or unenforceable, such provision shall not invalidate the remaining provisions of this Agreement.

The undertakings and restraints in this Agreement shall be severable from the contemplated negotiations, discussion and any prospective agreement.

**17.7. CESSION AND DELEGATION**

Neither Party may sell, cede, assign, delegate or in any other way alienate or dispose of any of its rights and obligations under and in terms of this Agreement without the prior written approval of a duly authorised *director of the other Party*.

**18. STIPULATIO ALTERI**

18.1. Each Party acknowledges and agrees that the undertakings and acknowledgements given by it and in terms of this Agreement are stipulations for the benefit of itself and its successors-in-title and assigns, capable of enforcement by each of its successors-in-title and assigns on the basis that the signature hereof by itself constitutes and acceptance of such benefit by each of its successors-in-title and assigns.

18.2. This Agreement shall be binding on and enforceable by the trustees, permitted assigns, liquidators or other legal successors of the Parties as fully and effectually as if they had signed this Agreement in the first instance and reference to any Party shall be deemed to include such Party's trustees, permitted assigns, liquidators and other legal successors, as the case may be.

**19. COUNTERPARTS**

19.1. This Agreement may be executed in several counterparts (including electronic and faxed copies), each of which shall be deemed it to be an original and all of which shall constitute the same Agreement.

**20. COSTS**

20.1. Each Party shall bear any and pay its own costs of or incidental to the negotiation, drafting, preparation and execution of this Agreement.

**I acknowledge that I have read and understood the terms of the confidentiality and non-disclosure agreement and agree to be bound by them.**

Signed at \_\_\_\_\_ on the \_\_\_\_ day of \_\_\_\_\_ 202\_\_.

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**SYNAQ (PTY) LTD**

Full Name:

Capacity:

who warrants that s/he is duly authorised thereto in respect of SYNAQ (PTY) LTD.

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**[INSERT PARTY FULL NAME]**

Full Name:

Capacity:

who warrants that s/he is duly authorised thereto in respect of [NAME OF PARTY] .

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**WITNESS 1**

Full Name:

ID Number:

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**WITNESS 2**

Full Name:

ID Number: