

NON-DISCLOSURE & CONFIDENTIALITY AGREEMENT:

Entered into between:-

of

(hereinafter referred to as the “Discloser”)

And

of

(hereinafter referred to as the “Disclosee”)

WHEREAS the Discloser has created and customized various systems and processes relating to the accounting industry (hereinafter referred to as “the Concept”); and

WHEREAS the Discloser has disclosed or may disclose to the Disclosee certain Confidential Information relating to the Concept. For purposes of this Agreement, “Confidential Information” means, without limitation: -

- i. financial information and business information;
- ii. practice management processes;
- iii. technical, commercial, market information, know-how and trade secrets;
- iv. data concerning processes;

- v. accounting systems and processes;
- vi. information concerning systems, hardware and/or software, defects occurring in such systems, hardware and/or software, or the incidence of such faults or defects;
- vii. information concerned with discoveries, research, developments, methods, processes, procedures, improvements, “know – how” and compilations;
- viii. market research, marketing techniques and plans conducted or drawn up by the Discloser; and any
- ix. human resource processes

howsoever recorded, stored or manifested, whether in oral, written, machine – readable, demonstrative, graphic or other form, which is unpublished, not available to the general public or trade, and which is maintained as confidential and proprietary information by the Discloser for any reason, including, without limitation, regulatory, business, competitive, contractual or customer relations reasons, but excluding information which was in the public domain prior to the date of this Agreement or which becomes part of the public domain after the date of this Agreement without any breach of this Agreement by the Disclosee or information which the Disclosee can show was received by it from a third party without any breach of a confidentiality obligation owed by that third party to the Disclosee, or which was independently developed by the Disclosee without any breach of this Agreement.

NOW THEREFORE the Disclosee agrees and undertakes as follows: -

1. That the Disclosee treats all information which the Discloser disclosed and/or discloses to him/it in connection with the Concept, which is not presently in the public domain, as strictly secret and confidential.
2. That the Disclosee shall not during the existence of this Agreement or at any time thereafter use, disclose or divulge, directly or indirectly, the Confidential Information relating to the Concept to any person, whether in the Disclosee’s employ or not, or any entity who is not part to this Agreement.

3. The Disclosee shall take all such steps as may be reasonably necessary to prevent the Discloser's Confidential Information falling into the hands of unauthorised third parties.
4. Notwithstanding the provisions of paragraph 2, the Discloser's Confidential Information may be disclosed by the Disclosee to its staff, professional advisers, agents and consultants should that be strictly necessary for purpose for which the Confidential Information was disclosed, provided that the Disclosee shall take whatever steps are necessary to procure that such staff, professional advisers, agents and consultants agree to abide by the terms of this Agreement in order to prevent the unauthorised disclosure of the ideas and concepts to third parties.
5. The obligations of confidentiality set out in this Agreement shall not apply to any information pertaining to the Concept that the Disclosee can show:
 - (a) was known to the Disclosee before the information was imparted by the Discloser, as evidenced by written record; or
 - (b) is or hereafter becomes part of the public domain otherwise than by the default of the Disclosee; or
 - (c) is acquired by the Disclosee independently from a third party acting in good faith who has not previously obtained the Confidential Information directly or indirectly under a confidentiality obligation from the Discloser; or
 - (d) is acquired or developed by the Disclosee independently of the Discloser and in circumstances that do not amount to a breach of the provisions of this agreement; or
 - (e) is disclosed by the Disclosee to satisfy an order of a court of competent jurisdiction.
6. The information, which the Discloser discloses to the Disclosee, is for present purposes only to demonstrate the Concept, its workings and functionalities and benefits of implementing the Concept to the Disclosee.
7. The Disclosee undertakes not to use, reproduce, copy, disclose, disseminate, transfer, exploit or in any other manner whatsoever apply the Confidential Information disclosed to it for any purpose whatsoever other than for the purpose for which it was disclosed and otherwise than in accordance with the provisions of this Agreement, save with the prior written consent of the Discloser.
8. The Disclosee will not publish any of the Confidential Information without the prior written approval of the Discloser.

9. The Disclosee hereby acknowledges that the unauthorised disclosure of the Confidential Information to a third party may cause irreparable loss, harm and damage to the Discloser and accordingly the Disclosee indemnifies and holds the Discloser harmless against any loss or damage, of whatever nature, suffered or sustained by the Discloser pursuant to a breach by the Disclosee of the provisions of this agreement.
10. The Disclosee shall promptly disclose to the Discloser all and any improvements and/or developments of the Concept which comes into the possession of the Disclosee, and insofar as such improvements and/or developments are capable of being protected and/or exploited, the Discloser shall be deemed to be the proprietor thereof.
11. All the above improvements and/or developments shall, for the purposes of this agreement, be deemed to form part of the Confidential Information disclosed to the Disclosee.
12. Furthermore, any documentation or records relating to the Discloser's Confidential Information which comes into the Disclosee's possession during the existence of this Agreement or at any time thereafter –
 - (a) shall be deemed to form part of the Discloser's Confidential Information;
 - (b) shall be deemed to be the Discloser's property;
 - (c) shall not be copied, reproduced, published or circulated by the Disclosee;
 - (d) shall be surrendered to the Discloser on demand, and in any event on the termination of this agreement, and the Disclosee shall not retain any extracts therefrom,unless the Discloser otherwise agrees in writing.
13. This Agreement shall remain in force for a period of five years from the signature hereof. In the event that the Parties extend the term by mutual and written agreement, then the provisions hereof shall endure for the whole of the extended period, but at least for a further minimum of period of 12 (twelve) months *mutates mutandis*.
14. In the event of the Agreement coming to an end, the Disclosee undertakes immediately to return to the Discloser all material and information relating to the concept and to maintain the secrecy and confidentiality thereof, until it is in the public domain, and not to utilise the same for any purpose.

- 15. Notwithstanding anything to the contrary herein, the Confidential Information shall remain the property of the Discloser, and the Disclosee shall not acquire the rights of ownership in the Confidential Information, except as expressly set out this Agreement.
- 16. Information which is acquired pursuant to the implementation of this agreement shall be deemed to be Confidential Information and shall be subject to the provisions contained in this clause.
- 17. This agreement constitutes the sole record of the agreement between the parties in regard to the subject matter hereof.
- 18. No party shall be bound by any representation, warranty, undertaking, promise or the like not recorded in this agreement.
- 19. No addition to, variation or consensual cancellation of this agreement shall be of any force or effect unless done in writing and signed by or on behalf of all the parties.
- 20. Any indulgence which the Discloser may show to the Disclosee in terms of or pursuant to the provisions contained in this agreement shall not constitute a waiver of any of the rights of the Discloser.
- 21. The material and procedural law governing this Agreement shall be the Law of the Republic of South Africa.

Thus, done and signed by the Disclosee or on behalf of the Disclosee by the undersigned, who is authorised to do so, on the _____ day of _____ 2022 in the presence of the undersigned witnesses:

Witnesses:

for the Disclosee

Full Name:

1. _____

2. _____

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Thus, done and signed by the Discloser or on behalf of the Discloser by the undersigned, who is authorised to do so, on the _____ day of _____ 2022 in the presence of the undersigned witnesses:

Witnesses:

for the Discloser

Full Name:

1. _____

2. _____