



CONFIDENTIALITY AND RESTRAINT AGREEMENT

Entered into by and between

.....

Registration Number

.....

(Hereinafter referred to as "The Company")

and

.....

Identity Number

.....

(Hereinafter referred to as "the Employee")

1. INTERPRETATION AND GOVERNING LAW

1.1 The clause headings in this Agreement shall not be used in the interpretation hereof.

1.2 Unless the context indicates a contrary indication:

1.2.1 an expression which denotes the singular shall include the plural and vice versa;

1.2.2 the following expressions shall bear the meaning assigned to them below (and cognate expressions shall bear corresponding meanings):

1.2.2.1 "the Confidential Information" shall mean all trade secrets and confidential information of the Company referred to in 5.1.1 (other than the know-how) of which the Employee will have become aware during the employment;

1.2.2.2 "divulge" includes all manner of disclosure;

1.2.2.3 "the employment" means the employment of the Employee by or any subsidiary of the Company whether current or future and any form of employment under the Company and all of its subsidiaries either present or future;

1.2.2.4 "exploit" and "exploitation" include all manner of use or application;

1.2.2.5 "involved" in relation to any competitor means directly or indirectly interested in or engaged in or concerned with or employed by any other business, trade, undertaking or concern, whether as proprietor, partner, director, shareholder, member, employee, consultant, contractor, financier, agent, representative, assistant, trustee or beneficiary or a trust or otherwise, and whether for reward or not;

1.2.2.6 "involvement" has the corresponding meaning;

1.2.2.7 "the know-how" means the know-how, techniques, methods and systems referred to in clause 2.2 read with clause 4.1.1 and includes in any other appropriate context or modifications and development of, and or improvements to the know-how (as herein defined);



- 1.2.2.8 “the parties” means the parties to this agreement, and party means one of them;
- 1.2.2.9 “the republic” means the Republic of South Africa;
- 1.2.2.10 “successors in title and assigns” shall include, without limiting the generality of the foregoing term, any person, firm, business, company, close corporation, trust or other incorporated or unincorporated association or undertaking who or which acquires
 - 1.2.2.10.1A whole or part of the goodwill of the company; or
 - 1.2.2.10.2 By cession the right to enforce the restraints embodied herein;
- 1.2.2.11 “the termination date” means the date on which the employment terminates, for whatever reason
- 1.2.2.12 “Territory” means the Republic;

2. INTRODUCTION

- 2.1 The Company carries on business in the Republic specialising in
- 2.2 In the conduct of its businesses the Company relies substantially upon the use of certain know-how, techniques, methods and systems which have been devised by or for the Company and are its confidential property.
- 2.3 The Company prizes its know-how and considers it vital to the continued success of its business that the know-how be kept secret, especially from competitors and prospective competitors.
- 2.4 The know-how is continually being modified, developed and improved upon in the interest of the business of the Company.
- 2.5 In the course of the Employee’s employment with the Company, he has had, and will continue to have, access to the know-how and its modifications developments and improvements.
- 2.6 In the interest of protecting the secrecy of the know-how and hence the Company’s proprietary interest and its business secrets, it is vital that any employee who has access to the know-how is restrained-
 - 2.6.1 both during the employment and forever thereafter, from divulging the confidential information otherwise than in performance of his/her duties to the Company;
 - 2.6.2 both during the employment and for a specific period after termination thereof, from divulging the know-how otherwise than in performance of his duties to the Company; and
 - 2.6.3 for a specific period after the termination of the employment, from becoming involved in any data warehousing business carried on within the territory;
- 2.7 Prior to his/her appointment as an employee of the Company, the Employee was advised of the terms and conditions of the written standard restraint agreement then in force and his/her employment was made subject to that restraint agreement
- 2.8 In the interests of certainty and uniformity, the parties are desirous of entering into this agreement which will cancel and supersede all prior restraint agreements concluded between them.

3. SCOPE OF THIS AGREEMENT

- 3.1 This agreement is intended to supplement the terms of the employment.



- 3.2 No variation of the terms of the employment and no other agreement which may be entered into between the Company and the Employee shall novate, render invalid or inoperative, give rise to any variation of, or otherwise affect, this agreement or any of its terms, unless the parties expressly agree otherwise in writing;
- 3.3 Without detracting from 3.2, no variation or consensual cancellation of this agreement shall be of force or effect unless reduced to writing and signed by both parties.
- 3.4 This document contains the entire agreement between the parties in respect of the matters with which it deals and supersedes and cancels all prior agreements concluded between the parties in respect of such matters.

4 RESTRAINTS

- 4.1 The Employee acknowledges:
 - 4.1.1 That the know-how relates inter alia to -
 - 4.1.1.1 Technical detail, techniques, designs, patents, copyright, know-how, development, for and under instruction of the Company of computer software and improvements to computer software in which the Company or its customers are interested, methods of operating, business plans, costs and products, pricing and marketing policies;
 - 4.1.1.2 Specially created computer programmes and procedures aimed at a “paperless” operation; the storage of information and statistics on computer- based equipment; management systems, training courses, direct marketing procedures, lead generation, return on investment, measurement and other marketing know-how, the creation of statistical records, methods of publication; financial models; internal control systems, sales techniques and procedures; and statistical data;
 - 4.1.2 That the know-how is and will continue to be in a state of modification, development and improvement from time to time;
 - 4.1.3 That in addition to the know-how, the Company will from time to time have other confidential information and trade secrets including inter alia knowledge of the Company’s strategic plans, the contractual arrangements between the Company and its business associates, the financial details of the Company’s relationships with its business associates, the financial details relating to the Company’s customers, details of the Company’s financial structure and operating results, details of the remuneration paid by the Company to its various employees and their duties, computer print outs, price lists, technical bulletins, information on or concerning customers or potential customers of the Company (whom the Company have not yet contacted, but intend contacting for the purposes of doing business), lists of clients and customers or potential clients or customers, any other information in connection with the Company’s business and or suppliers, customers, subsidiaries or associate businesses which is or may be of value to a competitor or prejudicial to the business of the Company if disclosed; and
 - 4.1.4 that the Employee in the course of his employment had, and will continue to have access to the know-how as well as the confidential information and has been, and will continue to be, trained by the group in its systems, procedures and techniques.
- 4.2 The Employee shall at all times throughout the employment and forever thereafter:
 - 4.2.1 Keep confidential and refrain from divulging the confidential information and every part thereof to anybody and everybody whomsoever, save only to the extent that the performance of the duties of the employment necessitates his acting otherwise; and
 - 4.2.2 Refrain from exploiting the confidential information or causing it to be exploited, in whole or in part, except in the course of the duties of the employment;
- 4.3 Forthwith upon the termination date or at any time should the Company request, the Employee shall deliver to the Company all documents of whatsoever nature and kind made or compiled by or for the Company or by the Employee in the course of his/her employment and which concerns the business and/or affairs of the Company which is in possession or under control of the Employee, his/her agent or representative. Ownership of all such documents shall at all times vest in the Company.



- 4.4 The Employee shall at all times throughout the employment and for the period of 12 (twelve) months immediately following the termination date (howsoever and whenever the employment terminates)
 - 4.4.1 Keep confidential and refrain from divulging the know-how and every part thereof to anybody and everybody whomsoever, save only to the extent that the performance of the duties of the employment necessitate his acting otherwise; and
 - 4.4.2 Refrain from exploiting the know-how or causing it to be exploited except in the course of the duties of the employment.
- 4.5 The Employee furthermore undertakes to the Company that he will not, at any time during the employment and for the period of 12 (twelve) months immediately following the termination date (howsoever and whenever the employment terminates), be or become involved within the field of activity referred to in clause 4.6 carried on anywhere within the territory.
- 4.6 The fields of activity in respect of which the restraint shall apply will be:
 - 4.6.1 ;
 - 4.6.2 The business actively carried on by the Company at the termination date.
- 4.7 The restraint undertakings in 4.5 shall be capable of applying to each province, municipal area or magisterial district within the territory separately and independently of the rest of the territory in all respects as if they had been given in respect of that province, municipal area or magisterial district only.
- 4.8 The Employee undertakes that, for a period of 12 (twelve months) after the termination date, he shall not either for his own account or as representative, or agent for any third party, employ or persuade or employ, induce, encourage or procure any employee within the Company –
 - 4.8.1 To become employed by or interested directly or indirectly in any manner whatsoever in any data warehousing business other than the Company carried on anywhere in the territory; or
 - 4.8.2 To terminate his/her employment with the Company; or
 - 4.8.3 For furnish any unauthorised person with any information or advice acquired by the Employee as a result of his employment by the Company; or
 - 4.8.4 To do anything which, if done by the Employee himself, would constitute a breach of the Employee's obligations under his restraint provision
- 4.9 The Employee acknowledges that the foregoing restraints are fair and reasonable, having regard to the considerations mentioned in this agreement and all other material circumstances.
- 4.10 Each restraint contained in this clause 5 is separate and divisible from every other restraint in the clause and from any other restraint to which the Employee may agree, so that if any one of the restraints is or becomes unenforceable for any reason that restraint will be severable and will not affect the validity of any other restraint contained in this clause or otherwise. Insofar as the restraints go too far to be enforceable, nonetheless the parties agree that the restraints may be enforced to such lesser extent as may be reasonable and shall therefore by interpreted accordingly.

5. DOMICILIUM

5.1 The parties choose their domicilium citandi et executandi of and in connection with this Agreement as follows:

The Company:

The Employee:



5.2 Either party may by written notice to the other party change its aforesaid domicilium citandi et executandi.

SIGNED at on 20

(Signature of or on behalf of company)

Names of Witnesses:

Signature Witnesses:

1

2

(Signature of or on behalf of employee)

Names of Witnesses:

Signature Witnesses:

1

2

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