

**[SOFTWARE AS A SERVICE] RESELLER AGREEMENT**

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**BETWEEN**

<b>SYNAQ (PTY) LIMITED</b>
<b>Registration number:</b> 1966/005897/07
<b>Physical Address:</b> Ballyoaks Office Park, Golden Oak House, 35 Ballyclare Drive, Johannesburg 2021 <b>Tel:</b> 011 262 3632 <b>Fax:</b> 086 637 8868 <b>Email:</b> hello@SYNAQ.com
(Hereinafter referred to as " <b>SYNAQ</b> ")

**AND**

<b>[ADD NAME]</b>
<b>Registration / ID number:</b> <b>[ADD]</b>
<b>Physical Address:</b> <b>[ADD]</b> <b>Tel:</b> <b>[ADD]</b> <b>Email:</b> <b>[ADD]</b>
(Hereinafter referred to as " <b>Reseller</b> ")

**RECITALS:**

- (A) SYNAQ is the proprietor of certain services known as "SYNAQ email" cloud services".
- (B) SYNAQ has agreed to appoint the Reseller as its Reseller to resale/ license such services and its associated documentation in the Territory (as hereinafter defined) on the terms and conditions hereinafter contained.

**NOW IT IS HEREBY AGREED** as follows:

**1. DEFINITIONS AND INTERPRETATIONS**

In this Agreement, unless otherwise specified, the following terms have these meanings:

- 1.1. **"Agreement"** means this document and all s, schedule or appendixes agreed to between the parties and attached hereto from time to time;
- 1.2. **"Business day"** means a day other than a Saturday, Sunday or a public holiday;
- 1.3. **"Client"** means a party introduced by the Reseller to the Services, which may include an End User;
- 1.4. **"Commission"** means the commission as per the SYNAQ Reseller Tier Terms and Conditions;
- 1.5. **"Referral Client"** means a Client that has been referred to SYNAQ by the Reseller and where the Client has concluded the Services Terms and Conditions directly with SYNAQ;
- 1.6. **"Commencement Date"** means the date of contract;
- 1.7. **"Commercially Reasonable Efforts"** means taking such steps and performing in such a manner as a well-managed company would undertake where such company was acting in a determined, prudent and reasonable manner to achieve the particular result for its own benefit;
- 1.8. **"CPI"** means the consumer Price Index as published from time to time by the Department of Statistics South Africa;
- 1.9. **"Data Protection Provisions"** means the provisions under clause 21 and such policies as SYNAQ may from time to time make available to its resellers;
- 1.10. **"Discount"** means the discount that the Reseller shall be entitled to as per the SYNAQ Reseller Tier Terms and Conditions (current rate) against the Price List;
- 1.11. **"End User"** means the natural person that utilised the Services subsequent to authorisation from the Reseller Client or as may be directly made available by the Reseller;
- 1.12. **"Initial Period"** means 12 months;
- 1.13. **"Intellectual property rights"** means patents, trademarks, service marks, registered designs, applications for any of the foregoing, copyright, design rights, know-how, confidential information, trade and business names and any other similar protected rights in any country.
- 1.14. **"Licensee" or "End User"** means a person situated in the Territory or that will utilise the Services in the Territory and who is a party to a Reseller Client Agreement with the Reseller in respect of the Services.
- 1.15. **"Pattern Data"** means non-personally identifiable information, data and reports derived from or compiled through the Services, including but not limited to demographics data, mobility patterns, location data and trend data such as aggregated data and statistics indicating frequency of use and popularity of the Services. For greater certainty, Pattern Data is data that does not identify a specific customer or Authorised User or end user and is data which does not relate to a specific customer's business (including data relating to a specific customer's locations that received the Services).

- 1.16. **"Personal Data"** or **"Personal information"** means personal information as defined under the POPI Act;
- 1.17. **"POPI Act"** means the Protection of Personal information Act of 2013 (as amended);
- 1.18. **"Price List"** means the recommended retail prices for the Services as made available to the Reseller from time to time by SYNAQ as amended as per this Agreement from time to time;
- 1.19. **"Prime Rate"** means the repo rate as determined and published from time to time by the South African Reserve Bank.
- 1.20. **"Referral Reseller"** means a specific legal entity that refers prospective leads or customers to SYNAQ which customers signs directly with SYNAQ for the use of the Services.
- 1.21. **"Reseller Client"** means a person who has a regular and contractual business relationship with the Reseller, more specifically that has been invoiced during the past six (6) months at any given date, for the provision of the services by the Reseller;
- 1.22. **"Reseller Client Agreement"** means the agreement between the Reseller and the Client for purposes of the Services, in the form as SYNAQ may from time to time direct or approve in writing (with reference to the SYNAQ Services Terms and Conditions) and as the same may be amended from time to time.
- 1.23. **"Reseller Tier Terms and Conditions"** means the document that specifies the Commission or Discount, Support Services obligations, payment terms, marketing and training obligations, and other terms relevant to the various Reseller tier groups;
- 1.24. **"Services"** means the SYNAQ services available for resale as presented on the SYNAQ website agreed to between SYNAQ and the reseller from time to time in writing;
- 1.25. **"Services Documentation"** means the operating manuals and other literature provided by SYNAQ to the Reseller from time to time for use by end-users in conjunction with the Services.
- 1.26. **"Service Levels"** means the service levels as per the SYNAQ Support Policy;
- 1.27. **"Software"** means the cloud-based software utilised to enable SYNAQ to provide the Services and make same available to End-Users;
- 1.28. **"Source Materials"** means all logic, logic diagrams, flowcharts, orthographic representations, algorithms, routines, sub-routines, utilities, Pattern data, modules, file structures, coding sheets, coding, source codes listings, functional specifications, program specifications and all other materials and documents necessary to enable a reasonably skilled programmer to maintain, amend and enhance the Software in question without reference to any other person or documentation and whether in eye-readable or machine-readable form.
- 1.29. **"Support Services"** means the support services provided or to be provided by the Reseller in accordance with the Reseller Tier Terms and Conditions pursuant to each Reseller Client Agreement.
- 1.30. **"SYNAQ Support Policy"** means the standard support and maintenance services made available by SYNAQ to Clients and End Users (upon request) as amended from time to time, which shall apply subsequent to Reseller's Support Services obligations as per the Reseller Tier Terms and Conditions;
- 1.31. **"Temporary Access"** means the period as may be agreed to between SYNAQ and the Reseller from time to time with regard to access to the Services for demonstration purposes;
- 1.32. **"Territory"** means the Republic of South Africa"
- 1.33. **"Year"** means any a calendar year of 12 months.

- 1.34. reference to any statute or statutory provision includes a reference to that statute or statutory provision as from time to time amended, extended or re-enacted;
- 1.35. words importing the singular include the plural, words importing any gender include every gender, words importing persons include bodies corporate and unincorporated; and (in each case) vice versa;
- 1.36. the headings to the clauses are for ease of reference only and shall not affect the interpretation or construction of this Agreement.
- 1.37. The rule of interpretation that a written agreement shall be interpreted against the party responsible for the drafting or preparation of that agreement shall not apply;
- 1.38. If any provision in a definition is a substantive provision conferring rights or imposing obligations on any party, notwithstanding that it is only in the definition clause, effect shall be given to it as if it were a substantive provision in the body of the Agreement.

## 2. APPOINTMENT AND GRANT OF RIGHTS

- 2.1. **Appointment:** Subject to the terms and conditions of this Agreement, SYNAQ hereby appoints the Reseller and the Reseller hereby agrees to act as the non-exclusive Reseller of SYNAQ Services to potential customers in the Territory.

## 3. LEGAL RELATIONSHIP

- 3.1. This Agreement does not establish the Reseller as a partner or agent of SYNAQ. Neither party may undertake obligations on behalf of the other or expose the other to liability, except as expressly permitted.
- 3.2. The Reseller may use the title "AUTHORISED SYNAQ RESELLER" in accordance with SYNAQ's policies. Prior to using this title on any materials, the Reseller must submit proof prints and details to SYNAQ for written approval.

## 4. COMMENCEMENT DATE AND DURATION

- 4.1. This Agreement begins on the Commencement Date and lasts for the Initial Period, unless terminated by either Party as outlined in this Agreement.
- 4.2. In the absence of early termination as per clause 14 below, the Agreement shall automatically renew on a month-to-month basis.
- 4.3. The commencement and duration of Services utilised by Clients will be as specified in the Services Terms and Conditions.

## 5. CLIENT CONTRACTUAL ENGAGEMENT

- 5.1. The Reseller must enquire all Clients to agree to SYNAQ's current then Services terms and conditions (the "**Services Terms**") by either:
  - 5.1.1. Referring the Client to SYNAQ (in its Proposal) and allow the Client to conclude the Services Terms and Conditions directly with SYNAQ (acting as referral Reseller ("**Referral Reseller**")); or
  - 5.1.2. Incorporate the Services Terms Conditions into the Reseller's agreement with the Customer in a method approved in advance by SYNAQ and obtain the signature of a duly authorised representative of the Customer on such agreement ("**Reseller Client Agreement**").
- 5.2. The Reseller must inform Clients that each End User can access the Services only after accepting the SYNAQ End User Service Terms / Acceptable Use Policy.
- 5.3. The Reseller shall not negotiate on any aspects of the Services without prior written consent from SYNAQ, including penalty provisions or warranties.

- 5.4. Upon signing the Services Terms or Reseller Client Agreement, SYNAQ will provide necessary credentials for activating and utilizing the Services.
- 5.5. The Reseller agrees to fulfil its obligations under each Reseller Client Agreement and assist SYNAQ in performing under the Services Terms.
- 5.6. If a Client breaches the Services Terms or Reseller Client Agreement, the Reseller must make reasonable efforts to remedy the breach. If unsuccessful, and without prejudice to SYNAQ being entitled to suspend the Services to the Client, the Reseller must terminate the Reseller Client Agreement and recover or destroy any related documentation as permitted.

## **6. SUPPORT AND MAINTENANCE**

- 6.1. The Reseller agrees to provide the Support Services to the Client as per this Agreement.
- 6.2. The Reseller must promptly notify SYNAQ of any errors or defects in the Services or related documentation, providing documented examples. SYNAQ will address these issues according to its Support Policy.
- 6.3. SYNAQ will make reasonable efforts to inform the Reseller in writing about any known bugs or defects and will strive to correct them according to its standard procedures.
- 6.4. While SYNAQ will provide necessary support and maintenance per its Support Policy, it is not obligated to support Clients or End Users directly unless agreed otherwise with the Reseller. The Reseller agrees to assist SYNAQ where it may be required to resolve certain support and maintenance issues.
- 6.5. Upon termination of this Agreement, SYNAQ will make best efforts to ensure continued maintenance and support for those Clients that are utilising the Services until the expiration of the Reseller Client Agreement (see clause 15.5 and 15.7 below).

## **7. RESELLER'S OBLIGATIONS**

The Reseller shall:

- 7.1. Use its best efforts to promote and extend the Services pro-actively throughout the Territory.
- 7.2. Promptly inform SYNAQ of any relevant facts or opinions it may be aware of that may impact the commercial exploitation of the Services, whether advantageous or disadvantageous.
- 7.3. Conduct its business in a manner that positively reflects on the Services and SYNAQ's reputation.
- 7.4. Avoid participation in any illegal, deceptive, misleading, or unethical practices, including disparagement of SYNAQ's Services.
- 7.5. Employ sufficient staff capable of competently demonstrating the Services to prospective Licensees.
- 7.6. Proactively promote the Services to Clients and manage sales leads effectively to close sales.
- 7.7. Provide SYNAQ with reports and information regarding orders and Clients as reasonably required.
- 7.8. Make no promises, representations, warranties, or guarantees regarding the Services except as expressly authorised by SYNAQ in writing.
- 7.9. Use SYNAQ's trade names only in the registered or agreed style related to the distribution of the Services and not in connection with other products or services.

- 7.10. Not supply or recommend any computer equipment to Clients, except for those listed in SYNAQ's current recommended compatible hardware list.
- 7.11. Comply with Data Protection Provisions, which shall survive termination of this Agreement.
- 7.12. Permit SYNAQ and its authorised agents to enter the Reseller's premises at reasonable times to verify compliance with this Agreement, granting an irrevocable license for such access.

## 8. SYNAQ'S OBLIGATIONS

SYNAQ shall:

- 8.1. Provide training as specified in the Reseller Tier Terms and Conditions, with additional training available at standard charges.
- 8.2. Offer Support and Maintenance to the Reseller and Reseller Clients per the SYNAQ Support Policy.
- 8.3. At its discretion, provide marketing and sales resources related to the Services, which remain SYNAQ's intellectual property and must be returned upon termination.
- 8.4. Timely provide updated Price Lists for Client engagements.
- 8.5. Notify the Reseller in advance of any changes to the Services or plans to discontinue licensing in the Territory.
- 8.6. Promptly supply necessary information and assistance for the Reseller to fulfil its obligations regarding any modified or enhanced Services.
- 8.7. Comply with Data Protection Provisions, which shall survive termination of this Agreement.
- 8.8. ensure that the Services are available as per the Service Levels.

## 9. ELECTRONIC DELIVERY AND HOSTING AND DATA CENTER FACILITIES

- 9.1. **Electronic Delivery.** SYNAQ will electronically deliver Services to Clients/End Users upon receipt of a valid Purchase Order. Services are subject to the terms outlined in the Documentation, and/or such Services Terms, which governs usage of the Services. SYNAQ is not liable for any claims arising from breaches of the Services Terms by the Reseller or End Users.
- 9.2. SYNAQ will provide and maintain all servers, hardware, and third-party software necessary for hosting Services at its own cost, unless otherwise agreed in writing.
- 9.3. Notwithstanding 9.2 above, SYNAQ is not obligated to acquire dedicated servers, hardware or software for the Reseller or Clients. Requests for such resources will incur additional costs, which the Reseller or End Users will be responsible for.
- 9.4. **Hosting and Data Centre Facilities.** Hosting and data center facilities will be managed by a third party at SYNAQ's discretion. Neither SYNAQ nor the Reseller is liable for any service interruptions or issues caused by this third-party service. The Reseller must promptly notify SYNAQ of any such incidents.

## 10. CONSIDERATION AND PAYMENTS

- 10.1. **Pricing** for Services is outlined in the SYNAQ Price List. Any deviations require prior written approval from SYNAQ, and the Reseller must maintain records of these approvals.

- 10.2. SYNAQ may provide recommended Service pricing for the Territory, but the Reseller can set its own Service fees and annual support charges, invoicing End Users directly.
- 10.3. The Reseller authorises SYNAQ to submit electronic invoices to Clients.
- 10.4. Reseller Fees (other than Referral Reseller):**
  - 10.4.1. The applicable Reseller Discount shall be as published by SYNAQ from time to time based on tier grouping.
  - 10.4.2. The Reseller agrees to pay SYNAQ a fee for each Reseller Client Agreement entered into by the Reseller calculated as the Price List amount minus the Reseller Discount ("**Reseller Fee**").
  - 10.4.3. The payment procedures for Reseller Fees are detailed in B.
- 10.5. Referral Reseller:**
  - 10.5.1. The applicable Reseller Commission shall be as published by SYNAQ from time to time against the relevant Reseller tier grouping.
  - 10.5.2. SYNAQ will pay the Commission to the Reseller as detailed in B.
  - 10.5.3. Payment procedures for the Referral Reseller's Commission are outlined in B.
- 10.6. Enabling and Implementation Fee:** SYNAQ will charge necessary onboarding fees upon Client's activation, specified in the proposal or provided prior to onboarding. The Reseller must include these fees in the Client quotation and Reseller Client Agreement.
- 10.7. Overage Fees.** If the End User's actual Service usage exceeds the initial quantity ordered on the Purchase Order ("Overage"), the Reseller will be billed for any applicable Overage charges monthly per any applicable SYNAQ terms or Documentation ("Overage Fees"). All undisputed Overage Fees must be paid by the Reseller within thirty (30) days of invoice receipt.
- 10.8. The Reseller shall maintain accurate records and make them available to SYNAQ upon request for verification of payments due.
- 10.9. During this Agreement and for a period thereafter, either party may conduct an audit of the other's records related to fee payments with five (5) business days' notice. The audited party must grant access to relevant records, and any identified shortfall must be paid within fourteen (14) days of written confirmation.
- 10.10. **Suspension of orders:** If the Reseller fails to make timely payments, SYNAQ may suspend the Reseller's ability to enter into further agreements until full payment is made.
- 10.11. **Suspension of Access.** If fees are thirty (30) days overdue, SYNAQ may suspend End User access to Services after providing written notice and allowing seven (7) business days for payment. The Reseller remains liable for all fees during suspension and indemnifies SYNAQ against any related claims.
- 10.12. All fees under this Agreement are exclusive of any Value Added Tax or sales tax that SYNAQ are obliged to charge, which the Reseller shall be additionally liable to pay to SYNAQ.
- 10.13. SYNAQ may increase contract prices due to uncontrollable factors (e.g., foreign exchange fluctuations) with written notification to the Reseller.
- 10.14. The Reseller Fees payable to SYNAQ are subject to an annual increase to take place during July each year on the Consumer Price Index (CPI) as stipulated by the Reserve Bank of South Africa.
- 10.15. SYNAQ may charge interest on late payments at Prime Rate plus 2 (two) percent per month on overdue amounts, along with collection costs (including legal costs on an attorney and own client basis).

- 10.16. SYNAQ reserves the right to increase the prices it charges for the Services from time to time, upon at least thirty (30) days written notification to the Reseller.

## 11. PROPERTY RIGHTS

- 11.1. The Services and Services Documentation and all intellectual property rights therein or relating thereto and all enhancements or changes thereto are and shall remain the property of SYNAQ and all copies thereof in the Reseller's possession, custody or control shall (to the extent that they are not exhausted by proper use) be returned to SYNAQ or otherwise disposed of by the Reseller as SYNAQ may from time direct.
- 11.2. The Reseller shall not use, copy, reverse-engineer, decompile, modify, or otherwise handle SYNAQ's intellectual property in any unauthorised manner, even after termination of this Agreement.
- 11.3. The Reseller must immediately notify SYNAQ of any unauthorised use of the Services or related intellectual property and assist SYNAQ (at its expense) in defending its rights.
- 11.4. The Reseller shall not use, reproduce or deal in the Services except as expressly permitted by this Agreement.
- 11.5. The Reseller shall not alter, obscure, remove, or interfere with any trademarks or markings of SYNAQ or associated with the Services provided by SYNAQ.
- 11.6. The provisions of this Section shall survive the termination of this Agreement.

## 12. CONFIDENTIALITY

- 12.1. Each party acknowledges that the Confidential Information of each party is valuable, proprietary information. For purposes of this Agreement, "Confidential Information" means any information disclosed by either the Reseller to SYNAQ or SYNAQ to the Reseller concerning the discloser's business and/or affairs, including but not limited to information relating to a its operations, technical or commercial know-how, specifications, inventions, processes or initiatives, plans, product information, pricing information, know-how, designs, trade secrets, software, documents, personal information, data and information which, when provided to the Reseller or to SYNAQ, as the case may be: (a) are clearly identified as "Confidential" or "Proprietary" or are marked with a similar legend; (b) are disclosed orally or visually, identified as Confidential Information at the time of disclosure and confirmed as Confidential Information in writing within 10 (ten) days; or (c) a reasonable person would understand to be confidential or proprietary at the time of disclosure.
- 12.2. All Confidential Information supplied by the one party to the other party pursuant to this Agreement, together with all copies thereof, will remain the property of the disclosing party. During the Term and after termination or expiration of the Agreement for any reason whatsoever, each party shall keep the other Party's Confidential Information confidential, not disclose any Confidential Information to third parties and not use the other party's Confidential Information for any purpose other than the performance of its obligations under the Agreement.
- 12.3. The obligations of confidentiality shall not apply to information which (a) was publicly available at the time of the disclosure to the receiving party, (b) subsequently becomes publicly available through no fault of the receiving party, (c) is rightfully acquired by the receiving party from a third party and not in breach of a confidential obligation with regard to such information, (d) is independently known by the receiving party whether prior to or during the Term of the Agreement, (e) is required to be disclosed due to an order by a court, government, administrative, fiscal or judicial body that is acting within its powers, but only to the extent required to comply with the applicable order and provided that the receiving party will cooperate with the other party in the exercise of its right to protect the confidentiality of the Confidential Information, or (f) is disclosed with the written consent of the respective other party.
- 12.4. This clause 12 shall survive the termination of this agreement for any reason whatsoever but such obligation shall not exceed 5 years from commencement date.

### 13. RESERVATION OF RIGHTS

SYNAQ reserves the right:

- 13.1. to modify, enhance, replace or make additions to the Services in any way whatsoever as SYNAQ may in its discretion determine;
- 13.2. to discontinue licensing or sub-licensing the Services in the Territory (whereupon this Agreement shall automatically terminate), subject to 180 days prior written notification to the Reseller; and
- 13.3. to require the Reseller either not to use or to cease to use any advertising or promotional materials in respect of the Services which SYNAQ considers not to be in SYNAQ's best interest.
- 13.4. to withdraw any of the Services or part of the Services, subject to reasonable advance notification of said withdrawal of Services.

### 14. BREACH AND TERMINATION

14.1. Notwithstanding anything else contained herein, this Agreement may be terminated:

14.1.1. by SYNAQ immediately upon written notice if:

- 14.1.1.1. The Reseller ceases or threatens to cease its business related to the Services.
- 14.1.1.2. The Reseller fails to meet fee targets as outlined in agreed targets.

14.1.2. By either party immediately upon written notice if:

- 14.1.2.1. The other party commits a material or persistent breach and fails to remedy it within twenty-one (21) days of receiving a written request.
- 14.1.2.2. The other party is unable to perform its obligations for fifteen (15) consecutive days or a total of thirty (30) days in any year.
- 14.1.2.3. A receiver is appointed, a winding-up resolution is passed, or the other party applies for business rescue.
- 14.1.2.4. The other party is placed in liquidation, judicial management, or sequestration.
- 14.1.2.5. The other party commits an act of insolvency under the Insolvency Act of 1936.
- 14.1.2.6. The other party fails to satisfy a final judgment within twenty-one (21) days of becoming aware of it.

the non-defaulting party shall, without prejudice to any other remedies which it may otherwise have in terms of the Agreement or at law terminate this Agreement and/or any Services or any part of a Service, in which event such termination shall be without prejudice to, and shall not constitute a release or waiver of, any claims which the non-defaulting party may have for damages against the defaulting party occasioned by the termination of the this Agreement and/or any Services (as the case may be) in terms of this clause.

14.2. Upon termination of this Agreement for any reason, any End User Client may, in its sole discretion, elect to procure the services of either Party hereto subject to the terms and conditions of the End User Agreement entered into between the End User Client and the Reseller.

### 15. EFFECT OF TERMINATION

Upon termination of this Agreement:

15.1. All rights and obligations of the Parties under this Agreement shall automatically terminate, except for:

15.1.1. Rights of action accrued prior to termination and obligations intended to continue post-termination.

- 15.1.2. Terms necessary for the Reseller to fulfil ongoing obligations under existing Reseller Client Agreements, excluding cases where Clients have concluded Services Terms directly with SYNAQ.
- 15.2. Clause 15.1 shall not apply where the Clients have concluded the Services Terms directly with SYNAQ.
- 15.3. The Reseller must:
  - 15.3.1. Immediately remove all references to "AUTHORISED SERVICES/SYNAQ RESELLER" from literature and advertisements.
  - 15.3.2. Return or dispose of all SYNAQ promotional materials and documents at its own expense.
  - 15.3.3. Have its access and its authorised representatives' access to the Services deactivated by SYNAQ.
  - 15.3.4. Settle any outstanding amounts immediately with SYNAQ.
  - 15.3.5. Erase the Services from all its computers and provide certification of this to SYNAQ.
- 15.4. Subject to clause 15.5 below, each Reseller Client Agreement then subsisting shall continue in effect and shall survive the termination of this Agreement. SYNAQ shall continue to provide the Services to those Clients as per the Reseller Client Agreement and the Reseller shall be entitled to such consideration on those Reseller Client Agreements until expiration of said Reseller Client Agreement, unless the breach under this Agreement is a result of an action and or omission of the Reseller, where the Reseller shall not be entitled to any remuneration subsequent to the termination of this Agreement. It is specifically agreed that the Reseller shall not be entitled to remuneration on any Referral Client subsequent to the termination date.
- 15.5. **Transition Period.** Following expiration or termination of the Agreement, a period (of no more than 3 months) will commence upon termination, allowing Clients to transition off the Services or assign the Reseller Client Agreement to SYNAQ or its nominee. The Reseller must confirm the expiration date of each Reseller Client Agreement to SYNAQ before termination. During this period, no new orders or renewals may occur.
- 15.6. **Termination Assistance.** The Reseller must notify Clients at least thirty (30) days before termination, assisting them in transitioning services to ensure continuity. Additional services requested by Clients or the Reseller will be quoted by SYNAQ.
- 15.7. If either Party continues to perform any of its obligations as per this clause 15.5, such continuance shall not constitute a waiver of any rights of remedies available to such Party in terms of said breach.

## 16. INDEMNITIES

- 16.1. SYNAQ shall indemnify the Reseller and End Users against claims that the normal use of the Services infringes third-party intellectual property rights, provided that:
  - 16.1.1. SYNAQ is given immediate and complete control of the claim.
  - 16.1.2. The Reseller does not prejudice SYNAQ's defence.
  - 16.1.3. The Reseller provides reasonable assistance.
  - 16.1.4. The claim does not arise from unauthorised use of the Services or unapproved equipment.
- 16.2. SYNAQ may replace or modify the Services or Service Documentation to avoid infringement. This indemnity constitutes SYNAQ's sole liability for such claims.
- 16.3. **Data Processing indemnification:** The Parties indemnify each other, along with their affiliates and staff, against any claims, actions, liabilities, losses, damages, and expenses (including legal fees) arising from third-party claims or government actions related to data processing under this Agreement, provided that:-
  - 16.3.1. A party (against who the claim is ("Indemnifying Party")) is given immediate and complete control of the claim.
  - 16.3.2. The Indemnified Party does not prejudice the defence.
  - 16.3.3. The Indemnified Party provides reasonable assistance.
  - 16.3.4. The claim does not arise from the Indemnified Party 's actions and or omissions or the use of the Services outside the Service Documentation or advice from the Service provider;
- 16.4. If a claim is made against SYNAQ for which indemnification is sought, SYNAQ shall consult with the Reseller and cooperate with any reasonable requests from the Reseller regarding the claim, subject to reasonable security measures.

**17. WARRANTIES**

- 17.1. **General:** Each Party represents and warrants that it:-
- 17.1.1. The execution and performance of this Agreement has been duly authorised by the requisite corporate action on the part of such Party.
  - 17.1.2. Has the legal capacity and power to enter into and perform and has taken all necessary action to authorise the entry into and performance of the transactions (including but not limited to having the necessary licenses, permits, consents and authorisations) contemplated by this Agreement.
  - 17.1.3. The execution and performance do not conflict with any applicable laws or regulations applicable to the Party.
  - 17.1.4. All information provided is true and accurate in all material respects.
  - 17.1.5. no information has been given or withheld by it which, if disclosed, might result in the information supplied being untrue or misleading in any material respect.
- 17.2. **No Representations.** The Reseller may not make any warranties or representations on behalf of SYNAQ beyond those explicitly provided in this Agreement or the Customer Agreement. The Reseller must ensure that neither it nor its agents make any unauthorised claims and must disclaim all other warranties, express or implied, except those permitted by this Agreement.
- 17.3. The Reseller acknowledges that the success of its business by reselling of the Services in terms of this Agreement depends to a large extent upon its own business ability. The Reseller acknowledges that SYNAQ has made no warranty, express or implied, as to the potential success of the Services to be introduced to the Reseller's customers.
- 17.4. The express terms of this Agreement are in lieu of all warranties, conditions, terms, undertakings and obligations implied by statute, law, custom, trade usage, course of dealing or otherwise, all of which are hereby excluded to the fullest extent permitted by law.

**18. LIMITATION OF LIABILITY**

- 18.1. A Party's total liability for any proven direct loss or damage arising out of this Agreement shall not exceed 100% of the total contract value over a period of 12 months.
- 18.2. Notwithstanding anything else contained in this Agreement but subject to clause 18.3, neither party shall be liable for loss of profits, business or anticipated savings or for any indirect, special or consequential loss or damage whatsoever even if a party has been advised of the possibility thereof and whether arising from negligence, breach of contract or howsoever.
- 18.3. A Party does not exclude liability for:-
- 18.3.1. death or personal injury caused by a Party's negligence;
  - 18.3.2. gross negligence or wilful misconduct;
  - 18.3.3. fraud or misrepresentation.
  - 18.3.4. Breach of any Data protection Provisions.
  - 18.3.5. Infringement of a party's intellectual property rights.

**19. NON-SOLICITATION.**

Except as otherwise agreed by SYNAQ in writing, during the term of this Agreement and for a period of twelve (12) months following the date of any contract hereunder, the Reseller hereby agrees not to solicit, induce or hire any employee or contractor of SYNAQ involved in the marketing, promotion, sale or distribution of cloud services to the Reseller to leave their employment or terminate or breach their contract for services with SYNAQ, as the case may be. Notwithstanding the foregoing, solicitation of either party's current employees or independent contractors who are not involved in the performance of this Agreement by means of a general media solicitation or trade publication or advertisement shall not constitute a breach of this provision.

**20. COMPLIANCE WITH LAWS**

- 20.1. In connection with this Agreement and the delivery of SYNAQ Services hereunder both Parties shall comply with any and all applicable laws, rules, regulations and codes, both domestic and foreign, including, but not limited to, any applicable import, re-import, export and re-export laws and regulations and economic sanctions programs implemented by the relevant authority. The Reseller is solely responsible for compliance related to the manner in which the Reseller and/or End User choose to use the SYNAQ Services, including, without

limitation, any transfer and processing of End User content, the provision of the End User content to third parties and the region in which any of the foregoing occur.

## 20.2. **Anti-Bribery.**

20.2.1. The Reseller (including its officers, directors, employees, agents and any person under its control) shall comply with, and shall require its contractors, subcontractors and any contingent workers to comply with, any and all applicable anti-corruption laws and regulations, applicable in the Republic of South Africa and the Territory. Without limiting the foregoing, the Reseller (including its officers, directors, employees, agents and any person under its control) shall not, directly or indirectly, make, promise to make, or accept any payment (other than for the SYNAQ Services fee), offer or transfer of anything of value in connection with this Agreement or any other business transaction, to:

- 20.2.1.1. anyone working in an official capacity for a government, government entity (including employees of government owned or controlled corporations), or public international organisation;
- 20.2.1.2. any political party, party official, or candidate for political office;
- 20.2.1.3. an intermediary for payment to any of the foregoing;
- 20.2.1.4. any officer, director, employee of any actual or potential End Users;
- 20.2.1.5. any officer, director, employee of any commercial company;
- 20.2.1.6. any officer, director or employee of either party or any of its affiliates; or
- 20.2.1.7. any other person or entity if such payment, offer or transfer would violate the laws of the country in which made.

20.2.2. It is the intent of the parties hereto that no payments, offers or transfers of value shall be made or received which have the purpose or effect of public or commercial bribery, acceptance or acquiescence in extortion, kickbacks or other unlawful or improper means of obtaining or retaining business or directing business to any person or entity. In addition, each party warrants to the other that none of its officers, directors, employees, agents, or representatives is an official or employee of the government of the Territory or of any department or instrumentality of such government, nor is any of them an officer of a political party or candidate for political office who will share, directly or indirectly, any part of the sums due hereunder.

## 21. **DATA PROTECTION AND PRIVACY**

21.1. Each party agrees to comply with all applicable laws, rules, regulations, regulatory requirements and codes of practice including, but not limited to, laws and regulations implementing the protection of personal information of each other's personal information and the personal information of their customers in whatsoever capacity (i.e. either as responsible party/controller and/or operator/processor) ("**Data Protection Laws**");

21.2. Without prejudice to any rights and obligations under the Data Protection Laws, the Parties agree they will (but not limited to the following):-

- 21.2.1. to implement reasonable measures to prevent unauthorised access to or loss of personal information.
- 21.2.2. Treat all personal information processed under this Agreement as confidential.

21.3. If changes to Data Protection Laws affect this Agreement, both parties will seek a legally effective amendment.

21.4. The Reseller agrees to the following and to reflect same under each Reseller Client Agreement:-

21.4.1. SYNAQ shall act as Responsible Party when Processing the Clients' own Personal Information to activate the Services and Processing of the Reseller Personal Information when managing the Reseller relationship, however SYNAQ shall act as the Operator during the Clients' use of the Services and Process Personal Information as per lawful instructions from the Client, who shall act as Responsible Party. The Client is solely responsible for assessing the admissibility of the data Processing and for safeguarding the rights of the data subjects.

21.4.2. Personal Information may be transferred or stored outside the country where the Reseller, Client (or End users) are located in order to carry out the Services. SYNAQ agrees that where the performances of Services involves a transfer of Personal Information outside the country of the Reseller or Client, additional requirements are to be met over and above the requirements described under this agreement, unless the country where SYNAQ or its service provider(s) is located is a country to have a similar or adequate level of protection of Personal Information as described in the POPI Act.

21.4.3. SYNAQ may process and disclose personal information to its affiliates or third-party providers anywhere in the world for administration purposes, in order to manage the relationship of the parties and execution of the Services and the Reseller must inform its clients/End Users accordingly.

21.4.4. Subject to SYNAQ's Promotion of Access to Information Manual (PAI Manual) as made available on the SYNAQ website, SYNAQ will give the Reseller and/or Client a copy of or access to all or part of

- the Client's Personal Information in its possession or control in a usable format (subject to the prescribed process). Availability and access to Personal Information under this clause 21.4.4 excludes Services data, which shall be dealt with on termination of the Reseller Client Agreement or SYNAQ Terms and Conditions (directly with the Client);
- 21.4.5. SYNAQ shall be entitled to retain Personal Information of the Reseller and Client if required by law, regulation, or government or regulatory body and for audit purposes.
- 21.4.6. Processing of Personal Information during provisioning of the Services will be done in accordance with the SYNAQ Privacy Policy available on its website ([www.SYNAQ.com](http://www.SYNAQ.com))
- 21.5. It is the Client's or where Reseller acts on behalf of the Client, the Reseller's responsibility to ensure that it is entitled to transfer Personal Information to SYNAQ and to enable SYNAQ to lawfully Process the Personal Information in accordance with the Reseller Client Agreement on the Client/End User's behalf;
- 21.6. SYNAQ shall:-
- 21.6.1. have due regard to generally accepted information security practices and processes which may apply to it;
- 21.6.2. assure that the Processed Personal Information shall be kept strictly separate from other third party data;
- 21.6.3. notify the Reseller and Client (where required by law) immediately in writing if there are reasonable grounds to believe that the Personal Information has been accessed or acquired by any unauthorised person or that there has been any loss or corruption of Personal Information. SYNAQ agrees to use its best endeavours to assist the Reseller and/or End User, where such information has been used, lost, corrupted or disclosed in remedying such unauthorised use, loss, corruption or disclosure.
- 21.6.4. Where the Client is under current Data Protection Laws obligated to provide a person with information about the processing of their Personal information, SYNAQ shall upon the written request of the Client (or Reseller, where Reseller acts on behalf of the Client) assist him/her in the task of providing such information in accordance with the Data Protection Laws.
- 21.7. Each party agrees to obtain all necessary consents under the Data Protection Laws prior to Processing of Personal Information (where required).
- 21.8. The Reseller may use, store or otherwise process Personal Information provided by SYNAQ for relationship management purposes, but shall not pass any Personal information to any third parties, not authorised by SYNAQ in writing, without prior notification to the data subject.
- 21.9. The Parties reserve the right to intercept, block, filter, copy, read, use, retain and/or monitor all communications initiated and received between the Parties;
- 21.10. Each Party indemnifies and holds the other harmless against any costs, liabilities and damages that may result from a claim that a communication was illegally intercepted, blocked, filtered, copied, read, used, retained and/or monitored;
- 21.10.1. The intercepting Party shall however only disclose the contents of a communication if:
- 21.10.2. authorised thereto by the other Party;
- 21.10.3. authorised thereto by any third Party who sent the relevant communication;
- 21.10.4. reasonably required for the proper execution of the Services in terms of this Agreement; or
- 21.10.5. authorised or required to do so in law or in respect of due legal process.
- 21.11. **Marketing Data.** The Reseller agrees that SYNAQ may collect, store and use the Reseller data, for the purpose of facilitating its marketing and sale of the Services, and the Reseller hereby consents to such collection, storage and use of the Reseller data by SYNAQ for these purposes. The Reseller further consents to the use of such data for communicating the Services and promotional information to the Reseller via email or other electronic means unless the Reseller notifies SYNAQ in writing that it does not wish to receive such promotional information.

## 22. DISPUTE RESOLUTION

- Any dispute arising from the Agreement shall be subject to the following dispute resolution procedures -
- 22.1. **Informal dispute resolution:** Prior to referring any dispute to arbitration, the Parties shall first attempt to resolve their dispute informally by referring a dispute to its senior management. Senior management of all Parties shall discuss the problem and attempt to resolve the dispute, without the necessity of any formal proceeding, within 7 (seven) days of the dispute having been referred.
- 22.2. **Informal dispute resolution does not reduce Parties' rights:** Proceedings in terms of clause 22.1 shall not be construed to prevent a Party from instituting formal proceedings earlier to obtain urgent or interim relief, avoid the expiration of any applicable limitations period, or preserve a superior position with respect to other creditors.

- 22.3. **Institution of Formal Proceedings:** Subject to the provisions of clauses 22.1 and 22.2, the Parties agree that either Party may elect to refer any dispute which may arise to either the High Court of South Africa or to arbitration proceedings as contemplated in clause 22.4. Upon election by a Party initiating the relevant dispute proceedings, the other Party will be bound by such election for the purposes of the dispute in question.
- 22.4. **Arbitration:** If the Parties are unable to resolve any dispute informally and either Party has elected to commence arbitration proceedings to resolve the dispute in terms of clause 22.3, then such dispute shall on written demand by the electing Party be submitted to arbitration at Arbitration Foundation of Southern Africa ("AFSA") to be held in Cape Town. The parties can agree to the arbitrator to be appointed; where no agreement can be reached between the parties the chairperson of AFSA will make such appointment.
- 22.5. **Status of arbitration ruling:** The decision of the arbitrator shall be binding on the Parties to the arbitration after the expiry of the period of 20 (twenty) days from the date of the arbitrator's ruling if no appeal has been lodged by any Party or upon the issue of determination by the appeal panel, as the case may be. A decision, which becomes final and binding in terms of this clause 0 may be made an order of court at the instance of any Party to the arbitration. The parties agree to keep the arbitration confidential and not to disclose it to anyone except for purposes of obtaining an order as contemplated herein.
- 22.6. **Rapid resolution of disputes:** The Parties shall use commercially reasonable efforts to resolve disputes arising as rapidly as possible.
- 22.7. **Excluded relief:** This clause 22 shall not preclude either Party from seeking urgent or interim relief from the High Court of South Africa or any other competent organs of state created for the specific purpose of regulating the business or industry activities in which the Parties are engaged.
- 22.8. **Agreed Jurisdiction:** The Parties hereby consent to the jurisdiction of the Western Cape High Court (Cape Town) in respect of proceedings referred to in clause 22.3.

### 23. FORCE MAJEURE

- 23.1. Neither Party shall be liable for default or delay in fulfilling its obligations under this Agreement if such delay is due to circumstances beyond its reasonable control, including acts of God, war, civil disturbances, court orders, power failures, communication issues, or malicious computer programs ("**Circumstances of Force Majeure**"). Liability is contingent upon the non-performing Party being without fault and unable to prevent the delay through alternative means.
- 23.2. In the event of Circumstances of Force Majeure, the non-performing Party must:
- 23.2.1. Notify the other Party in writing as soon as reasonably possible.
- 23.2.2. Be excused from performance for the duration of the circumstances while making best efforts to resume obligations promptly.
- 23.2.3. Cooperate with the other Party in implementing reasonable contingency measures.
- 23.3. If Circumstances of Force Majeure persist for more than 30 days, either Party may terminate this Agreement with written notice.
- 23.4. Neither Party will be liable to the other for any default or delay in the performance of its obligations under this Agreement:

### 24. NOTICES

- 24.1. Each Party chooses as its address for all purposes under this Agreement ("chosen address"), whether for serving any court process or documents, giving any notice, or making any other communications of whatsoever nature and for any other purpose arising from this Agreement ("notice") the addresses and contact details as per the cover page;
- 24.2. Either Party shall be entitled from time to time, by written notice to the other, to vary its address to any other address which is not a post office box or poste restante.
- 24.3. Any notice to either party which is -
- 24.3.1. sent by prepaid registered post in a correctly addressed envelope to the address specified for it under clause 24.1 shall be deemed to have been received, unless the contrary is proved, within 14 (fourteen) days from the date on which it was posted; or
- 24.3.2. delivered to the party by hand, shall be deemed to have been received on the day of delivery, provided that it has been delivered to a responsible person during ordinary business hours; or

- 24.3.3. Sent by data messages from one party to another shall be deemed to be received by the receiving party when the data message enter the recipient's information system, unless otherwise proven;
- 24.4. Notwithstanding anything to the contrary contained in this clause, a written notice or other communication actually received by either party and for which written receipt has been obtained, shall be adequate written notice or communication to it notwithstanding that the notice was not sent to or delivered at its chosen address.
- 24.5. Any notice required or permitted under this Agreement shall be valid and effective only if in writing.

## 25. ASSIGNMENT.

- 25.1. The Reseller may not transfer or assign this Agreement, in whole or in part, or delegate any of its duties hereunder, to a third party by change in control, operation of law or otherwise, without the prior written consent of SYNAQ which shall not be unreasonably withheld.
- 25.2. SYNAQ may assign this Agreement and/or any purchase order in whole or in part with the consent of the Reseller. SYNAQ shall endeavour to provide prompt notice of any assignment to the Reseller.
- 25.3. No assignment shall be effective unless (i) the assignor notifies the other party of the assignment in writing and (ii) the assignee agrees in writing to abide by the terms of this Agreement.
- 25.4. Any assignment in violation of the foregoing shall be void.
- 25.5. This Agreement shall inure to the benefit of the parties, their successors and permitted assigns. The Reseller understands and agrees that, regardless of any such assignment, the rights and obligations of SYNAQ in this Agreement may accrue to, or be fulfilled by, any affiliate and/or its subcontractors.

## 26. GENERAL AND MISCELLANEOUS

- 26.1. **Sole record of agreement:** This Agreement constitutes the sole record of the agreement between the Parties with regards to the subject matter hereof. No Party shall be bound by any express or implied term, representation, warranty, promise or the like not recorded herein. This Agreement supersedes all previous agreements between the parties, saves for where the Reseller has agreed to any restraint or confidentiality undertaking other than stipulated in this Agreement.
- 26.2. **No amendments except in writing:** No alteration, cancellation, variation of, or addition hereto, including this clause, shall be of any force or effect unless reduced to writing and signed by all parties to this agreement or their duly authorised representatives.
- 26.3. **Waivers:** No relaxation or indulgence, which any Party may grant to any other, shall constitute a waiver of the rights of that Party and shall not preclude that Party from exercising any rights which may have arisen in the past or which might arise in future.
- 26.4. **Survival of obligations:** Any provision of this Agreement, which contemplates performance or observance subsequent to any termination, or expiration of this Agreement shall survive any termination or expiration of this Agreement and continue in full force and effect.
- 26.5. **Approvals and consents:** An approval or consent given by a Party under this Agreement shall only be valid if in writing and shall not relieve the other Party from responsibility for complying with the requirements of this Agreement nor shall it be construed as a waiver of any rights under this Agreement except as and to the extent otherwise expressly provided in such approval or consent, or elsewhere in this Agreement.
- 26.6. **Severability:** In the event that any of the terms of this Agreement are found to be invalid, unlawful or unenforceable, such terms will be severable from the remaining terms, which will continue to be valid and enforceable.
- 26.7. **Governing Law:** The validity and interpretation of this Agreement will be governed by the laws of the Republic of South Africa.
- 26.8. **Counterparts:** This Agreement may consist of a number of counterparts and, if so, the counterparts taken together constitute one and the same instrument.

**SCHEDULE OF PARTICULARS**

**Particulars of Reseller**

<b>Name</b>	[ADD NAME]
<b>Registration Number / ID Number</b>	[ADD REGISTRATION NR.]
<b>Business Address: Domicilium</b>	[ADD ADDRESS]
<b>Postal Address</b>	
<b>Tel. nr.</b>	
<b>Email address:</b>	<a href="#">[ADD EMAIL]</a>

**Representative (where Reseller is juristic person)**

<b>Name</b>	
<b>Registration Number</b>	
<b>Business Address: Domicilium</b>	
<b>Postal Address</b>	
<b>Tel. nr.</b>	
<b>Email address:</b>	

**AGREEMENT DETAILS**

<b>Commencement Date</b>	[ADD DATE]
<b>Commission and Discounts:</b>	<a href="#">Click here to view Reseller Tier Groups:</a> <a href="#">Click here to view the Payment Terms:</a> <a href="#">Click here to view Products and Services:</a>

**SYNAQ (PTY) LIMITED**

**RESELLER**

\_\_\_\_\_  
 Authorised Signature

\_\_\_\_\_  
 Authorised Signature

\_\_\_\_\_  
 Print Name and Title

\_\_\_\_\_  
 Print Name and Title

\_\_\_\_\_  
 Date signed

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 Date signed