

# Protection of Personal Information Act, 2013

Operator Agreement

## Agreement

### *Between*

Company Name: \_\_\_\_\_  
Registration Number: \_\_\_\_\_  
Full Name/s and Surname of Responsible Party Representative: \_\_\_\_\_  
Designation: \_\_\_\_\_  
Business Address: \_\_\_\_\_  
Business Postal: \_\_\_\_\_  
Tel. No: \_\_\_\_\_  
Mobile No: \_\_\_\_\_  
E-mail Address: \_\_\_\_\_  
(hereinafter referred to as the **"Responsible Party"**)

### *And*

Company Name: \_\_\_\_\_  
Registration Number: \_\_\_\_\_  
Full Name/s and Surname of Operator Representative: \_\_\_\_\_  
Designation: \_\_\_\_\_  
Business Address: \_\_\_\_\_  
Business Postal: \_\_\_\_\_  
Tel. No: \_\_\_\_\_  
Mobile No: \_\_\_\_\_  
E-mail Address: \_\_\_\_\_  
Country: \_\_\_\_\_  
(hereinafter referred to as the **"Operator"**)

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## 1. Introduction

- 1.1 The Protection of Personal Information Act (Act Number 4 of 2013) (POPIA) regulates and controls the processing of Personal Information.
- 1.2 The Responsible Party is a \_\_\_\_\_ (*entity*) which conducts business in \_\_\_\_\_ (*countries*).
- 1.3 The Responsible Party, for the purposes of carrying out its business and related objectives, does and will from time to time, process Personal Information belonging to living individuals and legal entities including public and private entities (hereinafter referred to as “data subjects”), such as Personal Information relating to employees and staff, prospective employees and job applicants, students and interns, service providers and contractors, vendors, clients, customers, and other third parties.
- 1.4 The Responsible Party is obligated to comply with POPIA and the data protection conditions contained under POPIA in respect of the processing of any and all Personal Information.
- 1.5 In order for the Responsible Party to pursue its business interests, to protect its legitimate interests and to manage its risks, the Responsible Party may from time to time have to disclose certain Personal Information, which it has obtained from data subjects, to other parties, including its group companies or subsidiaries, joint venture companies and/or approved product or third party service providers, Operators, regulators and/or governmental officials, international service providers and related companies or agents.
- 1.6 POPIA determines that if the Responsible Party discloses Personal Information which it has collected from a Data Subject to another Party for the purpose of further processing on its behalf, or where the Responsible Party has appointed another Party to process Personal Information of a Data Subject, on its behalf (hereinafter referred to as “the Operator”), then any such processing must be subject to a written agreement concluded between the Responsible Party and the Operator, which contractually obliges the Operator to comply with the provisions of POPIA, including inter alia an undertaking to keep all the Personal Information held by the Operator on behalf of the Responsible Party, as well as the Personal Information of the Responsible Party, confidential and secure.

1.7 The Responsible Party is desirous of providing the Operator with certain Personal Information, which the Responsible Party would like the Operator to process on its behalf, and the Operator has agreed to process the Personal Information on behalf of the Responsible Party, subject to the terms and conditions set out under this Agreement.

## 2. Definitions

The following definitions apply to this Agreement, unless the context indicates a contrary meaning:

*"Responsible Party"* means \_\_\_\_\_ (*Company*) who has mandated the Operator to process certain Personal Information belonging to Data Subjects on its behalf, in accordance with the terms of this Agreement;

*"Data Subject"* means the person whose Personal Information will be processed by the Operator;

*"Operator"* means \_\_\_\_\_ (*Company*) who has been mandated by the Responsible Party in terms of this agreement, to process Personal Information on behalf of the Responsible Party;

*"Person"* means an identifiable, living, natural person, or an identifiable, existing juristic person;

*"Personal Information"* means information relating to a person, including, but not limited to:

- a) Information relating to the race, gender, sex, pregnancy, marital status, national, ethnic, or social origin, colour, sexual orientation, age, physical or mental health, well-being, disability, religion, conscience, belief, culture, language, and birth of the person;
- b) Information relating to the education or the medical, financial, criminal or employment history of the person;
- c) Any identifying number, symbol, e-mail address, physical address, telephone number, location information, online identifier, or other assignment to the person;
- d) The biometric information of the person;
- e) The individual opinions, views, or preferences of the person;
- f) Correspondence sent by the person that is implicitly or explicitly of a private or confidential nature or further correspondence that would reveal the contents of the original correspondence;

- g) The views or opinions of another individual about the person, and
- h) The name of the person if it appears with other Personal Information relating to the person or if the disclosure of the name itself would reveal information about the person;

*"Process or Processing"* means any operation or activity, or any set of operations, whether by manual or electronic means, performed by the Operator concerning a person's Personal Information, including-

- a) The collection, receipt, recording, organisation, collation, storage, updating or modification, retrieval, alteration, consultation or use;
- b) Dissemination by means of transmission, distribution or making available in any other form;
- c) Merging, linking, as well as restriction, degradation, erasure, or destruction of information;

*"Record"* means any recorded information, regardless of form or medium or when it came into existence, in the possession of the Responsible Party, whether it was created by the Responsible Party or not, including any of the following-

- a) Writing on any material;
- b) Information produced, recorded, or stored by means of any tape-recorder, computer equipment, whether hardware or software or both, or other device, and any material subsequently derived from information so produced, recorded, or stored;
- c) Label, marking or other writing that identifies or describes anything of which it forms part, or to which it is attached by any means;
- d) Book, map, plan, graph or drawing;
- e) Photograph, film, negative, tape or other device in which one or more visual images are embodied to be capable, with or without the aid of some other equipment, of being reproduced;

### 3. Mandate to Process

The Responsible Party hereby grants to the Operator a mandate to process certain Personal Information, which is identified under Annexure "A" attached hereto, on its behalf for the purpose and period set out under Annexure "A".

## 4. Obligations of the Operator

4.1 The Operator expressly warrants and undertakes that it will:

4.1.1 Process the Personal Information strictly in accordance with its mandate set out under this Agreement, read together with “Annexure A,” and any specific instructions provided to it by the Responsible Party from time to time;

4.1.2 Not use the Personal Information for any other purpose, save for the purpose set out under “Annexure A”;

4.1.3 Only disclose, transfer and/or hand over the Personal Information to those person(s) identified under item 5 of Annexure A;

4.1.4 Save for the provisions contained under clause 4.1.3, treat the Personal Information as confidential and not disclose such Personal Information to any other person unless required by law, and only once it has provided the Responsible Party with adequate warning of this requirement to disclose, and the related details thereof.

4.1.5 Have in place appropriate technical and organisational measures to protect and safeguard the Personal Information against accidental or unlawful destruction or accidental loss, alteration, unauthorised disclosure, or access, and which in addition, provide a level of security appropriate to the risk represented by the processing and the nature of the Personal Information to be protected, and which safeguards comply with the requirements set out under POPIA;

4.1.6 Notify the Responsible Party immediately where it has reasonable grounds to believe that the Personal Information, which has been provided to it including any Personal Information which it has processed, has been lost, destroyed, or accessed or acquired by any unauthorised person;

4.1.7 Process the Personal Information strictly in accordance with POPIA and the POPIA processing conditions;

- 4.1.8 Not use the Personal Information for any direct marketing or advertising, research, or statistical purposes, unless expressly authorised to under Annexure "A";
- 4.1.9 Not treat the Personal Information as its own, expressly acknowledging that it has been tasked with processing the Personal information in its capacity as the Responsible Party's Operator and agent, and that ownership of all such Personal Information and any records comprising such Personal Information will always remain with the Responsible Party;
- 4.1.10 Not sell, alienate, or otherwise part with the Personal Information;
- 4.1.11 Where it can transfer the Personal Information onwards as per Annexure "A" to any third party for the purposes of performing its mandate, it has in place written arrangements which compel the said third party to respect and maintain the confidentiality and security of the Personal Information;
- 4.1.12 Ensure that any person acting under the authority of the Operator, including any employee or third party, shall be obligated to process the Personal Information only on instructions from the Operator and strictly in accordance with this Agreement;
- 4.2 The Operator warrants that it has the legal authority to give the abovementioned warranties and fulfil the undertakings set out in these clauses.
- 4.3 The Responsible Party will ascertain compliance with the warranties and undertakings contained under this Agreement, have the right on reasonable notice and during regular business hours to view and/or audit, either by itself or through an independent agent, the Data Processor / Operator's facilities, files, and any other data processing documentation needed for the required review, audit and/or independent or impartial inspection.

## 5. Liability of the Operator and Third-Party Rights

- 5.1 The Operator indemnifies and holds the Responsible Party harmless against any loss, damage, action or claim which may be brought by whomsoever against the Responsible Party or any of its Directors or employees in consequence of the Operator or its employees or agents breaching:



- 5.1.1 Any of the warranties and undertakings contained under this Agreement, or
- 5.1.2 Any of the provisions of POPIA and/or the POPIA Personal Information conditions, and
- 5.1.3 Which breach applies to the Personal Information which the Operator has been mandated to process in terms of this Agreement.

5.2 In the event of the Operator, its employees or agents breaching any of the warranties and undertakings contained under this Agreement, or breaching any of the provisions of POPIA and/or the POPIA Personal Information conditions, and which breach applies to the Personal Information which it has been mandated to process in terms of this Agreement, then in such event, the Operator shall be liable for all and any damages it may have caused in consequence of said breach, including patrimonial, non- patrimonial and punitive damages actually suffered by the Responsible Party and/or the data owner of the Personal Information.

5.3 At the request of the Responsible Party, the Operator will provide the Responsible Party with evidence of financial resources sufficient to fulfil its responsibilities set out under this Agreement, which may include insurance coverage.

## 6. Applicable Law

The laws of South Africa shall apply to this Agreement, regardless of where the Personal Information is, will be or was processed.

## 7. Termination

7.1 In the event that—

- 7.1.1 the transfer of Personal Information to the Operator has been completed in accordance with this mandate;
- 7.1.2 the transfer of Personal Information to the Operator has been suspended by the Responsible Party for longer than one month for whatever reason;
- 7.1.3 the Operator is in breach of its obligations under this Agreement and has failed when called upon to do so by the Responsible Party to rectify the breach;

7.1.4 the Operator is in substantial or persistent breach of any warranties or undertakings given by it under this Agreement, notwithstanding that the Responsible Party has not given the Operator notice of such breach;

7.1.5 an application is filed for the placing of the Operator under business rescue, under administration, or winding up whether interim or final, which application is not dismissed within the applicable period for such dismissal under applicable law; or any equivalent event in any jurisdiction occurs,

—then the Responsible Party, without prejudice to any other rights which it may have against the Operator, shall be entitled to terminate this Agreement.

7.2 The parties agree that the termination of this Agreement at any time, in any circumstances and for whatever reason does not exempt them from the obligations and/or conditions set out under this Agreement with regards to the processing of the Personal Information detailed under Annexure “A”.

7.3 In the event of this Agreement being terminated whenever, and for whatever reason, the Operator undertakes:

7.3.1 To restore and/or transfer back to the Responsible Party all and any Personal Information which has been provided to the Operator for processing, and/or which has been processed, together with any related documentation and/or information, which will be returned to the Responsible Party within a period of 30 (thirty) days from date of service of the termination notice.

7.3.2 To confirm in writing simultaneously when the transfer under clause 7.3.1 takes place, that all such Personal Information will be kept confidential as per the provisions of clause 4.1.3 and that it will not under any circumstances use the information.

Notwithstanding termination of this Agreement and for whatsoever reason, Clauses 4, 5 and 6 will survive such termination.

## 8. Variation

The parties may not modify the provisions of this Agreement, including the information in Annexure “A”, unless such variation is reduced to writing and signed by the parties.

## 9. Declaration

Signed at \_\_\_\_\_ on \_\_\_\_\_ .

\_\_\_\_\_  
**FOR RESPONSIBLE PARTY**

Name and Surname: \_\_\_\_\_

Designation: \_\_\_\_\_

As Witnesses:

1. \_\_\_\_\_

2. \_\_\_\_\_

\_\_\_\_\_  
**FOR OPERATOR**

Name and Surname: \_\_\_\_\_

Designation: \_\_\_\_\_

1. \_\_\_\_\_

2. \_\_\_\_\_

## Annexure A

1. Description of the Personal Information belonging to the Data subject/s of the Responsible Party which the Operator has been asked to process in terms of this Agreement:

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2. Purposes of the Processing

The processing of the above-mentioned Data Subject/s is for the following purposes:

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3. Categories of Data (e.g. Customers, Clients, Management, Employees, Temporary Staff)

The Personal Information transferred concern the following categories of data of the Responsible Party:

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4. Recipients (e.g. Management, Employees, Temporary Staff, Subcontractors)

The Personal Information belonging to the abovementioned Data Subject/s may be disclosed only to the following recipients or categories of recipients of the Operator:

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5. Sensitive Data (if applicable)

The Personal Information transferred concerns the following categories of sensitive data:

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6. Period of Agreement

\_\_\_\_\_ to \_\_\_\_\_

7. Additional useful information (storage limits and other relevant information) / Remarks

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