

CFO360 will enforce the below agreement or a similar agreement that meets the same objective

OPERATOR AGREEMENT (*template*)

between

_____ (hereinafter referred to the Company)

and

_____ (Hereinafter referred to as the "Operator")

1. INTRODUCTION

- 1.1 The Protection of Personal Information Act, 4 of 2013 (POPIA) is a data protection privacy law which as its main function and objective, regulates and controls the processing of Personal Information by a Responsible Party.
- 1.2 The Company, for the purposes of carrying out its business and related objectives, does and will from time to time, processes Personal Information belonging to a number of persons, including legal entities and individuals, who are referred to as Data Subjects under POPIA.
- 1.3 The Company is obligated to comply with POPIA and the Data Protection conditions housed under POPIA with respect to the processing of all and any Personal Information pertaining to all and any Data Subjects.
- 1.4 In order for the Company to pursue its mandate and its related operational and business interests, the Company may from time to time request third parties to process certain Personal Information on its behalf, which Personal Information it has obtained from its Data Subjects.
- 1.5 In terms of section 20 of POPIA, if the Company discloses Personal Information which it has collected from Data Subjects to another for the purpose of processing or further processing such Personal Information on its behalf, (hereinafter referred to as "the Operator") then any such processing must be subject to a written agreement concluded between the Company and the Operator, which contractually obliges the Operator to:
 - 1.5.1 comply with the provisions of POPIA and the POPIA processing conditions when processing such Personal Information on behalf of the Company;
 - 1.5.2 only process the Personal Information received from the Company in accordance with the mandate or written instruction received from the Company;
 - 1.5.3 keep all the Personal Information held by the Operator on behalf of the Company and / or

belonging to the Company Data Subjects, confidential;

1.5.4 put measures in place in order to keep all such Personal Information held by the Operator, and processed on behalf of the Company confidential, safe and secure from misuse, abuse and / or unauthorised use or access.

1.6 The Company is desirous of providing the Operator with certain Personal Information which pertains to certain of its Data Subjects, which the Company would like the Operator to process on its behalf, and the Operator has agreed to process the Personal Information on behalf of the Company, which processing will be subject to the terms and conditions set out under this Operator Agreement.

2. DEFINITIONS

2.1 The parties must take note of the following definitions, which will be used throughout this Operator Agreement, unless the context indicates a contrary meaning:

2.1.1 **"Agreement"** means the Agreement or series of Agreements entered into between the Company and the Operator;

2.1.2 **"Data Subject (s)"** means the person (s) who own (s) the Personal Information which is to be processed by the Operator, on behalf of the Company, in terms of the Agreement and the Operator Agreement;

2.1.3 **"....."** shall mean the 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 Operator Agreement;

2.1.4 **"Operator"** means who has been mandated by the Company in terms of the Agreement and this Operator Agreement to processes Personal Information belonging to certain Data Subject (s) on its behalf;

2.1.5 **"Operator Agreement"** means this Operator Agreement;

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

2.1.7 **"Personal Information"** means personal information relating to any identifiable, living, natural person, and an identifiable, existing juristic person, including, but not limited to:

- **in the case of an individual:**

- name, address, contact details, date of birth, place of birth, identity number, passport number, bank details, details about your employment, tax number and financial information;
- vehicle registration;
- dietary preferences;
- financial history;
- information about next of kin and or dependants;
- information relating to education or employment history; and
- **Special Personal Information** including race, gender, pregnancy, national, ethnic or social origin, colour, physical or mental health, disability, criminal history, including offences committed or alleged to have been committed, membership of a trade union and biometric information, such as images, fingerprints and voiceprints, blood typing, fingerprinting, DNA

analysis, retinal scanning and voice recognition;

- **in the case of a juristic person:**

- name, address, contact details, registration details, financials and related history, B-BBEE score card, registered address, description of operations, bank details, details about employees, business partners, customers, tax number, VAT number and other financial information; and
- 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;
- the views or opinions of another individual about the person; and
- 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.

2.1.8 "**process or processing**" means any operation or activity or any set of operations, whether or not by automatic means, performed by the Operator concerning a Data Subject's Personal Information, including—

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

2.1.9 "**record**" means any recorded information—

- (a) regardless of form or medium, including any of the following:
 - (i) writing on any material;
 - (ii) 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;
 - (iii) label, marking or other writing that identifies or describes anything of which it forms part, or to which it is attached by any means;
 - (iv) book, map, plan, graph or drawing;
 - (v) photograph, film, negative, tape or other device in which one or more visual images are embodied so as to be capable, with or without the aid of some other equipment, of being reproduced;
- (b) in the possession or under the control of a responsible party;
- (c) whether or not it was created by a responsible party; and
- (d) regardless of when it came into existence.

3. MANDATE TO PROCESS

The Company 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 the Agreement and the Operator Agreement read together with **"Annexure A"** and any specific instructions provided to it by the Company from time to time;
 - 4.1.2 not use the Personal Information for any other purpose, save for the purpose set out under this Operator Agreement and **"Annexure A"**, read together with the Agreement.
 - 4.1.3 only disclose, transfer and / or hand over the Personal Information to those person(s) identified under item of **Annexure A**;
 - 4.1.4 save for the provisions housed under clause 4.1.3, treat the Personal Information as confidential and not disclose the Personal Information to any other person unless required by law and only once it has provided the Company with adequate warning of this requirement to disclose and the related details thereof, including the identity of the person who is to receive the Personal Information, the reason for the disclosure and confirmation that the person to whom the Personal Information is to be disclosed to, has signed the POPIA onwards transmission notice attached hereto marked Annexure **"B"**;
 - 4.1.5 has and will continue to have in place, appropriate technical and Organizational 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, provides 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, which measures are in line with the requirements described under the attached the Company Security Service Level Requirements, marked **Annexure "C"**;
 - 4.1.6 notify the Company 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 do as described under **Annexure "A"**, read together with the Agreement, and when conducting such activity ensure that this is done strictly in compliance with the requirements of POPIA and its regulations especially those applicable to direct marketing detailed under section 69;
 - 4.1.9 not treat the Personal Information as its own, it expressly acknowledging that it has been tasked with processing the Personal Information in its capacity as the Company's Operator and agent, and that ownership of all the records housing the Personal Information and any records comprising such Personal Information pertaining to the Data Subject, will always remain with the Company;
 - 4.1.10 not sell, alienate or otherwise part with the Personal Information or any of the records housing the Personal Information;

4.1.11 where it is allowed to transfer the Personal Information onwards as per Annexure "A" to any third party, known as a Sub Operator, for the purposes of performing its mandate, ensure that such party concludes a "Sub Operator agreement" with it and the Company which compels the third party receiving the Personal Information to respect and maintain the confidentiality and security of the Personal Information, which Sub operator agreement will house the same terms and conditions as contained in this Operator Agreement, and which shall be concluded before the Personal Information is transferred to the Sub operator.

4.1.12 ensure that any person acting under the authority of the Operator, including any employee or sub operator, shall be obligated to process the Personal Information only on instructions from the Operator and strictly in accordance with this Operator Agreement, read together with the Agreement and in particular the Sub Operator Agreement, where applicable.

4.2 The Operator warrants that it has the legal authority to give the above-mentioned warranties and fulfil the undertakings set out in this Operator Agreement.

4.3 The Company, in order to ascertain compliance with the warranties and undertakings housed under this Operator Agreement, will 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 Operator's facilities, files, and any other data processing documentation needed for the required review, audit and / or independent or impartial inspection and the Operator undertakes to provide all necessary assistance which may be needed to give effect to this right.

5. LIABILITY OF THE OPERATOR AND THIRD PARTY RIGHTS

5.1 In the event of the Operator, the Sub Operator or their respective employees or agents breaching any of the warranties and undertakings housed under this Agreement, or the Sub Operator Agreement here applicable, or failing to comply with any of the provisions of POPIA and / or the 8 POPIA Personal Information conditions, then in such an event, the Operator shall be liable for all damages it or the Sub Operator may have caused in consequence of said breach or non-compliance, including patrimonial, non- patrimonial and punitive damages suffered by the Company and / or the Data Subject(s) and the Operator indemnifies and holds the Company including(if applicable) and its directors and employees harmless against any such loss, damage, action or claim which may be brought by whomsoever against the Company or any of its directors or employees or against any of its affiliated companies, or their directors or employees, including(if applicable) and agrees to pay all and any such amounts on demand.

5.2 At the request of the Company, the Operator will provide the Company with evidence of financial resources sufficient to fulfil its responsibilities set out under the Agreement and the Operator Agreement, which may include insurance coverage.

6. APPLICABLE LAW

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

7. TERMINATION

- 7.1 In the event of the Agreement being terminated for whatsoever reason;
- 7.1.1 the transfer of Personal Information to the Operator being temporarily suspended by the Company for longer than one month, for whatever reason;
 - 7.1.2 the Operator is in breach of its obligations under the Agreement or this Operator Agreement or has failed to comply with POPIA or the 8 Information Processing Principles, and has failed when called upon to do so by the Company to rectify the breach or area of non-compliance;
 - 7.1.3 the Operator is in substantial or persistent breach of any warranties or undertakings given by it under the Agreement or this Operator Agreement, notwithstanding that the Company has not given the Operator notice of such breach;
 - 7.1.4 the Sub Operator is in breach of the Sub Operator Agreement;
 - 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 Company without prejudice to any other rights, which it may have against the Operator, shall be entitled to terminate the Agreement and the Operator Agreement as well as the Sub Operator Agreement.

- 7.2 The Parties agree that the termination of the Agreement and the Operator Agreement at any time, and / or the Sub Operator agreement, where applicable, in any circumstances and for whatever reason, does not exempt them from the rights and obligations set out under this Operator Agreement with regards to the processing of the Personal Information detailed under **Annexure "A"** read together with the obligations under POPIA.
- 7.3 In the event of the Agreement and / or Operator Agreement being terminated whenever, and for whatsoever reason, the Operator undertakes to:
- 7.3.1 restore and / or transfer back to the Company all and any Personal Information which has been provided to the Operator for processing, including that held by the Sub Operator, whether same has been processed or not, and / or which has been processed, together with any related documentation and / or information, all of which documentation must without exception, be returned to the Company 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 and that it will not under any circumstances use the aforementioned information for whatsoever reason.
- 7.4 Notwithstanding termination of the Agreement and / or the Operator Agreement and for whatsoever reason, the clauses 4, 5, 6 and 7.2 will survive any such termination.

8. GENERAL

- 8.1 Variation
The parties may not modify the provisions of this Operator Agreement including the information in

Annexure "A", "B" or "C" unless such variation is reduced to writing and signed by the Parties.

The Operator Agreement forms part of the Agreement.

This Operator Agreement, save where the contrary is stated, will be subject to and governed by the terms set out under the Agreement. In the event of any conflict or inconsistency between the terms of the Agreement and the Operator Agreement, the terms and conditions in so far as the processing of the Personal Information is concerned, as set out under the Operator Agreement will take precedence and govern its interpretation, application and construction.

8.2 Notices

All notices to be provided in terms of the Operator Agreement must be sent to the Information Officer at:
.....

Concluded onat

The Company

The Operator

