

Operator POPIA Protocol

entered into by and between

Jason Michael Smith Incorporated Attorneys

Registration Number: 2008/003855/21

("the Company")

and

Registration Number: _____

("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, process 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 a third party for the purpose of processing or further processing such Personal Information on its behalf, (hereinafter referred to as "the Operator") then any such processing is 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 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 agrees to process the Personal Information on behalf of the Company, which processing will be subject to the terms and conditions set out under this Operators POPIA Protocol ("**this Protocol**").

2. DEFINITIONS

In this Protocol, the capitalised terms which have not been defined, will have the same definition as contained in the POPIA unless the contrary appears from the context.

3. MANDATE TO PROCESS

The Company hereby grants to the Operator a mandate to process certain Personal Information, which shall be identified by the Company from time to time, on its behalf for the purpose and period set out in such notification

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, the POPIA, this Protocol 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 in its mandate, the POPIA, this Protocol and any specific instructions provided to it by the Company from time to time;

4.1.3 only disclose, transfer and/or hand over the Personal Information to the extent necessary to properly deliver the service;

4.1.4 save as set out in 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, will process such information in accordance with the POPIA and both the Operator and/or such third party will only retain the information for such period as is necessary in order to provide the services;

4.1.5 has and will continue to 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, 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;

- 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, accessed or acquired by any unauthorised person;
 - 4.1.7 not use the Personal Information for any direct marketing or advertising, research or statistical purposes;
 - 4.1.8 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;
 - 4.1.9 not sell, alienate or otherwise part with the Personal Information or any of the records housing the Personal Information;
 - 4.1.10 where it is allowed to transfer the Personal Information 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 contain the same terms and conditions as this Protocol, and which shall be concluded before the Personal Information is transferred to the Sub Operator;
 - 4.1.11 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 Protocol, read together 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 Protocol.
- 4.3. The Company, in order to ascertain compliance with the warranties and undertakings contained herein, 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

In the event of the Operator, the Sub Operator or their respective employees or agents breaching any of the warranties and undertakings contained in this Protocol, or the applicable Sub Operator Agreement, or failing to comply with any of the provisions of POPIA, the mandate and/or any specific instructions provided to it by the Company from time to time 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 consequential damages suffered by the Company and/or the Data Subject(s) and the Operator indemnifies and holds the Company, its directors and employees harmless against any such loss, damage, action or claim which may be brought against the Company or any of its directors or employees and agrees to pay all and any such amounts on demand.

6. APPLICABLE LAW

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

7. TERMINATION

7.1. In the event that:

7.1.1. the Operator is in breach of its obligations under this Protocol, its mandate, any specific instructions provided to it by the Company from time to time and/or has failed to comply with POPIA, and has failed to remedy such breach within 7 days of the Company demanding same;

7.1.2. the Sub Operator is in breach of the Sub Operator Agreement, this Protocol, its mandate, any specific instructions provided to it by the Company from time to time and/or has failed to comply with POPIA;

7.1.3. the Operator or the Sub Operator being placed under business rescue, under administration, or winding up whether interim or final, or any equivalent event in any other jurisdiction occurs,

then the Company without prejudice to any other rights that it may have against the Operator and/or Sub Operator, shall be entitled to terminate the Operator's mandate as well as the Sub Operator's mandate, if applicable.

7.2. Notwithstanding anything aforesaid, or what is stated in the mandate (if applicable) the Company may at any time terminate the Operator's mandate by giving 5 days' notice.

7.3. The Parties agree that the termination of the mandate, this Protocol, 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 Protocol with regards to the processing of the Personal Information under POPIA.

7.4. In the event of the Operator's mandate, Sub Operator's Agreement and/or this Protocol being terminated for whatsoever reason, the Operator undertakes to:

7.4.1. restore and/or transfer back to the Company any and all 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 must without exception, be returned to the Company within 14 (fourteen) days from date of the termination notice;

7.4.2. confirm in writing simultaneously when the transfer under clause 7.4.1 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.

7.5. Notwithstanding termination of the Operator's mandate, the Sub Operator's Agreement and/or this Protocol, clause 4, 5, 6 and 7.3 of this Protocol will survive any such termination.

8. GENERAL

8.1. The Operator's mandate forms part of this Protocol and, save where the contrary is stated, will be subject to and governed by the terms set out under this Protocol. In the event of any conflict or inconsistency between the terms of this Protocol and the Operator's mandate, the terms and conditions in so far as the processing of the Personal Information is concerned, as set out in this Protocol will take precedence.

8.2. This Protocol supersedes and novates in its entirety any previous understandings or agreements among the Parties in respect the processing of Personal Information; and the Parties waive the right to rely on any alleged provision not expressly contained in this Protocol.

8.3. No contract varying, adding to, deleting from or cancelling this Protocol, and no waiver of any right under this Protocol, shall be effective unless reduced to writing and signed by or on behalf of the Parties.

8.4. The grant of any indulgence, extension of any time or relaxation of any provision by a Party under this Protocol (or under any other agreement or document issued or executed pursuant to this Protocol) shall not constitute a waiver of any right by the grantor or prevent or adversely affect the exercise by the grantor of any existing or future right of the grantor.

8.5. Unless expressly provided otherwise in this Protocol, no Party may cede any or all of that Party's rights or delegate any or all of that Party's obligations under this Protocol, without the prior written consent of the other Party.

8.6. Notices

All notices to be provided in terms hereof must be sent to the Information Officer at:

The Company: Bradley Botha
bradley@jmsainc.com
011 447 8188

The Operator: _____

9. SHOULD YOU NOT AGREE TO THE TERMS AND CONDITIONS AS SET OUT IN THIS PROTOCOL AND CONSENT DECLARATION YOU MUST NOTIFY THE COMPANY IMMEDIATELY FAILING WHICH IT WILL BE DEEMED THAT YOU ACCEPT AND AGREE TO THE TERMS AND CONDITIONS SET OUT HEREIN.

Signed on this the _____ day of _____ 2021

The Company
Name: _____
I.D. No: _____
duly authorised

The Operator
Name: _____
I.D. No: _____
duly authorised