

# **DATA PROTECTION AGREEMENT**

Between

**SOUTH AFRICAN REVENUE SERVICE  
("SARS")**

And

**(DRAFTING NOTE: TO BE INSERTED) (PTY) LTD  
("OPERATOR")**

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## 1. PARTIES

1.1. This Data Protection Agreement (“**DPA**”) is an integral part of the existing Agreement between the parties which is referred to below (hereinafter collectively referred to as “**Agreement**”) and is entered into by and between:

- 1.1.1. **South Africa Revenue Service** an organ of the State established in terms of the South African Revenue Services Act, 1997 (Act No. 34 of 1997), with its registered address situated at its Pretoria Head Office, 299 Bronkhorst Street, Nieuw Muckleneuk, Pretoria, 0181; (“**SARS**”); (“**Responsible Party**”); and
- 1.1.2. (●) (**Pty**) **Limited**, Registration No. (●), a private company incorporated in accordance with the laws of South Africa, with its registered address situated at (●) (“**Operator**”).

## 2. DEFINITIONS AND INTERPRETATION

2.1. Unless otherwise defined herein, capitalized terms and expressions used in this Agreement shall have the following meaning: -

- 2.1.1. “**Agreement**” means the Master Services Agreement entered into by the Responsible Party and Operator with effect from (●) to which this DPA is attached as **Annexure B**;
- 2.1.2. “**Approved Operators**” means the Operator’s subsidiaries registered in terms of the Company laws of South Africa which are used by the Operator for the provision of the Services in line with the Purpose Specification.
- 2.1.3. “**Authority**” mean the Information Regulator established in terms of section 39 of the Protection of Personal Information Act 4 of 2013 (as amended from time to time) or any Regulatory Authority responsible for privacy or data protection matters;
- 2.1.4. “**Commencement Date**” means (●) notwithstanding Signature;

- 2.1.5. **“Consent”** means any freely-given, specific and informed expression of will whereby Data Subjects agreeing to the Processing of Personal Information relating to them;
- 2.1.6. **“Data Protection Laws”** shall mean the relevant data protection and privacy law in the Republic of South Africa including POPIA which the Parties are subject to;
- 2.1.7. **“Data Subject”** shall mean the person to whom Personal Information relates;
- 2.1.8. **“DPA”** means this Data Protection Agreement as amended by the Parties from time to time in writing;
- 2.1.9. **“DPA Term”** means the term of the Agreement;
- 2.1.10. **“Further Processing”** means the additional collection, organizing, updating, storing, dissemination, modification, and destruction of Personal Information in a manner compatible with the Purpose Specification and which further Processing must be specified, explicit and legitimate as further described in Section 15 of Chapter 3 of Part A, POPIA;
- 2.1.11. **“Operator”** means the party who Processes Personal Information on behalf of the Responsible Party in terms of this DPA, without coming under the direct authority of the Responsible Party and shall for purposes of this Agreement mean (●) including the Approved Operators;
- 2.1.12. **“Operator Personnel”** means the employees, contractors, consultants and/or the like of the Operator who are currently employed to provide the Services and required to Process the Personal Information and for this purpose being the (●) personnel;
- 2.1.13. **“Personal Information”** means the information relating to an identifiable, living, natural person, and where applicable, an identifiable existing juristic person as fully defined in POPIA;
- 2.1.14. **“POPIA”** means the Protection of Personal Information Act, 2013 (Act No. 4 of 2013) or any further amendments thereof and all references

to "**POPIA**" in this Agreement shall accordingly refer to this legislation as finally promulgated as from the date of promulgation;

2.1.15. "**Privacy and Data Protection Requirements**" means the 8 (eight) conditions for the Processing of Personal Information as contained in Chapter 3 of Part A of POPIA;

2.1.16. "**Process**", "**Processing**" or "**Processed**" means any operation or set of operations which is performed upon Personal Information whether or not by automatic means, including collecting, receipt, recording, organising, storing, adapting or altering, retrieving, consulting, using, disclosing, making available, aligning, combining, blocking, erasing and destroying Personal Information;

2.1.17. "**Purpose Specification or Lawful Purpose**" means the prescribed purpose being the scope of Services by the Operator as aligned with the provisions of Sections 13, of Condition 3 and Section 18 of Condition 6 in Chapter 3 of Part A of POPIA;

2.1.18. "**Responsible Party**" means the Party who determines the Purpose Specification and means for Processing Personal Information and shall for the purpose of this DPA be SARS;

2.1.19. "**Services**" means the services the Operator is contracted to provide to the Responsible Party in terms of the Agreement and as defined in Agreement; and

2.1.20. "**Sub-Operator**" means the Operator's subsidiaries registered in terms of the Company laws applicable in such subsidiaries' respective countries which are used by the Operator for the provision of the Services in line with the Purpose Specification. For the avoidance of doubt, the Parties record and agree that there are no sub-operators.

2.2. Any reference in this Agreement to:

2.2.1. "**Clause**" shall, subject to any contrary indication, be construed as a reference to a clause in this Agreement;

2.2.2. "**Person**" refers to any person including juristic entities.

2.3. Unless inconsistent with the context or save where the contrary is expressly indicated:

2.3.1. if any provision in a definition is a substantive provision conferring rights or imposing obligations on any Party, notwithstanding that it appears only in the definition Clause, effect shall be given to it as if it were a substantive provision of this Agreement;

2.3.2. when any number of days is prescribed in this Agreement, such a period shall be computed by excluding the first and including the last day unless the last day falls on a day which is not a Business Day, in which case the last day shall be the next succeeding Business Day;

2.3.3. no provision of this Agreement constitutes a stipulation for the benefit of any Person who is not a Party to this Agreement; and

2.3.4. a Party includes that Party's successors-in-title and permitted assignees, including any other persons contemplated in clause 2.8 of this Agreement.

2.4. Unless it is clear from a specific clause in which a term has been defined that such definition has limited application to the relevant Clause, any term defined within the context of any particular clause in this Agreement shall bear the same meaning as ascribed to it throughout the Agreement, notwithstanding that that term has been defined in a specific clause.

2.5. The termination of the Agreement will not affect the provisions of this DPA which will continue to operate after any such termination or which of necessity must continue to have effect after such termination, notwithstanding that the clauses themselves do not expressly provide for this.

2.6. None of the provisions hereof shall be construed against or interpreted to the disadvantage of the Party responsible for the drafting or preparation of such provision.

2.7. This DPA shall govern the relationship between the Parties for Processing of the Personal Information to be provided to the Operator by the Responsible Party for the Lawful Purpose.

- 2.8. This Agreement is binding on the executors, administrators, trustees, permitted assignees or liquidators of the Parties as fully and effectually as if they had signed this Agreement in the first instance and reference to any Party is deemed to include such Party's estate, heirs, executors, administrators, trustees, permitted assigns or liquidators, as the case may be.

### 3. PREAMBLE

- 3.1. **Whereas** under the Agreement concluded between Operator and the Responsible Party, the Operator agreed to provide the Responsible Party with the Services as further specified in the Agreement.
- 3.2. **Whereas** in rendering the Services, the Operator will be required to have access to the Personal Information in order to provide the Services and where required, appoint consultants to perform the Services as contemplated in the Agreement and in this regard, such consultant will be Operator and shall have access to the Personal Information of the Responsible Party or to information of other individuals having a (potential) relationship with the Responsible Party and this information may qualify as Personal Information within the meaning of the POPIA and relevant Data Protection Laws.
- 3.3. **Whereas** the main purpose of POPIA as described in *Section 2 of Chapter 1 thereof*, is to regulate the use of Personal Information (as defined by POPIA) and to provide for adequate security measures to protect Personal Information of Data Subjects. The Parties are therefore obligated to comply with these measures in certain ways or the other.
- 3.4. **Whereas** SARS, in terms of this DPA, acts as the Responsible Party and wishes to procure the Services, which entail the Processing of Personal Information by the Operator including Further Processing thereof by the Operator in compliance with Section 4 of POPIA and the Agreement.
- 3.5. **Whereas** POPIA requires a Responsible Party to provide adequate protection for Processing of Personal Information and such protection can be adduced by requiring Operator to enter into DPA's for the Processing of Personal Information.

3.6. **Whereas** the Parties seek to implement the DPA that complies with the requirements of the current legal framework in terms of POPIA in relation to Processing of Personal Information and the Agreement.

3.7. **Whereas** the Parties by entering into this DPA, wish to lay down their rights and obligations in this DPA.

#### 4. **PROTECTION OF PERSONAL INFORMATION**

4.1. In line with the preamble in clause 3 above, the Parties hereby undertake to comply with the provisions of POPIA and the Agreement in their dealings with Personal Information and acknowledge that they are familiar with and undertake to comply with the provisions of POPIA and/or Data Protection Laws for the duration of the DPA Term.

4.2. The Parties acknowledge and agree that all Personal Information provided by Responsible Party to the Operator or to which Operator and Responsible Party may become privy, pursuant to the Agreement and/or this DPA, shall constitute Personal Information and where applicable, intellectual property belonging to the Responsible Party.

4.3. Chapter 3 of POPIA sets out the Data Privacy Requirements to be complied with by anyone when dealing with Personal Information and the Parties are encouraged to appraise themselves in line with their respective roles with the aforesaid requirements when dealing with Personal Information. Below is a summary of the prescribed Data Privacy Requirements and the Parties hereby confirm that they have read and understand Chapter 3 of POPIA.

##### 4.4. **Condition 1 - Accountability:**

4.4.1. The Responsible Party shall ensure that conditions for lawful Processing are met by the Operator during the term of the DPA. In so doing both Parties shall:

4.4.2. comply with its obligations under the Agreement in respect of Personal Information collected, supplied and/or Processed in connection with the Purpose Specification and the Agreement;



- 4.4.3. comply with the specific obligations imposed on them in terms of POPIA in respect of the specific role they fulfil either as the Responsible Party or Operator when providing the Services in line with the Purpose Specification;
- 4.4.4. ensure that no Personal Information of the Data Subject shall be collected, Processed and/or shared with any other third party without obtaining written mandate from the Responsible Party unless lack of consent is justified as set out in Section 11 of Chapter 3, POPIA;
- 4.4.5. in dealing with the Personal Information either as the Responsible Party and/or Operator comply with the specific security safeguards/measures as set in Condition 7 of Chapter 3, POPIA and data protection obligations imposed on them in terms of POPIA and/or Data Protection Laws.
- 4.4.6. Notwithstanding the above, the Responsible Party remains obligated to ensure that the Operator complies at all times, *specifically* with the Privacy and Data Protection Requirements and *generally* with POPIA and/or Data Privacy Legislation when Processing Personal Information and the Operator hereby agrees to comply with the aforesaid.

#### 4.5. **Condition 2 - Processing Limitation**

- 4.5.1. Personal Information must be Processed lawfully and in a reasonable manner that does not infringe the privacy of Data Subjects. As such, Personal Information must only be Processed in accordance with the Purpose Specification and where there is consent or justification or objection as set out in Section 11 of Condition 2 of Chapter 3, POPIA. Notwithstanding the aforesaid, any objection to Processing by Data Subjects is only allowed if such objection meets the requirements of Section 11(3)(a) to (b). No objection will be allowed if Processing is required to comply with legislative requirements.
- 4.5.2. In summary, the Operator shall only Process the Personal Information:
  - 4.5.2.1. in compliance with POPIA;
  - 4.5.2.2. as is necessary for the Purpose Specification;

- 4.5.2.3. for maintaining its internal administrative processes, including quality, risk, client, or vendor management processes;
- 4.5.2.4. for internal business-related purposes; and
- 4.5.2.5. in accordance with the reasonable instructions of the Responsible Party.

4.5.3. Without limiting the provision of clause 4.5.2, the Operator undertakes:

- 4.5.3.1. to Process the Personal Information in compliance with the Privacy and Data Protection Requirements aligned to Purpose Specification; and
- 4.5.3.2. not to Process the Personal Information to any other third party except for the Operator Personnel and/or Approved Operators. In order to safeguard the Responsible Party, the Operator warrants that it has executed agreements with the Operator Personnel and/or Approved Operators restricting the Processing of Personal Information and/or disclosure of the Confidential Information without written approval of the Responsible Party.

4.5.4. The Operator shall not Process nor allow the Processing of the Personal Information to:

- 4.5.4.1. an outsourced information technology service provider; or
- 4.5.4.2. another country, including the use of cloud-based solutions (unless those solution are approved by the Responsible Party in writing and compliant with POPIA); or
- 4.5.4.3. an Affiliate;

without prior written consent of Responsible Party and the Data Subject or existing Personal Information Protection Agreement.

4.5.5. Where consent has been granted in terms of clause 4.5.4 above, the Operator undertakes and for the DPA Term, to require that any Approved Operators involved in the Processing or storage of Personal Information, to ensure that:

4.5.5.1. the Further Processing of Personal Information is in compliance with the Data Privacy Protection Requirement and POPIA; and

4.5.5.2. Personal Information Processed as contemplated above is protected with the same best industry practices and/or protection as is required in terms of Section 21 and 22 of POPIA;

4.5.6. It is acknowledged by the Operator that, the Operator remains accountable for Personal Information further Processed by their respective Operator Personnel and/or Sub-Operators and/or Approved Operators;

4.5.7. The Operator shall inform the Responsible Party about important developments, proposals and services which it thinks may be relevant to the Responsible Party for Service improvement etc., however, the Operator undertakes for the DPA Term, not to use or Process nor allow Further Processing of the Personal Information for marketing purposes or other communications without prior written approval of the Responsible Party.

4.6. **Condition 3 - Purpose Specification**

4.6.1. The collection of Personal Information must be for a specific, explicit defined purpose and not further processed in a manner that is incompatible with those purposes. For the purposes of this DPA the Responsible Party has taken measures to ensure that the Purpose Specification is communicated to the Data Subjects as required by Section 18(1) of Condition 6 of Chapter 3, POPIA unless such communication is limited by Section 18(4) of Condition 6 of Chapter 3, POPIA.

4.6.2. In general, and without restricting the Processing Limitation set out above the Operator shall for the DPA Term only Process the Personal Information in accordance with written instructions from the Responsible Party (which may be specific instructions or instructions of a general nature limited to the Purpose Specification, or as otherwise notified by the Responsible Party in writing, subject to compliance with the Privacy and Data Protection Requirements and/or the provision of POPIA.

4.6.3. In ensuring compliance with the provisions of this DPA, the Operator undertakes for the DPA Term to:

4.6.3.1. process the Personal Information in accordance with the applicable provision of POPIA in particular, the lawful Process as set out in Section 9 of Condition 2 of Chapter 3 of POPIA;

4.6.3.2. co-operate as requested by the Responsible Party, to enable the Responsible Party to comply with or exercise rights of Data Subject under POPIA in respect of Personal Information Processed by the Operator and/or Operator Personnel for the Purpose Specification or comply with any assessment, enquiry, notice or investigation under POPIA and/or Applicable Laws which shall include the provision of all data requested by Responsible Party within the timescale specified by the Responsible Party in each case, subject to compliance by the Responsible Party and Operator with POPIA.

4.6.4. Without limiting any other provision of this DPA, the Operator shall (subject to clause 4.6.3:

4.6.4.1. only store, copy or use any Personal Information disclosed/supplied to it by the Responsible Party pursuant to the Agreement to the extent necessary to perform its obligations under this DPA and subject to the provisions of POPIA;

4.6.4.2. not otherwise modify, amend, or alter the contents of the Personal Information or disclose or permit the disclosure of any of the Personal Information to any third party unless authorised in writing by Responsible Party and where required, the Data Subject and limited to the purpose.

4.6.4.3. not maintain records of the Personal Information for longer than is necessary unless retention thereof for a longer period is required by the Applicable Laws or requested in writing by the Responsible Party.

4.6.4.4. keep all Personal Information and any analyses, profiles or documents derived therefrom separate from all other data and documentation of Software AG.

- 4.6.5. If at any time the Operator suspects or has reason to believe that Personal Information disclosed/supplied to it by the Responsible Party pursuant to this DPA has or may become lost or corrupted in any way for any reason then, the Operator shall without limiting Clause 4.10 below, immediately notify the Responsible Party thereof and inform the Responsible Party of what remedial action it proposes to take.

4.7. **Condition 4: Lawful Processing**

- 4.7.1. The Responsible Party shall with effect from the Commencement Date, supply the Personal Information to the Operator which the Operator requires in order to ensure Service provision which the Operator shall use for the Purpose Specification.
- 4.7.2. Further as part of the Service provision, the Responsible Party will supply the Personal Information to the Operator which the Operator requires in order to provide the Services in terms of the Principal Agreement required by the Responsible Party which Personal Information will be supplied either telephonically and/or via email or in terms of the mode agreed to by the Parties in the Agreement.
- 4.7.3. The Operator acknowledges the importance of Personal Information to the Responsible Party including the legislative requirements binding on the Responsible Party when dealing with the Personal Information in particular the Privacy and Data Requirements and undertakes for the DPA Term to ensure the following:
- 4.7.3.1. that the Personal Information is only used for a Purpose Specification and as authorized by the Responsible Party and in terms of this Agreement;
- 4.7.3.2. that the Personal Information shall only be supplied to Approved Operators and not to any other third party;
- 4.7.3.3. notify the Responsible Party of any request it receives from third parties either directly or via Approved Operators for any access to or changes to the Personal Information;
- 4.7.3.4. not transfer the Personal Information in any manner to any third party not authorized in writing by the Responsible Party;

- 4.7.3.5. comply with all laws, Responsible Party's policies and procedures relating to the protection, storage, handling, privacy, processing and retention of Personal Information as well as the destruction of Personal Information.

#### 4.8. **Condition 4 – Further Processing**

- 4.8.1. The Operator acknowledges that further Processing must always be in accordance with the provisions of Section 15 of Condition 4 of Chapter 3, POPIA and compatible with the Purpose Specification including compliance with the requirements of Section 15(2) of Condition 4 of Chapter 3, POPIA.
- 4.8.2. Further, in the performance of the Services, the Operator shall take reasonable steps to ensure the reliability of any Operator Personnel who may have access to the Personal Information ensuring in each case that access is strictly limited to those individuals who need to know/access the relevant Personal Information, as strictly necessary for the purposes of the Agreement, and to comply with POPIA in the context of that Operator Personnel's duties to the Operator and ensuring that all such Operator Personnel are subject to confidentiality undertakings or professional or statutory obligations of confidentiality.
- 4.8.3. The Operator shall not appoint or disclose any Personal Information to any Sub-Operator unless required or authorized by the Responsible Party.
- 4.8.4. Notwithstanding the above, in the event that authority is given, the Operator shall not be removed from its obligations as set out in this DPA and shall for the DPA Term remain responsible to ensure that the Personal Information Processed by the Sub-Operators is compliant with this DPA and POPIA and agrees to indemnify the Responsible Party in full for any Personal Information breach by the Sub-Operators.
- 4.8.5. It is specifically recorded that further Processing will not be deemed to contravene the Purpose Specification where such further Processing is aligned to the requirements of Condition 4 of Chapter 3, POPIA.

#### 4.9. **Condition 5: Information Quality**

- 4.9.1. The quality of the Personal Information is critical and therefore, the Responsible Party shall ensure that the Personal Information collected is complete, accurate, not misleading and updated where necessary including ensuring that such quality maintenance is always aligned to the Purpose Specification and requirements for Further Processing.
- 4.9.2. To ensure that the Responsible Party remains compliant with the requirements of Condition 5 of Chapter 3, POPIA, the Operator shall maintain the quality of the Personal Information being Processed and ensure that such maintenance is carried out by the Sub-Operators in the event that the necessary consent given in terms of (●) above when Further Processing, aligned to the Purpose Specification and requirements for Further Processing.

#### 4.10. **Condition 6: Openness and Notification**

- 4.10.1. The Responsible Party shall:
  - 4.10.1.1. maintain the documentation of all Personal Information Processed via its operations and under its responsibility notify the Operator of any change; and
  - 4.10.1.2. obtain written Consent from all applicable Data Subjects for the collection and Processing of Personal Information whenever this is required for the Purpose Specification.

#### 4.11. **Condition 7: Security Safeguards**

- 4.11.1. The Operator shall keep Personal Information logically separate from information Processed on behalf of any other third party.
- 4.11.2. Taking into account the costs of implementation and the nature, scope, context and Purpose Specification of Processing as well as the risk of varying likelihood and severity for the rights and freedoms of Data Subjects, the Operator shall in relation to the Personal Information implement appropriate technical and organizational measures to ensure a level of security appropriate to that risk, including, appropriate measures as stated in clause 19 of POPIA.

- 4.11.3. In assessing the appropriate level of security, the Operator shall take appropriate and reasonable technical and organizational security measures to prevent the accidental loss of, accidental or unlawful destruction of or damage to or unauthorized destruction of Personal Information, and the unlawful access to or Processing of Personal Information. The measures taken must at all times be at least of a minimum standard required by all Data Protection Laws and POPIA and be of a standard no less than the standards which are in compliance with the best industry practice for the maintenance of integrity and assurance of confidential information including protection, control, use and retention of data.
- 4.11.4. take reasonable steps to identify all reasonably foreseeable internal and external risks posed to Personal Information under its possession or control and establish and maintain appropriate risk mitigation processes and/or safeguards against any risks identified. The Operator shall regularly verify that the risk mitigation processes and/or safeguards are effectively implemented and keep a record of such verification. The mitigation and risk safeguards shall be updated continually in response to new risks or deficiencies in previously implemented safeguards.
- 4.11.5. The Operator shall undertake appropriate technical and organisational measures to safeguard the security of any electronic communications networks or services provided to the Responsible Party or utilised to transfer or transmit Personal Information (including measures designed to ensure the secrecy of communications and prevent unlawful surveillance or interception of communications and gaining unauthorised access to any computer or system and thus guaranteeing the security of the communications).
- 4.11.6. provide a level of security appropriate to the harm that might result from any unauthorized or unlawful Processing or accidental loss, destruction, or damage to the Personal Information and also to the nature of the Personal Information being protected. Any act or omission that compromises the security, confidentiality or integrity of Personal Information or the safeguards used to protect the security, confidentiality or integrity of Personal Information, or a receipt of or a



complaint in respect of the security practices of the Operator or a breach or alleged breach of any of the undertakings in relation to POPIA imposed on the Operator by this DPA or of obligations imposed on the Operator in terms of POPIA, will be deemed to be a breach for purposes of this DPA. In the event of breach or suspected breach, the Operator will notify the Responsible Party, within one Business Day of becoming aware of the breach.

**4.12. Condition 8: Data Subject Rights:**

- 4.12.1. Taking into account the nature of the Processing, the Operator shall assist the Responsible Party by implementing appropriate technical and organizational measures, insofar as this is possible, for the fulfilment of the Responsible Party's obligations to respond to requests to exercise Data Subject rights under POPIA.
- 4.12.2. The Operator shall:
  - 4.12.2.1. promptly notify the Responsible Party if it receives a request from a Data Subject under POPIA and/or any Data Protection Law in respect of the Personal Information; and
  - 4.12.2.2. ensure that it does not respond to that request except on the documented instructions of the Responsible Party or as required by POPIA or Data Protection Laws to which the Operator is subject, in which case the Operator shall to the extent permitted by such laws inform the Responsible Party of that legal requirement before the Operator responds to the request.
  - 4.12.2.3. Subject to section 24 of POPIA, the Operator shall promptly and in any event within 10 business days of the date of cessation of any Services involving the Processing of Personal Information (the "Cessation Date"), delete and procure the deletion of all copies of those Personal Information.

**5. OPERATOR EMPLOYEES CONFIDENTIALITY**

- 5.1. The Operator shall ensure the reliability of any employees and in the event where Approved Operators have been consented to by the Responsible Party, that the Operator personnel and Approved Operator personnel who

access the Personal Information and ensure that such personnel have undergone appropriate training in the care, protection and handling of personal information and have entered into confidentiality provisions in relation to the Processing of Personal Information.

- 5.2. The Operator will remain liable for any disclosure of Personal Information by each such person as if it had made such disclosure.

## **6. PERSONAL INFORMATION BREACH**

- 6.1. The Operator shall notify the Responsible Party without undue delay upon the Operator becoming aware of a personal data breach affecting the Responsible Party by providing the Responsible Party with sufficient information to allow the Responsible Party to meet any obligations to report or inform Data Subjects of the Personal Data Breach under POPIA.
- 6.2. The Operator shall co-operate with the Responsible Party and take reasonable commercial steps as are directed by the Responsible Party to assist in the investigation, mitigation, and remediation of each such personal data breach.
- 6.3. The Operator shall provide reasonable assistance to the Responsible Party with any assistance required for the data breach impact assessments including being available for any consultation with the Regulator or other competent data privacy authorities where the Responsible Party reasonably considers to be required in order to comply with the data breaches notification in terms of section 22 of Condition or equivalent provisions of any other Data Protection Law, in each case solely in relation to Processing of Personal Information by, and taking into account the nature of the Processing and information available to, the Operator.
- 6.4. After receipt of a notification of breach as in terms of Clause 6.1 above, the Parties shall as soon as reasonably possible meet to investigate the breach and the Operator will cooperate with the Responsible Party and assist the Responsible Party with its investigation by providing access to its systems, records, files, logs, data, employees and other relevant information that may be required in order to comply with its obligations in terms of POPIA. The Operator will cooperate and assist the Responsible

Party in any litigation or other proceedings which the Responsible Party deems necessary to protect its rights relating to the use, disclosure, protection, and maintenance of Personal Information.

- 6.5. The Operator shall treat any breach as confidential and shall not inform any third party of a breach unless it has obtained the Responsible Party's prior written consent. Any notification of a breach to any individual or regulatory authority and the content, manner and form thereof shall be within the Responsible Party's discretion.
- 6.6. The Operator shall take all steps required to prevent any further breaches at its own expense. If the preventative measure requires a publication of the breach to any third party (including a court of law or a regulator) it shall only do so after obtaining the Responsible Party's prior written consent as contemplated in 6.5 above, which shall not be unreasonably withheld. The Operator shall reimburse the Responsible Party for all costs, incurred by the Responsible Party to respond to, and to mitigate its damages caused by a breach which will include costs of notices and legal expenses associated with the breach.
- 6.7. The Responsible Party warrants that it has obtained all necessary consents, where required, from the Data Subjects when requesting their personal information.
- 6.8. The Operator further warrants, represents and undertakes that it shall ensure that all its systems and operations which it uses to provide the Services including all systems on which Data is Processed as part of providing the Services, shall at all times be of a minimum standard required by all applicable laws and be of a standard no less than the standards which are in compliance with the best industry practice for the protection, control and use of Data.
- 6.9. Notwithstanding any other provision in this Agreement, the Operator indemnifies the Responsible Party from any losses, damages, liabilities, deficiencies, actions, judgments, interests, awards, penalties, fines, costs or expenses of whatever kind incurred or suffered by the Responsible Party as a result of the Operator's failure to comply with its statutory

obligations contained in POPIA or any other obligations contained in this clause 6.

## **7. AUDITS**

- 7.1. Subject to this section, the Operator shall make available to the Responsible Party on request, all information necessary to demonstrate compliance with this DPA and shall allow for and contribute to audits, including inspections, by the Responsible Party or an auditor mandated by the Company in relation to the Processing of the Personal Information by the Operator.
- 7.2. Information and audit rights of the Responsible Party only arise under section 7.1 to the extent that the DPA does not otherwise give them information and audit rights meeting the relevant requirements of POPIA.
- 7.3. The Operator shall:
  - 7.3.1. ensure, if required, the necessary audit procedures are in place to deal with the requirements of POPIA and this clause.
  - 7.3.2. implement any other measures and procedures to ensure that the Operator's obligations in terms of this clause 7 and POPIA are met.
- 7.4. The Operator's failure to comply with the provisions of clause 7.3 is a material breach of this Agreement. In such event the Responsible Party may terminate the Agreement effective immediately upon written notice to the Operator without further liability or obligation to the Responsible Party.

## **8. DATA TRANSFER**

- 8.1. The Operator acknowledges that the Responsible Party is not a European Union (EU) nor European Economic Area (EEA) member state and as such, the supply of Personal Information for Processing by a person or entity who is outside the jurisdiction of South Africa is not allowed in terms of POPIA.
- 8.2. Notwithstanding the above, the Responsible Party has in terms of this DPA, given the Operator authority to Process the Personal Information such Processing and/or Further Processing shall be limited to Approved

Operators approved by the Responsible Party in terms of this DPA and on warranty by the Operator that the Approved Operators have existing adequate safeguards and measures for protection of Personal Information as prescribed by Condition 7 of POPIA in order to ensure that the Responsible Party does not breach its statutory requirement towards Data Subjects with regard to cross border transfer of Personal Information as prescribed by Section 72 of POPIA.

## **9. DELETION OF PERSONAL INFORMATION**

- 9.1. The Operator shall delete Personal Information from its records, systems etc. in accordance with the Responsible Party's instructions and deletion policies and processes and at such other times as may be required from time to time by the Responsible Party.
- 9.2. Upon termination or expiry of any of the relevant Services, in respect of such Services any remaining Personal Information shall, at Responsible Party's option, be destroyed or returned to Responsible Party, along with any medium or document containing Personal Information.

## **10. REQUESTS FOR DISCLOSURE OF PERSONAL INFORMATION**

- 10.1. Requests from Governmental Authorities and Data Subjects:
  - 10.1.1. The Operator shall, and shall procure that the Approved Operator shall, inform Responsible Party promptly (and in any event within twelve (12) hours of receipt or sooner if required to meet with any earlier time-limit) of any inquiry, communication, request, or complaint from:
    - 10.1.1.1. any Governmental, Regulatory or Supervisory Authority, including Privacy Authorities; and/or
    - 10.1.1.2. any Data Subject;
    - 10.1.1.3. relating to the Services, any Personal Information or any obligations under Data Protection Laws and any other relevant privacy law, regulations and other regulatory requirements, guidance or statutory codes of practice to which the Operator is subject and shall provide all reasonable assistance to Responsible

Party free of costs to enable Responsible Party to respond to such inquiries, communications, requests or complaints and to meet applicable statutory or regulatory deadlines. The Operator shall not, and it shall procure that any Sub-Operator shall not, disclose Personal Information to any of the persons or entities in 10.1.1.1 or 10.1.1.2 above unless it is obliged by law or a valid and binding order of a court or other legal judicial Process to disclose Personal Information and has otherwise complied with the obligations in this clause 10.1

10.2. **Requests at law**

- 10.2.1. Where the Operator or any Approved Operator is required by law, court order, warrant, subpoena, or other legal judicial Process (“**Legal Request**”) to disclose any Personal Information to any person or entity other than Responsible Party, the Operator shall, and shall procure that any Approved Operator shall, notify Responsible Party promptly (and in any event within twelve (12) hours of receipt or sooner if required to meet with any time-limit in the Legal Request and shall provide all reasonable assistance to Responsible Party to enable Responsible Party to respond or object to, or challenge, any such demands, requests, inquiries or complaints and to meet applicable statutory or regulatory deadlines. The Operator shall not, and it shall procure that any Sub-Operator shall not, disclose Personal Information pursuant to a Legal Request unless it is obliged by law or a valid and binding order of a court or other legal judicial process to disclose Personal Information and has otherwise complied with the obligations in this clause 10.2.

## **11. PRIVACY INCIDENT NOTIFICATION**

- 11.1. Operator undertakes to comply with all applicable laws that require the notification of Data Subjects in the event of unauthorized release of Personal Information or other event requiring notification. In the event of a breach of any of the Operator's security obligations or other event requiring notification under Data Protection Laws, the Operator agrees to assume responsibility for informing the Responsible Party and Data Subjects in accordance with the provision of the aforesaid Data Protection Laws and to indemnify, hold harmless and defend the Responsible Party and its trustees, officers, and employees from and against any claims, damages, or other harm related to such an event requiring notification.

## **12. INDEMNITY**

- 12.1. The Operator shall indemnify the Responsible Party, its officers, representatives and employees for direct damages, losses, actions or claims of any nature whatsoever in relation to any personal information breaches in accordance with POPIA and/or Data Protection Laws which indemnity shall remain binding on the Operator until POPIA and/or Data Protection Laws prescribes otherwise.

## **13. LIMITATION OF LIABILITY**

- 13.1. This Clause will allow the Responsible Party to bring a claim for any loss suffered by the Responsible Party as a result of the Operator and/or Approved Operator's negligence or breach of POPIA. For the avoidance of doubt, the Parties record and agree that the limitation of liability set out in the Agreement shall not apply to this DPA.

## **14. SUB-PROCESSING**

- 14.1. The Operator shall not subcontract any of its Processing operations performed on behalf of the Responsible Party under this DPA without the prior written consent of the Responsible Party. Where the Operator subcontracts its obligations under this DPA, the Operator indemnifies the Responsible Party for any act or omission of the Sub-Operator.
- 14.2. The Operator undertakes to keep a list of the Sub Approved Operator agreements concluded under this DPA and provide such list to the

Responsible Party on the date of this DPA and shall provide an updated list on the termination of a Sub-Approved Operator agreement entered under this DPA or on the agreement of a new Sub Approved Operator entered under this DPA.

## **15. MEDIATION AND JURISDICTION**

- 15.1. A Party may refer a dispute to mediation through written notice to the other Party. Within 10 (ten) business days of receipt of such notice, the managing executive of the Responsible Party and the general manager of the relevant business unit of the Operator shall meet with a view to resolving such dispute. Should the representatives be unable to resolve such dispute within 10 (ten) business days of meeting, a Party may then proceed to issue a notice that it intends to submit the dispute to arbitration, to the Arbitration Foundation of Southern Africa ("**AFSA**"), in accordance with its Rules.
- 15.2. If agreement is not reached on the identity of the arbitrator within 10 (ten) business days after either Party in writing calls for the arbitration, the arbitrator shall be an attorney or advocate nominated by the Registrar of AFSA for the time being. The request to nominate an arbitrator shall be in writing outlining the claim and any counterclaim of which the Party concerned is aware and, if desired, suggesting suitable nominees for appointment, and a copy shall be furnished to the other Party who may, within 7 (seven) business days, submit written comments on the request to the addressor of the request.
- 15.3. The arbitration shall be governed by the Arbitration Act No. 42 of 1965 ("**the Arbitration Act**") or any replacement Act.
- 15.4. The arbitration shall be held at Johannesburg and in the English language.

## **16. OBLIGATION AFTER THE TERMINATION OF PERSONAL INFORMATION PROCESSING SERVICES**

- 16.1. The Parties agree that on the termination of the Agreement, the Operator and Sub Approved Operators shall, at the request of the Responsible Party, return all the Personal Information Processed and the copies thereof



to the Responsible Party or shall destroy all the Personal Information in a manner approved by the Responsible Party and certify to the Responsible Party that it has done so,

## **17. APPLICATION OF THIS DPA**

- 17.1. The sole purpose of this DPA is to deal with the effects of the Data Protection Laws on the Processing of Personal Information by the Responsible Party to the Operator and any Further Processing to Approved Operators and/or Sub Approved Operators pursuant to this DPA, and to ensure compliance with the Data Protection Laws.
- 17.2. This DPA does not purport to implement any other contractual terms in respect of the relationship between the Parties, nor to amend the terms of the Agreement as may exist as at the date of this DPA provided that if, and to the extent that, any other contractual terms that exist, or may in future exist, between the Parties, any conflict with the terms of this DPA, the terms of thereof shall prevail except where such contractual terms are expressed to vary the terms of this DPA.

## **18. MISCELLANEOUS**

### **18.1. Non-Assignment**

- 18.1.1. The Service Provider may not assign, delegate or in any other manner transfer any benefit, rights and/or obligations in terms of this Agreement to a third party, with or without the prior written consent of SARS.
- 18.1.2. The Service Provider may only cede this Agreement in favour of registered Financial Services Providers (FSP) and state institutions established for the express purpose of providing funding to businesses and entities (State Institution). Therefore, cession shall only be permissible in the event that -
  - 18.1.2.1 It is intended to transfer rights to receive payment for services rendered by the Service Provider to SARS;
  - 18.1.2.2 The written request for cession to SARS is by the Service Provider and not any third party; and

- 18.1.2.3 The written request by the Service Provider must be accompanied by the cession agreement the parties intend to enter into.

**18.2. Whole Agreement**

- 18.2.1. This Agreement constitutes the whole agreement between the Parties as to the subject matter hereof and no agreement, representations, or warranties between the Parties other than those set out herein are binding on the Parties.

**18.3. Variation**

- 18.3.1. No addition to or variation, consensual cancellation or novation of this Agreement and no waiver of any right arising from this Agreement or its breach or termination shall be of any force or effect unless reduced to writing and signed by all the Parties or their duly authorised representatives.

**18.4. No stipulation for the benefit of a third person**

- 18.4.1. Save as is expressly provided for in this Agreement, no provision of this Agreement constitutes a stipulation of a third person (i.e. *stipulatio alteri*).

**18.5. No representations**

- 18.5.1. A Party may not rely on any representation (whether or not made innocently, negligently, or deliberately) which allegedly induced that Party to enter into this Agreement, unless the representation is recorded in this Agreement.

**18.6. Relaxation**

- 18.6.1. No latitude, extension of time or other indulgence which may be given or allowed by a Party to the other in respect of the performance of any obligation hereunder or enforcement of any right arising from this Agreement and no single or partial exercise of any right by any Party shall under any circumstances be construed to be an implied consent by such Party or operate as a waiver or a novation of, or otherwise affect any of that Party's rights in terms of or arising from this

Agreement or estop such Party from enforcing, at any time and without notice, strict and punctual compliance with each and every provision or term hereof.

**18.7. Governing Law**

- 18.7.1. This Agreement is governed by and construed and interpreted in accordance with the law of the Republic of South Africa.

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18.8.      **Counterparts**

18.8.1.      This Agreement may be executed in separate counterparts, none of which need contain the signatures of all Parties, each of which shall be deemed to be an original and all of which taken together constitute one agreement which shall be valid and binding on the Parties

SIGNED by the Parties on the following dates and at the following places respectively:

Signed at \_\_\_\_\_ on \_\_\_\_\_ 2022

Witnesses: \_\_\_\_\_ For: **SARS**

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_  
who warrants his/her authority

Signed at \_\_\_\_\_ On \_\_\_\_\_ 2022

Witnesses: \_\_\_\_\_ For: **SARS**

\_\_\_\_\_

\_\_\_\_\_

Signed at \_\_\_\_\_ who warrants his/her authority  
On \_\_\_\_\_ 2022

Witnesses: \_\_\_\_\_ For: **OPERATOR**

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_  
who warrants his/her authority