

## **POPIA Clause – 3<sup>rd</sup> party agreements (service providers)**

### **Data Protection**

1. The parties acknowledge and agree that all Data provided by FEM to the Service Provider, or to which the Service Provider may be exposed, shall constitute confidential information and where applicable, intellectual property belonging to FEM and must not be disclosed unless required by law or in the course of the proper performance of the Service Providers duties.
2. The performance of the Service Providers obligations in terms of this agreement shall be strictly in compliance with the Protection of Personal Information Act, 2013 (POPIA) and all other laws, policies, and procedures (Applicable Laws), relating to the protection, storage, handling, privacy, processing, and destruction of Personal Information.
3. The Service Provider hereby warrants, represents and undertakes in favour of FEM that:
  - a. It shall at all times strictly comply with all Applicable Laws and with all the provisions and requirements of any FEM data protection policies and procedures which may be in force from time to time.
  - b. It shall only process Personal Information where it is lawful and in a reasonable manner that does not infringe the processing conditions and privacy of the Data Subject.
  - c. It shall only process Personal Information in order to perform in terms of the contract or in order to comply with an obligation imposed by law or where the processing protects the legitimate interests of the Data Subject. It shall not, at any time Process Data for any purpose other than with the express prior written consent from FEM, and to the extent necessary to provide the services to FEM.
  - d. 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 meet the minimum standard and security required by all Applicable Laws.
  - e. It shall only process Personal Information, taking into account the purpose, it is deemed adequate, relevant and not excessive.
4. The Service Provider shall take appropriate and reasonable technical and organisational measures to prevent the loss of, damage to or unauthorised destruction of Data and the unlawful access to or Processing of Data. The measures taken must 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 Industry Best Practice for the protection, control and use of Data.
  - 4.1 The Service Provider shall inform FEM as soon as reasonably possible in the event of an unlawful or unauthorised access, disclosure, copying, destruction or amendment to the Personal Information or if it is suspected. Such notification shall have sufficient information to enable FEM to report appropriately.
5. The Service Provider agrees to ensure that all Personal Information processed or sent outside or received from outside South Africa is adequately protected, securely sent and only where required by law or an obligation in terms of a contract. In such instances the Service Provider agrees to comply with FEM policies and procedures as it relates to data protection.
6. The Service Provider agrees to keep complete, accurate and up to date records and to give effect to a Data Subjects right to correct, request access to or object to the processing of their Personal Information (where applicable).
7. The Service Provider agrees that it will ensure that, once it has Processed the Personal Information for the purposes it was intended, it will destroy the data to an extent that it cannot be

reconstructed to its original form or a form that allows the identity of the Data Subject to be related to the data, subject to compliance with applicable record retention requirements.

- 7.1 The Service Provider further agrees to only delete Personal Information on the written instruction of FEM and refer all destruction and deletion requests to FEM for final instruction.
- 7.2 The Service Provider shall also provide FEM with a schedule of the documents, Personal Information, data and/or records deleted or destroyed and a certificate of destruction assuring that all such information or records have been destroyed in accordance with the requirements of data protection laws and in particular, POPIA.
8. The Service Provider shall take reasonable steps to identify all reasonably foreseeable internal and external risks posed to Data under the Service Provider's possession or control and establish and maintain appropriate safeguards against any risks identified.
  - 8.1 The Service Provider shall regularly verify that the safeguards are effectively implemented and keep record of such verification.
  - 8.2 The safeguards shall be updated continually in response to new risks or deficiencies in previously implemented safeguards. Records kept must be available for inspection on 7 (seven) days' notice in writing from FEM.
9. The Service Provider shall be liable for any damages, claims or fines imposed on FEM in the event that the Service Provider is responsible for the breach or a failure to adhere to POPIA/ data privacy requirements and that the breach of its obligations under this clause shall be deemed as a material breach of contract.
  - 9.1 In the event of a breach or suspected breach, FEM reserves the right to promptly cease providing the Service Provider with further Confidential and/or Personal Information and this action shall not constitute a breach of the agreement.
10. The parties acknowledge and agree that, cancellation or a claim for damages may not be the only appropriate remedy for a breach of this data protection clause and that the remedies of interdict, specific performance and any other equitable relief may be appropriate for any actual or threatened breach of this clause. FEM may be entitled to apply for such remedy, in addition to any other remedy to which it may be entitled to by law.
11. This data protection clause is severable from the rest of this agreement and shall remain valid and binding on the parties notwithstanding any termination.

**Applicable Definitions:**

“Data” means any data, including Personal Information as amplified by the definition thereof set out in the Electronic Communications and Transactions Act 25 of 2002, the Protection of Personal Information Act 4 of 2013 and/or any equivalent legislation of the jurisdiction(s) where the Outsourced Services are being provided and/or performed, supplied to the Service Provider by FEM or Processed on behalf of FEM by the Service Provider.

“Service Provider” means the third party providing the product or service to or on behalf of FEM.

“Process” means any operation or activity or any set of operations, whether or not by automatic means, including;

- Collecting, receipt, recording;
- Organising, collating, storing, merging, linking;

- Updating, modifying, alteration, consultation;
- Blocking, degradation, erasure, destruction and/or
- Retrieval, testing, use, dissemination or distribution.

Processing and Processed will have a similar meaning.

“Services” means the services to be provided by the Service Provider to FEM.

“Personal Information” means information relating to an identifiable natural or juristic person, as defined by the Protection of Personal Information Act 4 of 2013 or equivalent legislation of the jurisdiction(s) applicable to the Parties and/or this Agreement.

“Applicable Laws” means all and any statutes, subordinate legislation, common law, regulations, ordinances, by-laws, directives, codes of practice, rules, circulars, guidance notices, judgments and decisions of any competent authority, or any governmental, intergovernmental or agency, department or regulatory, self-regulatory or other authority or organisation and any replacement or amendment thereof, and other similar provisions, which are in force and effect.

“Industry Best Practice” means at any time the exercise of that degree of skill, care, diligence, prudence, efficiency, foresight, standards, practices, methods, procedures and timeliness which would be expected at such time from a leading and expert company within the industry, such company seeking to comply with its contractual obligations in full and complying with all Applicable Laws.

“Data Subject” means the person (natural or legal) to whom Personal Information relates.