

OPERATOR AGREEMENT (EXAMPLE)

Entered into between

(Registration number:_____)
(Hereinafter referred to as the “Company”
or “Responsible party”)

and

(Registration number_____)
(Hereinafter referred to as “IRM” or “Operator”)

Whereas the Company requires the provision of certain labour relations related services by IRM in accordance with the Company’s operational requirements.

and

Whereas IRM is willing to provide the required labour relations related services in accordance with the Company’s operational requirements

and

Whereas the parties recognise the necessity to protect the processing of personal information in accordance with the provisions of the Protection of Personal Information Act, 4 of 2013, and to this end, enter into this agreement in the protection of associated parties’ interests.

WHEREAS THE PARTIES AGREE AS FOLLOWS:

1. DEFINITIONS AND INTERPRETATION

In this agreement

- 1.1 The clause headings are for reference purposes only and shall not be used in the interpretation thereof.
- 1.2 Unless the context clearly indicates a contrary intention, expressions which denote:
 - 1.2.1 Any gender shall include the other gender
 - 1.2.2 A natural person shall include a juristic person and vice versa
 - 1.2.3 The singular shall include the plural and vice versa.
- 1.3 The “Company” shall mean _____, with registration number _____, a private company registered in accordance with the company laws of the Republic of South Africa.
- 1.4 The *contra proferentem* rule shall not apply and therefore, none of the provisions of this agreement shall be construed against or interpreted to the disadvantage of the Party responsible for the drafting or preparation of such provision.
- 1.5 The expiration or termination of this Agreement shall not affect such of its provisions as expressly provided that they will continue to apply after such expiration or termination or which of necessity must continue to apply after such expiration or termination.
- 1.6 This agreement does not limit the parties’ rights that they may have in terms of common law.
- 1.7 “Act” means The Protection of Personal Information Act, 4 of 2013 (“POPIA”)
- 1.8 Agreement means this agreement and include any annexures thereto.
- 1.9 “*Data Breach*” means a breach of security leading to the accidental or unlawful destruction, loss, alteration, unauthorized disclosure of, or access to, Personal Information under the control of or in the possession of IRM.
- 1.10 “*Data Subject*” means the person to whom Personal Information relates.

- 1.11 “*Employees*” means any employee of _____.
- 1.12 “*IRM representatives*” means any employee, associate, contractor or legal representative contracted by IRM and acting on its behalf.
- 1.13 “*Operator*” shall mean _____ who will process personal information for the Responsible Party in terms of this contract or mandate, without coming under the direct authority of the Responsible Party.
- 1.14 “*Personal Information*” means information relating to an identifiable living, natural person and where it is applicable, and identifiable, existing juristic person, including, but not limited to:
- ❖ Race, sex, gender, sexual orientation, pregnancy, marital status, nationality, ethnic or social origin, colour, sexual orientation, age, physical or mental health, well-being, disability, religion, conscience, belief, cultural affiliation, language and birth of the person;
 - ❖ Information relating to education, medical, financial, criminal or employment history;
 - ❖ Any identifying number, symbol ,e-mail address, physical address, telephone number, location information, online identifier;
 - ❖ Biometric information of the person;
 - ❖ Personal opinions, views or preferences of the person;
 - ❖ 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 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;
 - ❖ Organization structure and business operations where the Data Subject is a juristic person;

- 1.15 “Policy” means this Privacy Policy;
- 1.16“ “Processing” means any operation or activity or any set of operations, whether or not by automatic means, concerning Personal Information, including:
- ❖ The collection, receipt, recording, organisation, collation, storage, updating or modification, retrieval, alteration, consultation or use;
 - ❖ Dissemination by means of transmission, distribution or making available in any other form or;
 - ❖ Merging, linking, restriction, degradation, erasure or destruction of information;
- 1.17 “Regulator” means Information Regulator established in terms of POPIA;
- 1.18 “Responsible Party” means _____ (company name) who alone or in conjunction with others, determines the purpose of and means for processing Personal Information;
- 1.19 “Special Personal Information” means Personal Information concerning a Data Subject’s religious or philosophical beliefs, race or ethnic origin, trade union membership, political opinions, health, sexual life, sexual orientation, genetic information, biometric information or criminal behaviour;
- 1.20 “Third Party” means any independent contractor, agent, consultant, sub-contractor or other representative of _____ (operator name) who may also be an operator.
- 1.21 Unless the context indicates otherwise, the definitions contained in the Protection of Personal Information Act, 4 of 2013 shall apply.

2. MANDATE

- 2.1 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.
- 2.2 The Company hereby grants to the Operator a mandate to process certain Personal Information, in accordance with the provisions of the POPIA and the required, contracted services which is identified under Annexure “A” attached

hereto (this may be an annexure or incorporate the service / transaction/ business details as a specific paragraph), on its behalf for the purpose and duration of this agreement.

3. APPLICATION AND UNDERTAKINGS

- 3.1 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.
- 3.2 The Company, the Operator and any other third party undertake to, at all times, take reasonable steps to comply with POPIA at all times and to process personal information in a lawful manner.
- 3.3 The Operator will only process personal information relating to the performance of contracted services between the parties and its mandate and only for the purpose for which it is intended.
- 3.4 An instruction given by the Company to the Operator to perform any service in accordance with its service agreement will be regarded as the Company providing consent to the Operator to process personal information relevant to such instruction and performance thereof. The Company undertakes to obtain consent, where required, to process personal information of its data subjects.
- 3.5 The Operator will cease the processing personal information if the required consent is withdrawn or if a legitimate objection is raised and upheld. Consent to the Operator will be regarded as automatically withdrawn upon the termination of the service agreement between the parties, unless specifically otherwise stated and with due cognizance to the extent that consent may continue after such contract termination.
- 3.6 Personal information will be collected directly from the Company and/or data subject, whichever is applicable and in accordance with the provisions of POPIA.
- 3.7 The Company and the Operator undertake to take reasonable steps to ensure that the Personal Information is complete, accurate, not misleading and updated where necessary.
- 3.8 The Operator will take appropriate and reasonable technical and organizational steps to protect data subjects' personal information. The Operator's security measures, including physical, technological and procedural safeguards, will be reasonable and appropriate and include, amongst others the following:
 - ❖ Keeping systems secure;

- ❖ Storing data subjects' records securely;
- ❖ Controlling the access to the Operator's premises, systems and/or records;
- ❖ Safely destroying or deleting records.

- 3.9 The Operator will take reasonable steps to ensure that all personal information is kept as accurate, complete and up to date as reasonably possible depending on the purpose for which it is collected or further processed. The Company will notify the Operator, in writing, of any relevant updates required in respect of appropriate personal information.
- 3.10 The Operator will not retain personal information for a period longer than is necessary to achieve the purpose for which the information was collected or processed, unless a longer period is permitted or required in terms of by the POPIA or other legislation.
- 3.11 The Operator will notify the Regulator and the Company and Data Subject, as may be applicable, (unless the applicable law requires that we delay notification to the Data Subject) in writing in the event of a Data Breach pertaining to that Data Subject's personal information.
- 3.12 The Operator undertakes not to regard or treat the personal information as its own. It expressly acknowledges 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 personal information processed remains the property of the Company.
- 3.13 The Operator will ensure that any person acting under the authority of the Operator, including any employee or other representative, shall be obliged to process the personal information only on instructions from the Operator and in accordance with this agreement and any service agreement between the Company and the Operator.

4. DURATION AND BREACH

- 4.1 This agreement will remain in force until _____, unless the parties agree to extend it, in which instance an extension shall only be binding if reduced to writing and signed by the duly authorized representatives of the parties.
- 4.2 In the event of a breach of one or more material provisions by a party to this agreement ("the defaulting party") the non-defaulting party may terminate this agreement immediately by giving written notice to such effect. Should a defaulting party breach any provision of this agreement which is not a material provision, the

non-defaulting party may terminate this agreement by giving the defaulting party 30 days' written notice to such effect.

- 4.3 Should the non-defaulting party wish to cancel this agreement as result of a breach of any provision of the agreement which is not material, in terms of paragraph 4.2 above, the non-defaulting party shall afford the defaulting party the opportunity to rectify the alleged breach during the said 30 day period. Should the party who is in breach of this agreement fail to rectify the breach within the said thirty day period, the other party shall be entitled to summarily cancel this agreement.
- 4.4 Upon termination of this agreement the Company may request that the Operator provide all existing personal information in its possession to the Company within thirty days or longer period so agreed.
- 4.5 The aforesaid does not limit the parties' rights that they may have in terms of common law.
- 4.6 In event of the termination of the agreement any personal information in possession of the Operator shall remain subject to the provisions of the POPIA and the Operator's responsibility to comply with the POPIA in relation to such personal information shall survive any termination of this agreement.

5. GENERAL

- 5.1 No relaxation or indulgence which either party may show to the other shall in any way prejudice or be deemed to be a waiver of their rights in terms of this contract. Such relaxation or indulgence shall also not preclude any party from exercising their rights in terms of this agreement in respect of any continued or future breach.
- 5.2 This Agreement constitutes the entire agreement between the Parties and supersedes all prior understandings and agreements, whether oral or written, between the Parties with regards to the issues regulated in terms of this agreement and it is expressly stated that this agreement comprises the entire agreement between the parties.
- 5.3 Any amendment or addition to this agreement shall be null and void, unless it is reduced to writing and signed by the parties.
- 5.4 The laws of the Republic of South Africa shall apply to this agreement, regardless of where the Personal Information was processed.

Signed at _____ on this _____ day of _____
2012.

Signature Name
DULY AUTHORIZED BY OPERATOR

Signature Name
WITNESS

Signature Name
DULY AUTHORIZED BY COMPANY

Signature Name
WITNESS