

## **POPIA DUE DILIGENCE CONTRACT ADDENDUM FOR OPERATORS AND 3<sup>RD</sup> PARTIES**

**Dear Contracting Department**

As per below extracts from the POPIA legislation all agreements with operators and 3<sup>rd</sup> parties must be reviewed to ensure that it identifies the security measures to adhere to when processing data subjects/people's personal information.

### **THE SPECIFIC ONUS ON OPERATORS AND RESPONSIBLE PARTIES REGARDING OPERATORS**

Reference below is from the ACT.

Sections 20 and 21 of the Act specifically address the obligations of Operators:  
Information processed by operator or person acting under authority

20. An operator or anyone processing personal information on behalf of a responsible party or an operator, must—
- (a) process such information only with the knowledge or authorisation of the responsible party; and
  - (b) treat personal information which comes to their knowledge as confidential and must not disclose it, unless required by law or in the course of the proper performance of their duties.
- Security measures regarding information processed by operator.
21. (1) A responsible party must, in terms of a written contract between the responsible party and the operator, ensure that the operator which processes personal information for the responsible party establishes and maintains the security measures referred to in section 19.
- (2) The operator must notify the responsible party immediately where there are reasonable grounds to believe that the personal information of a data subject has been accessed or acquired by any unauthorised person.

It should be noted that section 21(1) indicates that a responsible Party must “in terms of” a written contract ensure that the Operator establishes and maintains security measures. Note the wording “in terms of”, as opposed to “by way of”. This implies that a written contract must guide the onus on the Responsible Party, but that the Responsible Party has a greater due diligence responsibility than only to conclude an agreement with an Operator regarding security measures. This interpretation is in line with international privacy management practices and other guiding laws.



The below Operator or 3<sup>rd</sup> Party further confirms and undertakes that they will:

Sign this addendum as part of the existing agreement/s that have been concluded with WM Du Preez Financial Services and Solutions (Pty) Ltd.

It is agreed between WM Du Preez Financial Services and Solutions (Pty) Ltd

and \_\_\_\_\_ (Operator/3<sup>rd</sup> Party)

That interpretation shall be in accordance with the Protection of Personal Information Act, 2013 (POPIA) and that:

1. The Parties acknowledge their respective obligations to comply with the POPIA.
2. Where the Parties receive personal information consequent to this agreement they shall:
  - (a) process the personal information in a manner that is legally permissible in accordance with POPIA;
  - (b) process the personal information only to fulfil their obligations under this agreement;
  - (c) not further process the personal information without the written consent of the disclosing party or the data subject; and
  - (d) not retain the personal information any longer than is necessary for achieving the purpose for which the information was collected.
3. The operator processing personal information on behalf of the responsible party must:
  - (a) process the personal information with the authorisation of the responsible party; and
  - (b) treat the personal information as confidential and not disclose it unless required by law or during the proper performance of their duties.
4. The operator must secure the integrity and confidentiality of personal information in its possession by taking appropriate, reasonable, technical, and organisational measures to prevent:
  - (a) loss of, damage to, or unauthorised destruction of personal information; and
  - (b) unlawful access to or processing of personal information.
5. The operator must take reasonable measures to:
  - (a) identify all reasonably foreseeable internal and external risks to personal information in its possession;
  - (b) establish and maintain appropriate safeguards against the risks identified;
  - (c) regularly verify that the safeguards are effectively implemented; and
  - (d) ensure that the safeguards are continually updated in response to new risks or deficiencies in previously implemented safeguards.
6. The operator must have due regard to generally accepted information security practices and procedures which may apply to it generally or be required in terms of specific industry or professional rules and regulations.
7. The operator must notify the responsible party immediately where there are reasonable grounds to believe that the personal information of a data subject has been accessed or acquired by any unauthorised person.

8. The Parties agree to indemnify one another against any civil or criminal action or administrative fine or other penalty or loss as a result of the relevant Party's breach of this clause.

Operator or 3<sup>rd</sup> Party Name: \_\_\_\_\_

Date: \_\_\_\_\_

Authorised Person's name who is signing: \_\_\_\_\_

Authorised Signature: \_\_\_\_\_

Witness 1 Name: \_\_\_\_\_ Witness 2 Name: \_\_\_\_\_

Signature: \_\_\_\_\_

Signature: \_\_\_\_\_

SIGNATURE: \_\_\_\_\_

NAME: WM Du Preez Financial Services and Solutions (Pty) Ltd  
FSCA Licence Number: 46066

CAPACITY: Director and KI  
Wayne Du Preez

Date: \_\_\_\_\_

Witness 1 Name: \_\_\_\_\_

Witness 2 Name: \_\_\_\_\_

Signature: \_\_\_\_\_

Signature: \_\_\_\_\_

Registered Financial Services Provider with the FSCA (FSCA No. 46066)

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