

## Data Processing Agreement (DPA)

### 1. Interpretation of this DPA

- 1.1. Certain terms used in this Data Processing Agreement ("DPA") are capitalised. Unless the context requires otherwise, such capitalised terms shall have the meanings ascribed to them below.
- 1.2. The terms "**Data Controller**", "**Data Subject**", "**Personal Data Breach**", "**Data Processor**", "**Processing**", and "**Supervisory Authority**" shall have the meanings ascribed to them in the **General Data Protection Regulation (EU) 2016/679 ("GDPR")**.
- 1.3. Similarly, the terms "**Responsible Party**", "**Data Subject**", "**Operator**", "**Processing**", and "**Information Regulator**" shall bear the meanings given to them in the **Protection of Personal Information Act 4 of 2013 ("POPIA")**, to the extent applicable.
- 1.4. References to "**Process**", "**Processed**", and "**Processing**" shall be interpreted in accordance with the context of both GDPR and POPIA.
- 1.5. "**Data Protection Legislation**" means all applicable data protection and privacy laws in force from time to time, including the **Protection of Personal Information Act 4 of 2013 ("POPIA")** and any regulations or codes of conduct issued under it ; to the extent applicable, the **General Data Protection Regulation (EU) 2016/679 ("GDPR")** ; the **Nigerian Data Protection Act ("NDPA")** ; and any other applicable data protection and privacy legislation or regulatory requirements in force from time to time which apply to the processing of Personal Information by either Party.
- 1.6. "**Personal Information**" means personal information as defined in section 1 of the Protection of Personal Information Act 4 of 2013 ("POPIA"), as defined as 'Personal Data' under the GDPR, and 'Personal Data' under the NDPA which is Processed by us in connection with or pursuant to this Agreement.
- 1.7. "**Services**" means the services provided by us to you in terms of the Agreement.
- 1.8. "**Standard Contractual Clauses**" means, where applicable, the standard contractual clauses adopted by the European Commission pursuant to Regulation (EU) 2016/679 ("GDPR") for the lawful transfer of personal data to third countries, including those set out in Commission Decision (EU) 2021/914 ("EU SCCs"), to the extent applicable to the Parties and the Processing of Personal Information under this Agreement. For the purposes of POPIA, cross-border transfers of Personal Information shall comply with the requirements of section 72 of the Protection of Personal Information Act 4 of 2013 ("POPIA") and similarly sections 41-42 of the NDPA.

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- 1.9. Any capitalized terms used in this Data Processing Agreement (“DPA”) that are not defined in clause 1.1 shall bear the meaning ascribed to them in the Agreement.
- 1.10. References in this DPA to "writing" or "written" shall include electronic mail (email), but shall exclude fax.
- 1.11. In the event of any inconsistency or conflict between a provision of this DPA and any provision of the Agreement, the provision in this DPA shall prevail to the extent of such inconsistency.

### 2. **What Our Role is and your role**

- 2.1. We are the Operator (and Data Processor for GDPR purposes) of your Personal Information and you are the Responsible Party (and Data Controller for GDPR purposes) for your Personal Information. This means that you are in control of any Personal Information that you provide to us and ask us to Process on your behalf.
- 2.2. As the Responsible Party, you remain accountable for complying with applicable Data Protection Legislation. This includes ensuring that you have obtained all necessary consents, permissions, and authorisations to provide us with Personal Information for Processing on your behalf, and that a lawful basis exists for such Processing.
- 2.3. You are responsible for notifying Data Subjects about how their Personal Information is being used and for providing us with clear, appropriate, and lawful instructions regarding such Processing.
- 2.4. You warrant that your instructions, and our processing of Personal Information to deliver the requested Services, comply with Data Protection Legislation. We will inform you if we believe your instructions are non-compliant.

### 3. **Your obligations**

- 3.1. Your obligations will include the following. You will:
  - 3.1.1. maintain appropriate technical and organisational measures at all times during the term of this Agreement to ensure the security and protection of your Personal Information.
  - 3.1.2. make sure that your instructions to us regarding the Processing of your Personal Information are given in writing and are clear and understandable;
  - 3.1.3. ensure that you have an applicable legal basis for transferring any Personal Information to us for Processing;
  - 3.1.4. and indemnify us against all loss, liability, damages, costs, fees, claims and expenses which we may incur or suffer as a result of your breach of this DPA or the Data Protection Legislation.
- 3.2. You warrant and represent that:

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- 3.2.1. have in place, at all times during the term of the Agreement, appropriate technical and organisational measures to ensure that you have proper security measures in place to protect the Personal Information in accordance with applicable Data Protection Legislation.
  - 3.2.2. you shall, at your own cost, obtain and maintain all necessary regulatory registrations and notifications required under the Data Protection Legislation throughout the term of this Agreement;
  - 3.2.3. and you have undertaken appropriate due diligence in relation to our Processing operations, and are satisfied that:
  - 3.2.4. our Processing operations are suitable for the purposes you propose to use the Software for and engage us to Process your Personal Information;
  - 3.2.5. and we have sufficient expertise, reliability and resources to implement technical and organisational measures which meet the requirements of the Data Protection Legislation.
- 3.3. To the extent legally permitted, you will promptly reimburse us for any reasonable costs we incur as a result of providing you with assistance, reporting, or documentation or in connection with any audit or inspection under or pursuant to this DPA (to the extent that this goes beyond the existing functionality of our Services).
4. **Our obligations**
  - 4.1. We shall Process your Personal Information in accordance with and for the purpose set out in this DPA.
  - 4.2. Where an instruction is given to amend, transfer, delete or Process the Personal Information in a different manner, or to stop, mitigate or remedy any unauthorised Processing, we will promptly comply with this request.
  - 4.3. Take appropriate technical and organizational measures against the unauthorised or unlawful processing of Personal Information and against accidental loss or destruction of or damage to Personal Information taking into account the harm that might result from such unauthorised or unlawful processing, loss, destruction or damage and the nature of the Personal Information to be protected including without limitation, all such measures that may be required to ensure compliance with Section 39 of the Nigerian Data Protection Act (NDPA).
  - 4.4. Maintain a record of its processing activities in accordance with Section 41 of the Nigerian Data Protection Act (NDPA).
  - 4.5. Your Personal Information will remain confidential and shall not be shared with any third party, except where ; it is required by law ; you expressly give consent ; or we are permitted to do so under this DPA.

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- 4.6. Where the law, a regulator, a court, or a Supervisory Authority requires us to disclose or Process Personal Information, to the extent that we are lawfully and reasonably able to do so, we will first inform you of this requirement and give you an opportunity to challenge or object to it.
- 4.7. We shall provide reasonable assistance in meeting your compliance obligations under the Data Protection Legislation, taking into account the nature of our Processing of your Personal Information and the resources we have available to us.
- 4.8. You agree that we can use meta-data and statistics derived from your information for any purpose, provided it's anonymized and can't be reverse-engineered to identify you.
5. **Our employees**
  - 5.1. We will ensure that any and all of our employees:
    - 5.1.1. maintain confidentiality in the Processing of your Personal Information
    - 5.1.2. are aware of the restrictions on the use of the Personal Information;
    - 5.1.3. have undergone training relating to the handling of Personal Information under the Data Protection Legislation and how it applies to their particular duties;
    - 5.1.4. and are aware of our duties and their personal duties and obligations under the Data Protection Legislation and this DPA.
6. **Protecting your Personal Information**
  - 6.1. We shall implement and maintain at all times appropriate technical and organisational measures to protect your Personal Information against any unauthorised or unlawful Processing, access, disclosure, copying, modification, storage, reproduction, display, distribution, destruction, alteration, disclosure, damage and accidental or unlawful loss.
  - 6.2. We shall update our security measures from time to time and ensure that these updates do not negatively impact on the security of the Personal Information they apply to.
  - 6.3. We will maintain an up-to-date account of the security measures we have in place at any given time.
  - 6.4. This account will be reviewed at least once a year to confirm its accuracy and completeness.
  - 6.5. When implementing technological and organisational measures to ensure the security of Personal Information, we will establish and maintain those measures to ensure a level of security appropriate to the risks, having regard to the nature of the Personal Information to be processed, the scope of the processing, the risks to data subjects, and what is reasonably practicable.

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- 6.6. These measures may include, as appropriate:
  - 6.6.1. Implementing technical measures such as the pseudonymisation and encryption of Personal Information where appropriate.
  - 6.6.2. Implementing organisational measures aimed at ensuring the ongoing confidentiality, integrity, availability, and resilience of our Processing systems and services.
  - 6.6.3. Establishing processes for the timely restoration of access to and availability of Personal Information in the event of a physical or technical incident.
  - 6.6.4. Implementing a process for regularly testing, assessing, and evaluating the effectiveness of our security measures to ensure their ongoing adequacy.

### **DPA Clauses 7–17: Breach, Transfers, Sub-Processors, and NDPA**

7. **Personal Information Breach**
  - 7.1. If any of your Personal Information that we are Processing is lost, destroyed, becomes damaged, corrupted, or unusable, we will notify you, as the Responsible Party, without undue delay after becoming aware of such an incident.
  - 7.2. Where feasible and appropriate, we will take reasonable steps to restore the Personal Information at our own expense.
  - 7.3. We will notify you, as the Responsible Party, without undue delay after becoming aware of any incident involving:
    - 7.3.1. the accidental, unauthorised, or unlawful access to or processing of your Personal Information;
    - 7.3.2. or Any security compromise relating to your Personal Information.
  - 7.4. Upon the occurrence of any event described in clause 7.2, we will promptly provide you with all reasonably available information to assist you in meeting your obligations, including, where possible:
    - 7.4.1. a description of the nature of the security compromise, including the categories and approximate number of data subjects concerned and the categories and approximate number of personal information records concerned.
    - 7.4.2. a description of the likely consequences of the security compromise.
    - 7.4.3. a description of the measures taken or proposed to be taken by us to address the security compromise, including measures to mitigate its possible adverse effects.
    - 7.4.4. the name and contact details of our information officer or other contact point where more information can be obtained.

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- 7.5. Following any unauthorised or unlawful processing of your Personal Information or a security compromise, we will cooperate with you and provide reasonable assistance in your investigation and handling of the matter.
- 7.6. We will not, without your prior written consent, disclose the occurrence of a security compromise involving your Personal Information to any third party, including Data Subjects or the Information Regulator, unless we are under a direct legal obligation to do so under applicable Data Protection Legislation.
- 7.7. You acknowledge and agree that, as the Responsible Party, you have the primary responsibility for:
  - 7.7.1. determining whether or not to notify Data Subjects and the Information Regulator of a security compromise, in accordance with the requirements of Section 22 of POPIA.
  - 7.7.2. determining the content and method of any notification to Data Subjects and the Information Regulator, if you choose to make such a notification.
  - 7.7.3. determining whether or not to offer affected Data Subjects any remedies and the nature and extent of such remedies.

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8. **Transfers of Personal Information outside of your Local Jurisdiction**
- 8.1. We acknowledge that the Processing of your Personal Information may involve cross-border transfers.
- 8.2. We will not transfer your Personal Information outside the borders of the Republic of South Africa unless one of the conditions for lawful transfer under Section 72 of POPIA (similarly sections 41-42 of the NDPA) is met.
- 8.3. Transfers of Personal Information from the European Economic Area or the UK to the United States will primarily rely on the implementation of the Standard Contractual Clauses, as outlined below, or other permissible transfer mechanisms under applicable Data Protection Legislation.
- 8.4. We will only transfer your Personal Information to a third party in a foreign country if:
  - 8.4.1. The third party is subject to a law, binding corporate rules, or a binding agreement which provide an adequate level of protection that is substantially similar to the protection offered by POPIA, NDPA or GDPR.
  - 8.4.2. You do not withdraw your consent to the transfer under the terms of use.
  - 8.4.3. The transfer is necessary for the performance of a contract between you and us or for the implementation of pre-contractual measures taken in response to your request;
  - 8.4.4. The transfer is necessary for the conclusion or performance of a contract concluded in your interest between us and a third party;
  - 8.4.5. The transfer is for your benefit and it is not reasonably practicable to obtain your consent to the transfer, and if it were reasonably practicable, you would be likely to give it.
- 8.5. Where a condition for lawful transfer under the applicable Data Protection Legislation is met, we will implement appropriate safeguards to ensure the ongoing protection of your Personal Information in the recipient country. These safeguards may include, as appropriate:
  - 8.5.1. Ensuring the recipient country has laws providing an adequate level of protection recognised by applicable Data Protection Legislation.
  - 8.5.2. Implementing binding agreements with the recipient that impose obligations offering a level of protection substantially similar to the Data Protection Legislation.
  - 8.5.3. Implementing the Standard Contractual Clauses as adopted by the European Commission, particularly Commission Decision (EU) 2021/914 (“EU SCCs”), for transfers of Personal Information from the European Economic Area or the UK to the United States.

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- 8.5.4. Obtaining your explicit consent to the transfer after informing you of the risks involved in the absence of adequate protection.
- 8.5.5. Relying on other permissible transfer mechanisms under Data Protection Legislation.
- 8.6. We will, upon your reasonable written request, provide you with information regarding the specific mechanisms we rely on for any cross-border transfers of your Personal Information.
- 8.7. If there are any material changes to these mechanisms, we will notify you in a timely manner.
- 8.8. Where we use Operators (referred to as sub-processors under GDPR) located outside of South Africa to assist us in providing the Services, we will ensure that such transfers comply with Data Protection Legislation and that appropriate safeguards as described in Clause 8.3 are in place.
- 8.9. We will, upon your reasonable written request, provide you with relevant information regarding the measures taken to ensure the lawful transfer and adequate protection of your Personal Information by such Operators.
- 8.10. Any necessary local or regulatory laws shall be considering and strictly adhered to in relation to cross border transfer of Personal Information.
- 9. **Use of Sub-Processors in Processing Personal Information**
- 9.1. We may engage third parties ("Sub-processors" under GDPR, "Sub-operators" under Data Protection Legislation, collectively referred to as "Sub-operators") to Process your Personal Information on our behalf in connection with the Services.
- 9.2. You acknowledge and agree that Google Firebase, with its data centers currently located in us-central1 (United States), is one such Sub-processor used for database services. By entering into this Agreement, you provide your general consent to our use of Google Firebase in this capacity.
- 9.3. You provide your general consent to our use of such Sub-operators to the extent necessary for us to fulfil our obligations to you under the Agreement and this DPA.
- 9.4. We will maintain a list of our current Sub-processors and make it available to you upon reasonable request.
- 9.5. Where we intend to appoint a new Sub-processor, we will provide you with reasonable prior written notice of the proposed appointment, including relevant details of the Sub-processor and the Processing activities they will undertake.

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- 9.6. Ensure that a written contract is in place between us and the Sub-processor that imposes obligations on the Sub-processor including but not limited to obligations regarding confidentiality, security measures, limitations on Processing, and assistance with Data Subject rights and regulatory inquiries, as required by GDPR, POPIA and relevant Data Protection Legislation.
- 9.7. We will inform the Sub-processor without delay if our authorization to Process the Personal Information is terminated.
- 9.8. We will also ensure that the Sub-processor stops Processing the relevant Personal Information according to our instructions or applicable legal obligations.
- 9.9. We will be liable to you for the acts and omissions of our sub-Processors as if their acts and omissions were ours.
10. **Data Protection Impact Assessment and Gap Assessments**

The Data Processor shall provide reasonable input and assistance with carrying out data protection impact assessments or other supervisory authority in relation to the Controller's data processing activities in accordance with or Section 39 or 40 of the NDPA or equivalent provisions of any other Data Protection Law.
11. **Dealing with Processing complaints**
  - 11.1. We will implement and maintain appropriate technical and organisational measures to assist you in fulfilling your obligations under the Data Protection Legislation regarding the rights of Data Subjects and regulatory inquiries.
  - 11.2. If we receive any complaint, notice, or communication that is directly or indirectly related to our Processing of your Personal Information or our or your compliance with Data Protection Legislation, we will notify you immediately and provide you with relevant details to the extent permissible by law.
  - 11.3. We will notify you without undue delay if a Data Subject contacts us directly to exercise any of their rights under POPIA concerning Personal Information we are Processing on your behalf.
  - 11.4. We will provide you with relevant details of the request to enable you to respond.
  - 11.5. We will provide our full cooperation and reasonable assistance to you in responding to any complaint, notice, communication from the Information Regulator, or Data Subject request related to the Processing of Personal Information under this DPA.
  - 11.6. We will not disclose Personal Information to any Data Subject or to a third party unless:

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- 11.6.1. You provide us with documented instructions to do so.
- 11.6.2. We are under a legal obligation to do so in terms of applicable legislation or Data Protection Legislation.
- 11.6.3. This DPA explicitly permits such disclosure for specific, legitimate purposes consistent with the Services.

### 12. **Liability**

Neither party shall be liable to the other for any indirect, incidental, special, consequential, or punitive damages (including, without limitation, loss of profits, loss of business, loss of data, or business interruption) arising out of or in connection with this DPA, even if such party has been advised of the possibility of such damages, to the extent that such exclusions are permissible under applicable law.

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### 13. **Term and Termination**

- 13.1. This DPA will remain in full force and effect for as long as we Process or otherwise hold any Personal Information of the Responsible Party (or its data subjects, as applicable to the Services) in our possession or under our control.
- 13.2. Any provision of this DPA that is expressly stated or inherently intended to survive the termination or expiry of the Services or this DPA will continue in full force and effect thereafter, particularly those relating to confidentiality, security, and the handling of Personal Information upon termination.
- 13.3. In the event of any amendment, replacement, or enactment of new data protection legislation in South Africa that materially affects the obligations of either party under this DPA, we agree to promptly notify each other.
- 13.4. We will then engage in good faith discussions to determine the necessary modifications to this DPA to ensure that the Processing of your Personal Information continues to comply with POPIA and any other applicable Data Protection Legislation.
- 13.5. We will use reasonable endeavours to implement such necessary changes in a timely manner.

### 14. **Access to and Return/Destruction of Personal Information**

- 14.1. Upon your reasonable written request, we will provide you with access to your Personal Information that is in our possession or under our control, in a reasonable manner and format, as required by Data Protection Legislation.
- 14.2. We will endeavour to provide this information in a commonly accessible electronic format where feasible.
- 14.3. Upon the termination or expiry of this Agreement, or at your earlier written request where it is lawful and reasonable to do so, we will, at your option, either securely return or securely destroy all Personal Information in our possession or under our control, unless we are required or permitted by Data Protection Legislation or other applicable law to retain such Personal Information.
- 14.4. We will not return or delete your Personal Information if we are required or permitted to retain it to comply with any applicable law, regulation, or the lawful request of a regulatory or government authority.
- 14.5. In such cases, we will continue to process the Personal Information only to the extent and for as long as necessary to fulfill that legal obligation or lawful request, and we will maintain appropriate safeguards for that Personal Information in accordance with POPIA and any other Data Protection Legislation.

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### 15. **Records**

- 15.1. We will maintain detailed, accurate, and up-to-date documentation regarding all Processing of Personal Information carried out on your behalf, as required by Section 17 of POPIA, any other Data Protection Legislation, and to the extent necessary to enable you to comply with your obligations under POPIA.
- 15.2. Upon your reasonable written request, we will provide you with relevant extracts or summaries of this documentation pertaining to our Processing of your Personal Information.

### 16. **Audit**

- 16.1. You may, no more than once in any consecutive twelve-month period, request that we provide you with a summary of the relevant aspects of our information security measures to demonstrate our compliance with this DPA, and any relevant Data Protection Legislation.
- 16.2. We will answer any reasonable questions that you have regarding our compliance with POPIA and/or any other Data Protection Legislation in advance of such a request and will use our reasonable endeavours to ensure that the information provided constitutes an adequate response.
- 16.3. If you make a request to us in writing, we will, to the extent permitted by our agreements with our sub-operators, provide you with information regarding their compliance with their obligations concerning your Personal Information.
- 16.4. We will provide this information in a format of our choosing, taking into account the confidentiality obligations we owe to our sub-operators.
- 16.5. The rights set out in clause 15.1 and 15.3 are your contractual rights regarding information concerning our Processing of your Personal Information.
- 16.6. Nothing in this DPA shall, or is intended to, undermine the rights and powers granted to Data Subjects or the Information Regulator under POPIA or any other Data Protection Legislation.
- 16.7. Accordingly, we will submit to any audits or investigations required by the Information Regulator, POPIA or relevant Data Protection Legislation.

### 17. **NDPA**

- 17.1. This clause governs our Processing of Personal Information subject to the Nigerian Data Protection Act (NDPA) under this Agreement.

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- 17.2. We will Process NDPA Data solely on your behalf and will not retain, use, or disclose such data for any purpose other than those specified in this DPA and permitted by the NDPA, including storage and processing in Google Firebase data centers located in us-central1, United States, to the extent such processing and transfer are permitted by Sections 41-42 of the NDPA.
- 17.3. We will not process your NDPA Data in a manner that contravenes the principles and provisions of the NDPA beyond the scope of this Agreement and your lawful instructions. Specifically:
  - 17.3.1. we will not combine NDPA Data that we receive from, or on behalf of, you with personal data that we receive from, or on behalf of, any other person, or that we collect from our own interaction with a data subject, except to the extent necessary to fulfill our obligations under this DPA and as permitted by the NDPA for legitimate purposes;
  - 17.3.2. you have the right to take reasonable and appropriate steps to help ensure that we Process NDPA Data in a manner consistent with our obligations under this DPA and the NDPA;
  - 17.3.3. we will notify you without undue delay if we determine that we can no longer meet our obligations under the NDPA with respect to the NDPA Data Processed under this Agreement.
  - 17.3.4. you have the right, upon reasonable notice, to take reasonable and appropriate steps to stop and remediate any unauthorized Processing of NDPA Data by us.