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## **POPI ACT COMPLIANCE REPORT**

1. We have been called upon by [REDACTED] to provide a Protection of Personal Information Act 4 of 2013 (POPI Act) Compliance Report pertaining to their:
  - 1.1. Corporate structure;
  - 1.2. Systems in place;
  - 1.3. Contracts in place;
  - 1.4. Storage location of personal information;
  - 1.5. Lawfulness of sharing such personal information; and
  - 1.6. Internal staff agreements.
2. The report will be comprised in the following structure:
  - 2.1. The Eight Conditions for the Lawful Processing of Personal Information in Terms of the POPI Act;
  - 2.2. Your Privacy Policy;
  - 2.3. Website Terms and Conditions;
  - 2.4. Master Services Agreement Coupled with Your Relevant Service Schedules;
  - 2.5. Employment Relationships;
  - 2.6. Consideration of External Party Agreements; and
  - 2.7. Registration of Information Officer.

### 3. THE EIGHT CONDITIONS FOR THE LAWFUL PROCESSING OF PERSONAL INFORMATION IN TERMS OF THE POPI ACT

3.1. In order that personal information<sup>1</sup> may be lawfully processed, all such processing<sup>2</sup> needs to comply with eight conditions as set out in the POPI Act. These conditions coupled with a brief summary in respect thereof are set out below. Our Report will look to go into depth more so into some than into others, being those which we deem to be most applicable to you and your business.

#### 3.2. Condition 1: Accountability<sup>3</sup>

##### 3.2.1.

#### 3.3. Condition 2: Processing Limitation<sup>4</sup>

##### 3.3.1.

This condition predominantly speaks

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<sup>1</sup> Chapter 1 Definitions: "personal information" means information relating to an identifiable, living, natural person, and where applicable, an identifiable, existing juristic person, including, but not limited to- (a) information relating to the race, gender sex, pregnancy, marital status, national, ethnic or social origin, colour, sexual orientation, age, physical or mental health, well-being, disability, religion, conscience, belief, culture, language and birth of the person; (b) information relating to the education or the medical, financial, criminal or employment history of the person; (c) any identifying number, symbol, e-mail address, physical address, telephone number, location information, online identifier or other particular assignment to the person; (d) the biometric information of the person; (e) the personal opinions, views or preferences of the person; (f) 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; (g) the views or opinions of another individual about the person; and (h) the name of the person if it appears with the other personal information relating to the person or if the disclosure of the name itself would reveal information about the person;

<sup>2</sup> Chapter 1 Definitions: "processing" means any operation or activity or any set of operations, whether or not by automatic means, concerning personal information, including- (a) the collection, receipt, recording, organisation, collation, storage, updating or modification, retrieval, alteration, consultation or use; (b) dissemination by means of transmission, distribution or making available in any other form; or (c) merging, linking, as well as restriction, degradation, erasure or destruction of information;

<sup>3</sup> Section 8 of the POPI Act.

<sup>4</sup> Section 9 to Section 12 of the POPI Act.

<sup>5</sup> Chapter 1 Definitions: "data subject" means the person to whom personal information relates;

3.3.2. Further, personal information may only be processed if, given the purpose for which it is processed, it is adequate, relevant and not excessive.

3.3.3.

[REDACTED]

3.3.4. It is to be noted here that personal information must be collected directly from the data subject except, among others, where the data subject or a competent person where the data subject is a child has consented to the collection of the information from another source.

3.3.5.

[REDACTED]

#### **3.4. Condition 3: Purpose Specification<sup>6</sup>**

3.4.1. Personal information is to be collected for a specific, explicitly defined and lawful purpose related to the function or activity of [REDACTED]

[REDACTED]

3.4.2. Further thereto, generally speaking, personal information must not be retained any longer than is necessary for achieving the purpose for which the information was collected or processed.

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<sup>6</sup> Sections 13 and 14 of the POPI Act.

### 3.5. Condition 4: Further Processing Limitation<sup>7</sup>

3.5.1. Essentially what this condition records is that should personal information be required to be processed more than once, the data subject would simply need to consent to same.

### 3.6. Condition 5: Information Quality<sup>8</sup>

### 3.6.1.

A horizontal bar chart consisting of four solid black bars of increasing height from left to right. The bars are separated by small gaps and are set against a white background.

### 3.7. Condition 6: Openness<sup>9</sup>

3.7.1. Practically, this condition has the most important direct consequences on the Privacy Policy of [REDACTED] as it sets out the requirements to notify a data subject when collecting personal information.

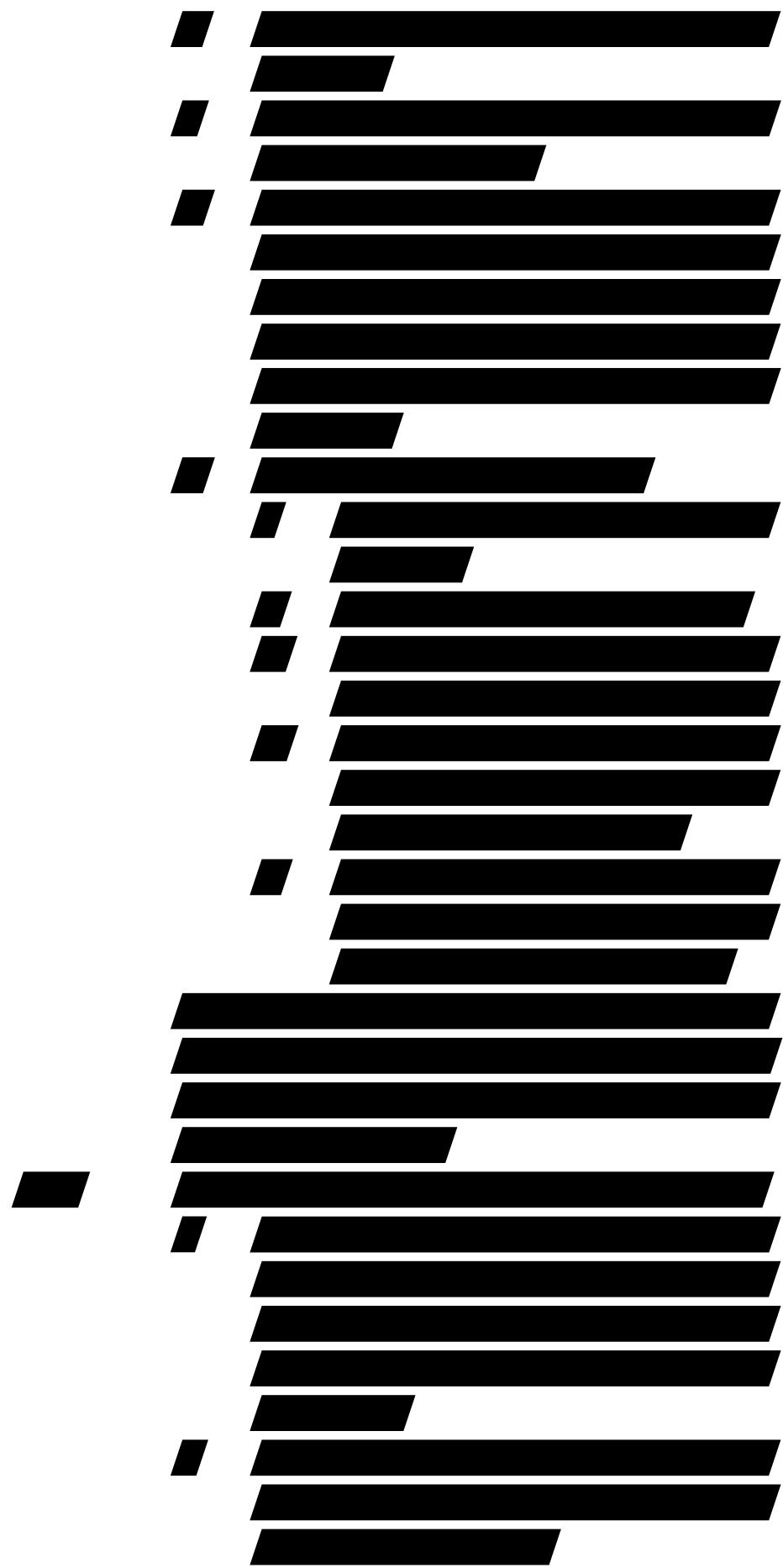
### 3.7.2.

The graphic consists of a series of black horizontal bars of varying lengths, arranged vertically. On the far left, there is a single vertical bar. To its right, a group of four horizontal bars is positioned, with the top bar being the longest. To the right of this group, a single horizontal bar is centered. Further to the right, a group of five horizontal bars is arranged, with the top bar being the longest. To the right of this group, another single horizontal bar is centered. The bars are rendered in a solid black color against a white background.

<sup>7</sup> Sections 15 of the POPI Act.

<sup>8</sup> *Sections 16 of the POPI Act.*

<sup>9</sup> Sections 17 and 18 of the POPI Act.



3.7.3. The provisions of Section 18 are dealt with in more detail in the section below which deals with your Privacy Policy.

### 3.8. Conditions 7: Security Safeguards<sup>10</sup>

3.8.1. Predominantly, this condition requires that [REDACTED], as the responsible party, must secure the integrity and confidentiality of personal information in its possession or under its control by taking appropriate, reasonable, technical and organisational measures to prevent loss, damage to or unlawful access to the personal information.

### 3.8.2.

3.8.3. Going forward, it should just be kept in mind that the aforesaid risk assessments be established and maintained, and that safeguards are verified consistently and regularly.

### 3.9. Conditions 8: Data Subject Participation

3.9.1. This condition predominantly sets out the fact that a data subject has the right to request and confirm whether personal information of such

<sup>10</sup> Section 19 to 22 of the POPI Act.

<sup>11</sup> Section 23 to 25 of the POPI Act.

data subject is held, and what such personal information comprises.

Three horizontal black bars of varying lengths are positioned side-by-side. The top bar is the longest, followed by the middle bar, and the bottom bar is the shortest. They are evenly spaced and extend across the width of the frame.

#### 4. YOUR PRIVACY POLICY

4.1. Set out below is a table which sets out questions that are asked in the left hand column (which, among others, section 18 of the POPI Act requires) [REDACTED]

Three horizontal black redaction bars, each consisting of a thick black line with a thin white border. The bars are positioned vertically, with the bottom one being the longest and the top two being shorter.

Opt-In consent to legal documents rather than passive consent	
	It is unclear at what point or if at all the Privacy Policy is agreed to by your customers.
Does the Privacy Policy set out exactly what personal information is collected?	
	As such, this needs to be specifically recorded in the Privacy Policy which it is not.

	<p>what you use the personal information for, such as in order to provide your services to a customer, market of services to you, analyse and conduct research in respect of such personal information, for example.</p>
<p>Have you recorded what legal basis you have for processing a user's personal information? There are six possible legal basis:</p> <ul style="list-style-type: none"> <li>• Consent;</li> <li>• Contract;</li> <li>• Legitimate interests;</li> <li>• Vital interests;</li> <li>• Public task;</li> <li>• Legal obligation.</li> </ul>	<p>Although consent is referred to in certain places of your Privacy Policy, nowhere does it record that the basis on which you obtain your personal information is premised on that of consent of your customers or that it is necessary for the processing of a contract with your service suppliers, which would be necessary for the performance of your services.</p>
	<p>The POPI Act requires that at the very least the categories of these persons be recorded.</p>
<p>Has the name and address of the responsible party, [REDACTED] been recorded?</p>	<p>Although the Privacy Policy itself does not record the name and address of [REDACTED]</p>
	<p>It has not been recorded whether the personal information that you collect is either voluntary or mandatory.</p>
<p>Have the consequences for failure to provide personal information been recorded?</p>	<p>Nowhere in the Privacy Policy has it been recorded that there are consequences for failure to provide personal information.</p> <p>In this regard, it should be recorded that failure to provide the personal information might place the customer in a position where LanDynamix simply cannot provide the services to the customer.</p>
	<p>A number of your suppliers certainly have servers which are located outside of the</p>

	<p>country. To the extent that this is the case, it should be recorded that you intend to transfer certain of their personal information outside of the country but will only do so to countries which maintain privacy standards of a similar standard to the POPI Act.</p> <p>Based on the external suppliers in terms of the contracts that you provided, I am satisfied that all the third party countries to which personal information might be transferred have privacy standards of at least the same as that to the POPI Act, but the fact that transfer might occur needs to be recorded.</p>
Notification of the existence of the right of access to and rectification of the personal information collected?	Nowhere in the Privacy Policy does it record either of these rights, and they are required to be recorded to be POPI Act compliant.
Has the right to object to the processing of personal information been notified?	<p>Nowhere in the Privacy Policy is it recorded that any of your customers have this right.</p> <p>In order to be POPI compliant, this needs to be recorded in your Privacy Policy.</p>
	Nowhere in your Privacy Policy is the right to lodge a complaint with the Information Regulator recorded.

## 5. WEBSITE TERMS AND CONDITIONS

### 5.1.

## 6. MASTER SERVICES AGREEMENT COUPLED WITH YOUR RELEVANT SERVICE SCHEDULES

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

## 7. **EMPLOYMENT RELATIONSHIPS**

7.1. In considering both the company organogram, coupled with the example of the employment agreement provided, we note that there are no provisions which pertain to the protection of the personal information which such employees obtain or have access to during the term of their employment with the company.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

## 8. **CONSIDERATION OF EXTERNAL PARTY AGREEMENTS**

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

8.2. Accordingly, please find set out in the table hereunder, the names of the external parties in the left column, coupled with our opinion regarding adequate protection of personal information afforded by such country in the middle column, and then in the right column whether, based on the contents of the agreement, a separate data processing agreement be entered into with such external parties.

	<p>As [REDACTED] is naturally domiciled in Africa I am satisfied that it is also subject to the POPI Act.</p>	<p>The agreement does not specifically record any provisions pertaining to the Protection of Personal Information Act. As such, we would strongly suggest that a separate Data Processing Agreement be entered into with [REDACTED]</p> <p>[REDACTED] <i>inter alia</i>, agree to process the personal information provided to them in a manner which is in conformity with your Privacy Policy and further that they undertake to employ reasonable and technical measures to safeguard such personal information.</p>
	<p>As [REDACTED] is naturally domiciled in Africa, I am satisfied that it is also subject to the POPI Act.</p>	<p>[REDACTED] <i>inter alia</i>, they agree to process the personal information provided to them in a manner which is in conformity with your Privacy Policy and further that they undertake to employ reasonable and technical measures to safeguard such personal information.</p>
	<p>As [REDACTED] is naturally domiciled in Africa, I am satisfied that it is also subject to the POPI Act.</p>	<p>The agreement does not specifically record any provisions pertaining to the Protection of Personal Information Act. As such, we would strongly suggest that a separate Data Processing Agreement be entered into with [REDACTED]</p> <p>[REDACTED] in terms of which, <i>inter alia</i>, they agree to process the personal</p>

		information provided to them in a manner which is in conformity with your Privacy Policy and further that they undertake to employ reasonable and technical measures to safeguard such personal information.
[REDACTED]	As [REDACTED] is naturally domiciled in Africa I am satisfied that it is also subject to the POPI Act.	Clause 10 of the Agreement in our opinion sufficiently regulates the protection of personal information which is shared with them. [REDACTED]
[REDACTED]	As [REDACTED] is naturally domiciled in South Africa I am satisfied that it is also subject to the POPI Act.	The agreement does not specifically record any provisions pertaining to the Protection of Personal Information Act. As such, we would strongly suggest that a separate Data Processing Agreement [REDACTED]  [REDACTED] they agree to process the personal information provided to them in a manner which is in conformity with your Privacy Policy and further that they undertake to employ reasonable and technical measures to safeguard such personal information.
[REDACTED]	As [REDACTED] is naturally domiciled in Africa I am satisfied that it is also subject to the POPI Act.	As clause 20 contains what we believe to be sufficient with regard to the protection of the personal information shared with them, we do not believe that a separate Data Processing Agreement is necessary to be entered into with them.
[REDACTED]	As [REDACTED] is naturally domiciled in Africa I am satisfied that it is also subject to the POPI Act.	The agreement does not specifically record any provisions pertaining to the Protection of Personal Information Act. As such, we would strongly suggest that a separate Data Processing Agreement be

		<p>entered into with [REDACTED]  [REDACTED] they agree to process the personal information provided to them in a manner which is in conformity with your Privacy Policy and further that they undertake [REDACTED]</p>
[REDACTED]	<p>As [REDACTED] is naturally domiciled in Africa I am satisfied that it is also subject to the POPI Act.</p>	[REDACTED] [REDACTED] in terms of which, <i>inter alia</i> , they agree to process the personal information provided to them in a manner which is in conformity with your Privacy Policy and further that they undertake to employ reasonable and technical measures to safeguard such personal information.
[REDACTED]	<p>As this entity is situate in both the USA and Europe, although it is not subject to the POPI Act, [REDACTED]</p>	<p>On account of their privacy policy being extensive, and I assume that when signing up with them, you agreed to such privacy policy, meaning that they would be bound to it, we believe that there is no need to enter into a separate Data Processing Agreement with them.</p>

## 9. REGISTRATION OF INFORMATION OFFICER

9.1. As you, Peter, will be regarded as the [REDACTED], there is a requirement that you will be required to register with the Information Regulator as the information officer. Please note, however, the mechanism in terms of [REDACTED]

## **10. NEXT STEPS AND RECOMMENDATIONS**

10.1. A correctly drafted POPI Act compliant Privacy Policy is essential and needs to be compiled;

10.4. Enter into a separate Data Processing Agreement with the external parties recorded in the second table able; and

10.5. Register with the Information Regulator as an information officer once the process is known.