



Data Processing Agreement

(Non-Recipricol - Operator / Vendor)

entered into between:

University of Johannesburg

(“UJ”)

and

[--Vendor--]

(“Vendor”)

Document Version Control			
Description	Date	Version	Author
Data Processing Agreement (Reciprocal)	13/05/2022	V1	Eversheds
Data Processing Agreement (Reciprocal)	27/05/2022	V2	T Griffiths
Data Processing Agreement (Reciprocal)	29/05/2022	V2.1	T Griffiths & M. van Eck

**The Future
Reimagined**

1. INTRODUCTION

- 1.1 This Agreement governs the rights and duties of the Parties when Processing Personal Information.
- 1.2 This Agreement relates to all activities where:
 - 1.2.1 UJ has appointed or intends to appoint the Vendor as a third party service provider to provide products and/or services to or on behalf of UJ as prescribed in section 21(1) of POPIA; and
 - 1.2.2 UJ is required to enter into a written agreement with any third party service provider in the event that such third party service provider may Process Personal Information for or on behalf of UJ (or any UJ connected entities who are also Responsible Parties), and to ensure that the third party service provider establishes and maintains the requisite technical security measures as required by POPIA.
- 1.3 The Parties have accordingly agreed to regulate the processing of Personal Information in accordance with the terms and conditions of this Agreement.

NOW THEREFORE THE PARTIES AGREE AS FOLLOWS:

2. INCORPORATION OF ANNEXURES

- 2.1 The Parties agree that the following documents are expressly incorporated herein and forms part of this non-disclosure agreement between the Parties:
 - 2.1.1 **Annexure A** – Information Schedule;
 - 2.1.2 **Annexure B** – General Terms and Conditions; and
 - 2.1.3 **Annexure C** – Relevant sections in Chapter 3 of POPIA.

SIGNED by the Parties and witnessed on the following dates and at the following places respectively, each signatory hereto warranting that he/she has the full power, authority and legal right to execute, deliver and perform the obligations imposed on it in terms of this agreement and will be duly authorised by all the necessary action of the Party concerned and its officers and officials and that any obligations arising from this agreement are valid and binding on the Party concerned.

PLACE	DATE	WITNESS	SIGNATURE
[_____]	[_____]	1. _____ Signature of Witness [_____] Name of Witness 2. _____ Signature of Witness [_____] Name of Witness	For: UJ _____ Signature [_____] Name of Signatory [_____] Designation of Signatory
[_____]	[_____]	1. _____ Signature of Witness [_____] Name of Witness 2. _____ Signature of Witness [_____] Name of Witness	For: Vendor _____ Signature [_____] Name of Signatory [_____] Designation of Signatory

Annexure A - Information Schedule

Data Subjects	<p>For the purpose of this Agreement, data subjects means includes employees, contractors, business partners or other individuals having Personal Information stored, transmitted to, made available to, accessed, or otherwise processed by the Vendor.</p> <p>Any other Data Subjects applicable to the Agreement are specified here:</p> <p>[--▼--]</p>	
Data Categories	<p>For the purpose of this Agreement, data categories include Personal Information typically relates to the following categories of data: name, phone numbers, e-mail address, address data, system access / usage / authorisation data, company name, contract data, invoice data, plus any application-specific data transferred by authorised users and may include financial data such as bank account data, credit or debit card data.</p> <p>Any other data categories applicable to the Agreement are specified here:</p> <p>[--▼--]</p>	
Vendor's Name:	<p>[--▼--]</p> <p><i>Insert the full names and surname in the event that the Vendor is a person and if the Vendor is a registered legal entity, insert the company name and include whether same is a (Pty) Ltd, Ltd, CC or SOC.</i></p>	
Vendor's Identification number / registration number:	<p>[--▼--]</p> <p><i>Insert either the identification number in the event that the Vendor is a person or the registration number if the Vendor is a registered legal entity</i></p>	
UJ domicilium address (in addition to the address set out in Annexure B)	For attention:	<p>[--▼--]</p> <p><i>Insert the full name (name and surname) of the party to which the notice must be addressed. If there is none, then indicate this.</i></p>
	Physical address:	<p>[--▼--]</p> <p><i>Insert the physical address within South Africa that the notice may be delivered to.</i></p>
	E-mail address:	<p>[--▼--]</p> <p><i>Insert the email address that the notice may be sent to.</i></p>
Vendor's domicilium address:	For attention:	<p>[--▼--]</p> <p><i>Insert the full name (name and surname) of the party to which the notice must be addressed. If there is none, then indicate this.</i></p>
	Physical address:	<p>[--▼--]</p> <p><i>Insert the physical address within South Africa that the notice may be delivered to.</i></p>
	E-mail address:	<p>[--▼--]</p> <p><i>Insert the email address that the notice may be sent to.</i></p>
Processing Operations	<p>The personal information transferred will be subject to the following basic processing activities (please specify):</p>	

	[--▼--]
--	---------



Initial here: _____

Annexure B – General Terms & Conditions**1. DEFINITIONS**

In this Agreement, the following expressions shall, unless otherwise stated or inconsistent with the context in which they appear, bear the following meanings and other words derived from the same origins as such words (that is, cognate words) shall bear corresponding meanings:

- 1.1 **Agreement** means this data processing agreement entered into between UJ and the Vendor for the provision of products and/or services where the Vendor may Process Personal Information on behalf of UJ, including the Information Schedule, Annexure B (General Terms & Conditions) and Annexure C (Relevant sections in Chapter 3 of POPIA), together with all annexures, addenda and schedules thereto;
- 1.2 **Business Day** means any day other than a Saturday, Sunday or public holiday declared as such in South Africa;
- 1.3 **Commencement Date** means either the Signature Date or the first date upon which Personal Information is Processed, whichever is the earlier;
- 1.4 **Data** means any data, including Personal Information, as set out in the Electronic Communications and Transactions Act 25 of 2002, POPIA and/or any equivalent legislation or law of a jurisdiction where Data or Personal information may be Processed;
- 1.5 **Data Protection Laws** means POPIA, and any applicable laws, regulations, and other legal requirements relating to:
 - 1.5.1 data protection and data security; and/or
 - 1.5.2 the use, collection, retention, storage, security, disclosure, transfer, disposal, and other Processing of any Personal Information;
- 1.6 **Data Subject** means the person to whom the Personal Information relates;
- 1.7 **Information Schedule** means that information schedule attached to the Agreement as **Annexure A**;
- 1.8 **Operator** has the same meaning as set out in section 1 of POPIA;
- 1.9 **Losses** means any and all losses, liabilities, damages and claims, and all related costs and expenses, including legal charges on a scale as between attorney and own client, tracing and collection charges, costs of investigation, interest fines and/or penalties finally awarded, or amounts as awarded by a court of competent jurisdiction or agreed to in settlement by the Indemnifying Party (including reasonable attorney's fees) losses, expenses, damages, fines, costs, or penalties suffered by a Party.
- 1.10 **POPIA** means the Protection of Personal Information Act 4 of 2013, as amended from time to time;
- 1.11 **Parties** means UJ and the Vendor and **Party** means, as the context requires, either one of them;
- 1.12 **Personal Information** means any means any Personal Information relating to a Data Subject which is protected under Data Protection Laws and for the purposes of this Agreement, it includes only Personal Information which is supplied to or accessed by the Parties comes into the possession, or under the control of a Party during the course or arising out of this Agreement and/or where a Party is required to Process for the purposes of performing its obligations under this Agreement.
- 1.13 **Process** means, in relation to Personal Information, the alternation, blocking, consultation, collection, collation, deletion, destruction, distribution, linking, merging, modification, organisation, receipt, recording, retrieval, storing, testing and/or updating;
- 1.14 **Responsible Party** means the same as set out in section 1 of POPIA;
- 1.15 **Security Incident** means circumstances where there are reasonable grounds to believe that Personal Information has been accessed or acquired by an unauthorised person, or any unauthorised access, destruction, loss, alteration, disclosure, or any other unlawful forms of Processing of the Personal Information. For the purposes of a Security Incident, "reasonable belief" shall be deemed to exist following an appropriate and promptly conducted investigation that confirms Personal Information has been accessed or acquired by any unauthorised person;

- 1.16 **Signature Date** means the date of signature of this Agreement by the last-signing Party, provided that both Parties sign this Agreement;
- 1.17 **Technical and Organisational Measures** means those technical and organisational measures that are reasonably necessary to protect and safeguard Data in accordance with industry standards and applicable Data Protection Laws;
- 1.18 **UJ** means means the University of Johannesburg, an institution of higher education established in accordance with the Higher Education Act 101 of 1997; and
- 1.19 **Vendor** means the Party described in the **Information Schedule**.

2. INTERPRETATION

In this Agreement:

- 2.1 any references to UJ shall, as the context requires, also include any reference to any UJ connected entities who are also Responsible Parties, who shall be entitled to enforce the terms of this Agreement against the Vendor;
- 2.2 any reference to one gender includes the other genders;
- 2.3 any reference to the singular includes the plural and *vice versa*;
- 2.4 all annexures, schedules and documents incorporated by reference form part of the Agreement and must be read together. Insofar as there may be an irreconcilable difference between the annexures, schedules and this document, then this document will take preference;
- 2.5 any reference to a document includes an amendment or supplement to, or replacement or novation of that document;
- 2.6 if any statute or statutory provision to which the Agreement refers be amended or replaced by another statute, any reference in the Agreement to that statute or statutory provision will be interpreted to refer to the amended statute or statutory provision, or to the statute or statutory provision which replaces the statute or statutory provision to which the Agreement refers;
- 2.7 the headings in this Agreement are for reference purposes only and will not affect the interpretation hereof, unless the context clearly indicates a contrary intention;
- 2.8 where numerical figures are referred to in numerals and words, if there is any conflict between the two, the words will prevail;
- 2.9 if any provision is a definition and is a substantive provision conferring rights or imposing obligations on any Party, notwithstanding that it is only in the definition (or such other clause) effect will be given to it as if it were a substantive provision in the body of this Agreement;
- 2.10 where any number of days is prescribed in this Agreement, that number shall be determined inclusively of the first and exclusively of the last day, unless the last day falls on a day which is not a Business Day, in which case the last day shall be the following Business Day;
- 2.11 the use of the word **include** or **including** followed by specific examples will not be construed as limiting the meaning of the general wording preceding it and the *eiusdem generis* rule will not be applied in the interpretation of such general wording or such specific examples;
- 2.12 unless expressly otherwise stated, no provision of this Agreement will constitute a stipulation for the benefit of any person (*stipulatio alteri*) who is not a party to this Agreement;
- 2.13 the terms of this Agreement will not be interpreted against the Party who prepared or drafted the document, it being specifically agreed that the *contra proferentem* rule will not apply;
- 2.14 whilst the Parties may correspond via email during the currency of an Agreement all formal notices required in terms of an Agreement, and any amendment of or variation to an Agreement may be given or concluded via email on condition that amendments or variations are signed by both parties and returned to the other by means of scanning and transmitting scanned and/or pdf documents.

Only the signatories to an Agreement that have legal authority to commit UJ and any other Agreement have the authority to sign such documents; and

- 2.15 the termination of this Agreement does not affect those of its provisions which expressly provide that they will operate after termination, or which must continue to have effect after termination, or which must by implication continue to have effect after termination.

3. COMMENCEMENT DATE AND DURATION

- 3.1 This Agreement will commence on the Commencement Date and shall continue until the date of expiration or termination of its obligations under this Agreement, unless agreed otherwise in writing by the Parties.

- 3.2 To the extent that:

3.2.1 the Vendor uses, or otherwise Processes, Personal Information subject to POPIA or other applicable Data Protection Laws in connection with Vendor's legitimate business operations, or

3.2.2 otherwise to the extent that the Vendor constitutes a Responsible Party under applicable Data Protection Laws when performing the Services,

the Vendor shall be deemed to be an independent Responsible Party for such use and shall comply with all applicable Data Protection Laws, other applicable laws and Responsible Party obligations.

4. DUTIES AND WARRANTIES

4.1 *General Duties and Undertakings*

4.1.1 UJ and the Vendor acknowledge that, for the purpose of applicable Data Protection Laws, UJ is the Responsible Party, and the Vendor is the Operator.

4.1.2 UJ retains control of the Personal Information and remains responsible for its compliance obligations under applicable Data Protection Laws, including providing any required notices, obtaining any required consents, and for the Processing instructions it gives to the Vendor.

4.1.3 The Vendor acknowledges and agrees that UJ retains all right, title and interest in and to the Personal Information. The Vendor shall not possess or assert any lien or other right against or to such Personal Information and no such Personal Information shall be sold, assigned, leased, or otherwise disposed of to third parties by the Vendor or commercially exploited by or on behalf of Vendor or its personnel.

4.1.4 To the extent that the Vendor may be required to Process Personal Information on behalf of UJ, it shall do so in accordance:

4.1.4.1 with the terms set out in this Agreement as required by the Parties;

4.1.4.2 with the Data Protection Laws; and

which will be subject to sections 20 and 21 of POPIA as detailed in **Annexure C** (Relevant sections in Chapter 3 of POPIA) attached hereto.

4.1.5 The Vendor will only Process the Personal Information on behalf of UJ if so mandated by UJ and solely for the purposes and to the extent described in this Agreement or on the specific written instructions of UJ.

4.1.6 UJ will remain the Responsible Party for all Personal Information which it provides to the Vendor to Process.

4.1.7 In performing its obligations under this Agreement, the Vendor will comply with its obligations as a Vendor under POPIA and this Agreement, and the Vendor will not knowingly or deliberately cause UJ to breach any obligation under POPIA.

4.1.8 The Vendor shall ensure that it will only collect Personal Information which is absolutely necessary for the lawful handling and Processing and that it is collected for the means and for purposes of Processing as prescribed by Data Protection Laws, and the Vendor will observe the principle of Personal Information minimisation within the meaning of section 10 of POPIA.

4.2 **Knowledge and authorisation**

4.2.1 The Vendor shall Process Personal Information only with the knowledge or authorisation of UJ.

4.3 **Processing on instruction**

4.3.1 The Vendor will Process Personal Information only in accordance with documented instructions from UJ. This Agreement constitutes such documented initial instructions and UJ may provide further instructions to the Vendor from time to time. The Vendor shall not Process the Personal Information for any other purpose or in a way that does not comply with this Agreement and/or applicable Data Protection Laws.

4.3.2 The Vendor will use reasonable efforts to follow any other instructions from UJ, as long as they are required by Data Protection Laws, technically feasible and do not require changes to the performance of and/or provision of a service or product.

4.3.3 If any of the before-mentioned exceptions apply, or the Vendor otherwise cannot comply with an instruction or is of the opinion that an instruction infringes Data Protection Laws, the Vendor will immediately notify UJ but shall, in any event, continue to comply with the provisions of this agreement and any applicable Data Protection Laws.

4.4 **Processing beyond instructions**

4.4.1 Should the Vendor reasonably believe that a specific Processing activity beyond the scope of UJ's instructions is required to comply with a legal obligation to which the Vendor is subject, the Vendor must inform UJ of that legal obligation and seek explicit authorisation from UJ before undertaking such Processing.

4.4.2 The Vendor shall never process the personal information in a manner inconsistent with UJ's documented instructions.

4.5 **Processing on Legal Requirement**

4.5.1 The Vendor may also Process Personal Information where required to do so by applicable law. In such a case, the Vendor shall inform UJ of that legal requirement before Processing unless that law prohibits such information on important grounds of public interest.

4.6 **Description of Processing**

4.6.1 Unless provided otherwise by UJ, Personal Information under this Agreement relates to the categories of Data Subjects specified in the **Information Schedule**.

4.6.2 The transferred Personal Information concerns the categories of data specified in the **Information Schedule**.

4.6.3 UJ determines the categories of data and/or data fields which could be Processed.

4.7 **Special Data Categories (if agreed)**

4.7.1 The transferred Personal Information may comprise special categories of Personal Information ("**Sensitive Data**"). The Vendor must take Technical and Organisational Measures to ensure a level of security appropriate to protect Sensitive Data.

4.7.2 The transfer of Sensitive Data may trigger the application of the following additional restrictions or safeguards if necessary to take into consideration the nature of the data and

the risk of varying likelihood and severity for the rights and freedoms of natural persons (if applicable):

- 4.7.2.1 training of personnel;
- 4.7.2.2 encryption of data in transit and at rest;
- 4.7.2.3 system access logging and general data access logging; and/or
- 4.7.2.4 any other safeguards reasonably required to protect such information in accordance with relevant Data Protection Laws.

4.8 **Compliance**

- 4.8.1 The Vendor shall reasonably assist UJ with meeting UJ's compliance of any obligations under applicable Data Protection Laws, considering the nature of the Vendor's Processing, the information made available to or otherwise accessed by the Vendor, including in relation to Data Subject rights, data protection assessments, and reporting to and consulting with the Information Regulator under POPIA.

4.9 **Notification**

- 4.9.1 The Vendor shall immediately notify UJ in writing, on:
 - 4.9.1.1 becoming aware, or if there are reasonable grounds to believe, that a Security Incident has or, to the extent reasonably practicable, is likely to occur including (i) the nature of the Security Incident, (ii) the approximate number and categories of Data Subjects; (iii) the likely consequences of the Security Incident and (iv) any measure proposed to be taken to address the Security Incident and to mitigate its possible adverse effects; and (v) any other relevant information;
 - 4.9.1.2 receipt of any request for access to or correction of the Personal Information or notice, complaints or any other communication from a Data Subject and provide UJ with a copy thereof; and/or
 - 4.9.1.3 receipt of any request for disclosure of Personal Information or any other notice or communication in connection with the Personal Information from the Information Regulator or any other competent authority and provide UJ with a copy thereof.
- 4.9.2 The Vendor shall immediately notify UJ, in its opinion, any instruction infringes with applicable Data Protection Laws. This notification will not constitute a general obligation on the part of the Vendor to monitor or interpret the applicable laws and this notification will not constitute legal advice to UJ.

4.10 **Disclosure**

- 4.10.1 The Vendor shall not disclose Personal Information except:
 - 4.10.1.1 where it is directed in writing to do so;
 - 4.10.1.2 as described in this Agreement; or
 - 4.10.1.3 as required by law.
- 4.10.2 The Vendor shall not disclose Personal Information to law enforcement agencies unless required by law. If a law enforcement agency contacts the Vendor with a demand for Personal Information, the Vendor shall immediately notify UJ thereof and shall attempt to redirect the law enforcement agency to request that data directly from UJ.
- 4.10.3 If the Vendor is compelled to disclose Personal Information to law enforcement agency, a court, or regulatory authority, the Vendor shall promptly notify UJ and provide a copy of the

demand and give the UJ an opportunity to object or challenge the requirement, unless the law prohibits such notice.

- 4.10.4 Upon receipt of any other third-party request for Personal Information, the Vendor shall promptly notify UJ unless prohibited by law. The Vendor shall reject the request unless required by law to comply. If the request is valid, the Vendor shall attempt to redirect the third party to request the information directly from UJ.

4.11 **Records of processing activities**

- 4.11.1 To the extent applicable Data Protection Laws require the Vendor to collect and maintain records of certain information relating to UJ, UJ will, where requested, supply such information to the Vendor and keep it accurate and up to date. The Vendor may make such information available to a data protection authority if required by applicable Data Protection Laws.
- 4.11.2 The Vendor shall also keep records regarding the Processing of Personal Information it carries out for UJ relating to, the access, control and security of the Personal Information, approved sub-contractors, the Processing purposes, categories of Processing, any transfers of Personal Information to a third country and related safeguards, and a general description of the technical and organisational security measures.

4.12 **Security and integrity**

- 4.12.1 The Vendor undertakes to secure the integrity and confidentiality of the Personal Information by taking appropriate, reasonable technical and organisational measures to prevent:

4.12.1.1 loss of, or damage to, or unauthorised destruction of Personal Information;

4.12.1.2 unlawful access to, or Processing of, the Personal Information; and

4.12.1.3 take reasonable measures to:

4.12.1.3.1 identify all reasonably foreseeable internal and external risks to Personal Information;

4.12.1.3.2 establish and maintain appropriate safeguards against the risks identified;

4.12.1.3.3 regularly verify that the safeguards are effectively implemented, including conducting security assessments consistent with best industry practice; and

4.12.1.3.4 ensure that the safeguards are continually updated in respect of new risks or deficiencies in previously implemented safeguards and shall notify the other Party of the risks identified and the safeguards established and implemented from time to time.

4.12.2 UJ may request the Vendor to:

4.12.2.1 promptly provide it with all information necessary to demonstrate compliance with the obligations set out in this Agreement;

4.12.2.2 allow for inspections of the policies and procedures to confirm compliance with POPIA and this Agreement (including without limitation that appropriate security checks on employees and to ensure that Personal Information is securely transferred);

- 4.12.2.3 have the right to audit or inspect IT systems and IT environments in connection with this DPA and to request ISO compliance certificates confirming that the internal systems and the environments have been audited;
- 4.12.2.4 assist in taking reasonable measures to address Security Incidents, including without limitation, where appropriate, measures to mitigate possible adverse effects; and
- 4.12.2.5 provide reasonable assistance in responding to requests, communications and/or complaints from Data Subjects, the information Regulator, or any other competent authority in connection therewith.

4.13 Data Protection Impact Assessment

- 4.13.1 If, pursuant to Data Protection Laws, a data protection impact assessment or prior consultation with the Information Regulator is required, the Vendor will, on UJ's request, provide such documents which are required any/or any other assistance in this respect.

4.14 Documentation and storage obligations

- 4.14.1 Documentation that demonstrates compliance within the meaning of Chapter 3 of POPIA is to be stored by the Vendor in accordance with its legal powers and obligations to do so beyond the end of the Agreement. The Vendor has a responsibility for ensuring that it complies with all statutory retention obligations in place in relation to the data. To this end, the Vendor is to take appropriate data protection precautions in terms of section 55 (1) of POPIA. This applies in particular in the event that the collaboration or the Agreement comes to an end.
- 4.14.2 The Vendor warrants that and undertakes that all its employees:
 - 4.14.2.1 have undertaken training on the applicable Data Protection Laws relating to handling Personal Information and how it applies to their particular duties; and
 - 4.14.2.2 that they are aware both of their duties and obligations under applicable Data Protection Laws.
- 4.14.3 The Vendor shall ensure that:
 - 4.14.3.1 that access to Personal Information is limited to those of its employees who require access to the Personal Information for the purpose and as is relevant to performing their job duties under this Agreement; and
 - 4.14.3.2 such employees personnel are bound by written confidentiality obligations and are made aware of the confidential and sensitive nature of the Personal Information.

4.15 Confidentiality of Personal Information

- 4.15.1 The Vendor shall ensure that all employees involved in the data Processing maintain the confidentiality of the Personal Information in accordance with sections 20 and 21 of POPIA and in the period in which they are employed as well as after their employment comes to an end and that said employees, before commencing their work, will be accordingly obligated to confidentiality and instructed in the data protection provisions that are relevant to them.

4.16 Deletion

- 4.16.1 The Vendor shall securely delete or return to UJ or transfer to any replacement service provider (in the format required by UJ) all Personal Information belonging to UJ, promptly

upon the termination (for any reason) of this Agreement or at any time upon request, and securely delete any remaining copies. Upon UJ's request, the Vendor shall certify to UJ that all Personal Information belonging to it and its (including its subcontractors) possession or control has been returned or destroyed.

- 4.16.2 Any right that the Vendor has or had to Process the Personal Information will terminate immediately upon the termination of this Agreement and the Vendor will notify all its sub-processors supporting its own Processing and ensure that they either destroy Personal Information or return Personal Information to UJ and to the other relevant connected entities, at the discretion of UJ (acting for itself and for the other relevant connected entities).

4.17 **Sub-Operators**

- 4.17.1 The Vendor will not engage or use any third party for the Processing of Personal Information or permit any third party to Process Personal Information without the prior written consent of UJ. The Vendor may hire third parties including any subcontractor to provide some or all services and Process Personal Information on its behalf, to the extent permitted by the UJ Agreement.
- 4.17.2 The Vendor is responsible for its sub-operator's compliance with the Vendor's obligations in this Agreement, as if the acts and omissions of the sub-operator were acts and omissions of the Vendor.
- 4.17.3 When engaging any sub-operator, the Vendor shall ensure by means of a written contract that the sub-operator may only access and use Personal Information to deliver the services that the Vendor has retained them to provide and is prohibited from using Personal Information for any other purpose.
- 4.17.4 UJ may request the Vendor to audit the sub-operator or provide confirmation that such an audit has occurred to ensure compliance with its obligations imposed by the Vendor in conformity with this DPA.

4.18 **Cross Border Processing**

- 4.18.1 Personal Information Processed on UJ's behalf may be transferred to and stored and Processed in any country in which the Vendor or its sub-operator ("**Data Exporter**") or its affiliates ("**Data Importer**") may operate, only if the Data Exporter ensures that such transfer will be in compliance with the requirements under applicable Data Protection Laws to which UJ may be subject, and subject to prior written approval from UJ.
- 4.18.2 Data Exporter may only Process Personal Information, or permit the transfer of Personal Information to a third party, in a foreign country under the following conditions:
- 4.18.2.1 Where POPIA Standard Contractual Clauses are used, the parties will complete all relevant details in and execute the POPIA Standard Contractual Clauses. The Data Exporter will make the executed POPIA Standard Contractual Clauses available to UJ or its connected entities, on request.
- 4.18.2.2 Where an appropriate level of protection has been provided by the third party who receives the Personal Information by way of a law, binding corporate rules or binding agreement (on substantially the same terms of this Agreement), in accordance with section 72(1)(a) of POPIA. The Data Exporter shall identify the transfer mechanism that enables the parties to comply with cross-border data transfer provisions and shall immediately inform UJ of any change to that status.
- 4.18.2.3 Where no law, binding agreement or binding corporate rules provide an adequate level of protection, the Data Exporter shall identify another transfer mechanism in section 72(1) of POPIA that enables the Parties to comply with cross-border

data transfer provisions and the Data Exporter shall inform UJ of any change to that status.

- 4.18.3 To the extent that the Data Exporter is relying on a specific statutory mechanism to allow for cross-border data transfers and those mechanisms are subsequently modified, revoked, or held in a court of competent jurisdiction to be invalid, UJ and the Data Exporter agree to cooperate in good faith to promptly suspend the transfer or to pursue a suitable alternate mechanism that can lawfully support the transfer.

4.19 **Privacy Notices**

- 4.19.1 To the extent required by applicable Data Protection Laws, as the Responsible Party, UJ is responsible for ensuring that all necessary privacy notices are provided to Data Subjects, and unless another legal basis set forth in applicable Data Protection Laws supports the lawfulness of the Processing, that any necessary Data Subject consents to the Processing are obtained and a record of such consents is maintained. Should such a consent be revoked by a Data Subject, UJ is responsible for communicating the fact of such revocation to the Vendor, and the Vendor remains responsible for implementing UJ's instruction with respect to the Processing of that Personal Information.

4.20 **Rights Of Data Subjects**

- 4.20.1 The Vendor undertakes to make available to Data Subjects, free of charge, the information required under section 5 of POPIA in a concise, transparent, easy to understand and easily accessible manner and in clear and plain language.
- 4.20.2 Data Subjects are able to assert the rights afforded to them by sections 19, 21, 22, 24 of POPIA against both the Vendor. Where a Data Subject, in exercising their rights as a Data Subject, contacts the Vendor, in particular with a view to obtaining, rectifying and deleting their Personal Information, the Vendor undertakes to forward this request without undue delay to the other Party, irrespective of any obligation to satisfy the Data Subject's rights.
- 4.20.3 The Vendor undertakes to fulfil the obligation to provide information as referred to in section 23 of POPIA and to make available to Data Subjects, upon request, the information to which Data Subjects are entitled under section 23 of POPIA. As a matter of principle, the information will be given to Data Subjects by the Vendor. Where necessary, the Vendor will make available to UJ the necessary information from their respective area of activity. The point of contact of the Vendor responsible in this respect is a person from the Vendor's organisation who is tasked with the protection of Personal Information. Any change to the respective point of contact must be notified to UJ without undue delay. The Vendor is also deemed to have fulfilled its obligation under the fifth sentence, when the person tasked with the protection of Personal Information as indicated in the privacy policy or legal notice of the Vendor.
- 4.20.4 Where Personal Information is to be deleted, the Vendor will notify UJ beforehand. The UJ may object to the deletion where a legitimate reason exists, for instance where it is subject to a statutory obligation to retain the data.
- 4.20.5 In the event that the Vendor receives a request from the UJ (or any of its connected entities) in respect to a Data Subject, to exercise one or more of its rights under applicable Data Protection Laws, in connection with a service for which the Vendor is a processor, the Vendor will within 3 (three) Business Days of receipt of the request redirect the Data Subject to make its request directly to UJ and UJ shall be responsible for responding to any such request. The Vendor will promptly comply with reasonable requests by UJ to assist with UJ's response to such a Data Subject request.

4.21 **Security**

- 4.21.1 The Vendor shall implement appropriate, reasonable Technical and Organisational Measures to prevent loss of damage to or unauthorized destruction of, and unlawful access to or Processing of, Personal Information, and to ensure that the level of security is

appropriate to the risks to the Personal Information in terms of applicable Data Protection Laws, considering the:

- 4.21.1.1 the reasonably foreseeable internal and external risks to Personal Information in its possession or under its control;
 - 4.21.1.2 generally accepted information security practices and procedures which may apply or be required in terms of specific industry or professional rules and regulations;
 - 4.21.1.3 implementation costs;
 - 4.21.1.4 Processing nature, scope, context, and purposes; and
 - 4.21.1.5 varying risks to Data Subjects' rights and freedoms in terms of likelihood and severity.
- 4.21.2 The Vendor has implemented and will apply the Technical and Organisational Measures. UJ shall be given the opportunity to review the Technical and Organisational Measures of the Vendor, and the Vendor agrees that its measures are appropriate taking into account the state of the art, the costs of implementation, nature, scope, context and purposes of the Processing of Personal Information.
- 4.21.3 The Vendor may not change its Technical and Organisational Measures without prior written notice to UJ and in the event that the Vendor changes its Technical and Organisational Measures, the Vendor shall maintain a comparable or better level of security. Individual measures may be replaced by new measures that serve the same purpose without diminishing the security level protecting Personal Information.
- 4.21.4 to the extent that that the Vendor provides or performs services on the premises of UJ and is given access to UJ's systems and data, the Vendor shall comply with UJ's reasonable administrative, technical, and physical conditions to protect such data and guard against unauthorised access. In connection with any access to UJ's system and data, UJ shall be responsible for providing the Vendor's employees with user authorisations and passwords to access its systems and revoking such authorisations and terminating such access, as UJ deems appropriate from time to time.

4.22 Warranties

4.22.1 The Vendor warrants that:

- 4.22.1.1 it complies and will continue to comply with the statutory provisions for the duration of this Agreement, in particular the lawfulness of the Processing it also carries out and will take all Technical and Organisational Measures reasonably necessary to ensure that the rights of Data Subjects are considered.
- 4.22.1.2 will ensure that the records are sufficient to enable UJ (and its connected entities) to verify the Vendor's compliance with its obligations under this Agreement and the Vendor will provide UJ with copies of the records upon request.
- 4.22.1.3 will keep detailed, accurate and up-to-date written records regarding the Processing of Personal Information it carries out, including, but not limited to, the access, control, and security of the Personal Information, approved sub-contractors, the Processing purposes, categories of Processing, any transfers of Personal Information to a third country and related safeguards, and a general description of the technical and organisational security measures;
- 4.22.1.4 will keep such Personal Information logically separated from its information or from any of its sub-processor information;;

- 4.22.1.5 will only hire or engage third parties, including any sub-processor, to provide some or all services on its behalf and it will only authorise (or otherwise cause or permit) a sub-processor to Process the Personal Information if UJ provides prior written consent to use the sub-processor and in accordance with this Agreement. When seeking for UJ's consent, the Vendor will provide UJ with full details regarding such sub-processor (including, without limitation, the full name and registered address of the sub-processor, evidence of data security measures, due diligence, and evidence that the sub-processor has committed in contract to implementing the minimum technical and organisational data security measures specified in this Agreement);and
- 4.22.1.6 will be responsible for any Personal Information controlled by or in the possession of its sub-processors and that it remains responsible for its sub-processors' compliance with its obligations in this Agreement.

5. BREACH

- 5.1 If either Party commits a breach of this Agreement ("**Breaching Party**") and fails to remedy such breach within 7 (seven) days of receiving a notice to do so from the other Party ("**Innocent Party**") then, in addition to any other rights and remedies that the Innocent Party may have in terms of an Agreement or otherwise, may elect to:
 - 5.1.1 claim specific performance from the Breaching Party;
 - 5.1.2 claim damages from the Breaching Party;
 - 5.1.3 approach the court for an interdict; and/or
 - 5.1.4 proceed with any combination of the above or as UJ may be entitled in law.

6. INDEMNIFICATION

- 6.1 The Vendor ("**Indemnifying Party**") hereby indemnifies and holds UJ ("**Indemnified Party**") harmless against any and all Losses and/or claims incurred and/or brought against the Indemnified Party by a third party (including claims by a regulator or governmental authority) as a result of:
 - 6.1.1 the Indemnifying Party breaching any of the provisions of POPIA; and/or
 - 6.1.2 the Indemnifying Party breaching any of its duties under this Agreement,
- 6.2 The Indemnified Party shall use all reasonable measure to mitigate any Losses and shall cooperate with the Indemnifying Party, at the Indemnifying Party's expense, in defending, or settling the claim.
- 6.3 The Indemnified Party will notify the Indemnifying Party in writing within 72 (seventy two) hours after receipt of notice of the commencement or threatened commencement of any civil, criminal, administrative or investigative action or proceeding involving a claim in respect of which Indemnified Party seeks indemnification pursuant to clause 6 ("**Indemnification Notice**").
- 6.4 The Indemnification Notice will include UJ's election to either:
 - 6.4.1 assume control of the defence or settlement of that claim;
 - 6.4.2 instruct the Indemnifying Party to assume control of the defence and/or settlement of that claim; or
 - 6.4.3 recommend to the Indemnifying Party that such claim not be defended or settled.

- 6.5 If the Indemnified Party, in terms of clause 6.3, recommend that any claim not be defended or settled, the Indemnifying Party shall have the election, within 24 (twenty four) hours of the Indemnification Notice to either:
- 6.5.1 pay the value of such claim to the Indemnified Party; or
 - 6.5.2 defend or settle the claim, at the Indemnifying Party's expense, in which event the provisions of clause 6.6 shall apply.
- 6.6 If the Indemnifying Party, in terms of clause 6.3, is instructed by Indemnified Party to control the defence or settlement of a claim, it shall do so at its own cost and shall at all times comply with all of the Indemnified Party's reasonable instructions and required actions relating to the defence and/or settlement of such claim. Under no circumstances will the Indemnifying Party without the prior written approval of Indemnified Party:
- 6.6.1 make any admission or acknowledgment that would be binding on or prejudicial to the interests of the Indemnified Party; or
 - 6.6.2 settle, compromise or cease to defend any such claim.
- 6.7 If the Indemnified Party, in terms of clause 6.3, assumes control of the defence and/or settlement of a claim, the Indemnified Party acknowledges that:
- 6.7.1 The Indemnified Party will have sole control over such defence or settlement; and
 - 6.7.2 The Indemnified Party will be entitled to join the Indemnifying Party to any such proceedings, in which event the Indemnifying Party shall, in consultation with the Indemnified Party, defend such proceedings at its own cost, and the Indemnified Party's costs in defending or settling any such claim shall be for the Indemnifying Party's account.
- 6.8 The Indemnifying Party shall at all times be entitled, upon written notice to the Indemnified Party, to participate in any such proceedings (including the right to instruct its own attorneys and/or counsel). Any costs or expenses in such participation shall be for the Indemnifying Party's account.

7. DOMICILIUM AND NOTICES

- 7.1 The Parties choose *domicilium citandi et executandi* ("**domicilium**") for all purposes of the giving of any notice, the payment of any sum, the serving of any process and for any other purpose arising from this Agreement, as follows:
- 7.1.1 **UJ**
The address as set out in **Annexure A**.
A copy of all notices and processes must also physically be delivered to the Office of the General Counsel at: *1st Floor, East Wing, Madibeng, Auckland Park Kingsway Campus of the University of Johannesburg*.
 - 7.1.2 **Vendor**
The addresses as set out in **Annexure A**.
- 7.2 Any written notices required in terms of clause 7.1 shall only be satisfied if such notice is given in a written, paper based form in English and if send by e-mail any notice is to be on a PDF form duly signed and attached to the e-mail. The body of the e-mail itself will not be deemed to be proper notice
- 7.3 Either Party shall be entitled, from time to time by written notice to the other Party, to vary its physical *domicilium* to any other physical address within South Africa which is not a post office box or a poste restante.

- 7.4 Either Party shall be entitled, from time to time by written notice to the other Party, to vary its postal address to any other postal address within South Africa.
- 7.5 All notices given in terms of this Agreement shall be in writing and any notice given by either Party to the other ("**Addressee**") which:
- 7.5.1 is delivered by hand to the Addressee's physical *domicilium*, shall be deemed to have been received by the Addressee on the first Business Day following the date of delivery; and
- 7.5.2 is posted by registered mail to the Addressee's postal address nominated above, shall be deemed to have been received by the Addressee on the 14th Business Day following the date of such posting.

8. GENERAL PROVISIONS

- 8.1 This Agreement constitutes the sole record of the agreement between the Parties in relation to its subject matter.
- 8.2 The terms and conditions contained on either of the Party's purchase order, order acceptance forms and/or invoices shall not apply to, supplement or supersede any provisions of this Agreement.
- 8.3 No Party shall be bound by any representation, warranty, promise or the like not recorded in this Agreement.
- 8.4 No addition to, variation, novation or agreed cancellation of this Agreement shall be of any force or effect unless in writing and signed by or on behalf of the Parties.
- 8.5 No suspension of a right to enforce any term of this Agreement and no pactum de non petendo shall be of any force or effect unless in writing and duly signed by or on behalf of the Parties.
- 8.6 No indulgence which a Party may grant to another Party shall constitute a waiver of any of the rights of the grantor unless in writing signed by both Parties.
- 8.7 All costs, charges and expenses of any nature whatever which may be incurred by a Party in enforcing its rights in terms of this Agreement, including without limiting the generality of the foregoing, legal costs on the scale of attorney and own client and collection commission, irrespective of whether any action has been instituted, shall be recoverable on demand from the Party against which such rights are successfully enforced and shall be payable on demand.
- 8.8 The provisions of this Agreement shall be binding upon the successors-in-title and the permitted assigns of the Parties.
- 8.9 All provisions in this Agreement are, notwithstanding the manner in which they have been put together or linked grammatically, severable from each other. Any provision of this Agreement which is, or becomes, unenforceable in any jurisdiction, whether due to voidness, invalidity, illegality, unlawfulness or for any other reason whatsoever, shall, in such jurisdiction only, and only to the extent that it is so unenforceable, be deemed pro non scripto, and the remaining provisions of this Agreement shall be of full force and effect. The Parties declare that it is their intention that this Agreement would be executed without such unenforceable provisions if they were aware of such unenforceability at the time of its execution.
- 8.10 No remedy conferred by this Agreement is intended, unless specifically stated, to be exclusive of any other remedy which is otherwise available at law, by statute or otherwise. Each remedy shall be cumulative and in addition to every other remedy given hereunder or now or hereafter existing at law, by statute or otherwise. The election of any one or more remedy by a Party shall not constitute a waiver by such Party of the right to pursue any other remedy available at law.
- 8.11 This Agreement supersedes and cancels all prior agreements and/or arrangements relating to the subject matter hereof.
- 8.12 Each of the Parties acknowledges that it has been free to secure independent legal and other advice as to the nature and effect of all of the provisions of this Agreement and that it has either taken such independent legal or other advice or dispensed with the necessity of doing so.

-
- 8.13 This Agreement may be executed in any number of counterparts and by the Parties on separate counterparts, one or more of which may be delivered via email or facsimile, each of which when so executed and delivered shall be an original, but all such counterparts together shall constitute one and the same instrument.
- 8.14 Each Party shall bear and pay its own fees and costs of and incidental to the negotiation, drafting, preparation and execution of this Agreement.
- 8.15 All matters arising from or in connection with this Agreement, its validity, existence or termination shall be determined in accordance with the laws for the time being of the Republic of South Africa and the Parties consent to the jurisdiction of the High Court of South Africa: South Gauteng High Court, Johannesburg.

Annexure C – Relevant Sections of Chapter 3 of POPIA**RELEVANT SECTIONS OF PROTECTION OF PERSONAL INFORMATION ACT,
No. 4 OF 2013****CHAPTER 3
CONDITIONS FOR LAWFUL PROCESSING OF PERSONAL INFORMATION****19. Security measures on integrity and confidentiality of personal information**

- (1) A 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—
- (a) loss of, damage to or unauthorised destruction of personal information; and
 - (b) unlawful access to or processing of personal information.
- (2) In order to give effect to subsection (1), the responsible party must take reasonable measures to—
- (a) identify all reasonably foreseeable internal and external risks to personal information in its possession or under its control;
 - (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.
- (3) The responsible party 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.

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.