



Data Processing Agreement for Skypiom Compliance

Between

Skypiom (Pty) Ltd

(Hereinafter referred to as the “Operator”)

and

The Customer

(Hereinafter referred to as the “Responsible Party” as well as “Customer”)

Collectively the Operator and Responsible Party are referred to as the “Parties”.

Preamble

- A. The Protection of Personal Information Act, 4 of 2013 (POPIA), as amended from time to time, has as its principal purpose regulating and controlling the processing of Personal Information by a Responsible Party.
- B. To conduct its business and achieve its related objectives, the Customer collects and processes Personal Information about several individuals and legal entities who are referred to as Data Subjects under POPIA.
- C. The Customer must comply with POPIA and with the Data Protection conditions that are outlined in it to process the Personal Information of Data Subjects.
- D. To comply with this mandate and to pursue its business interests, the Customer may at times request third party Operators to process Personal Information that it has obtained from its Data Subjects, on its behalf.
- E. The Customer shall obtain or have access to a written Agreement from the Operator before it discloses any Personal Information that it collects from Data Subjects to an Operator for further processing such Personal Information on its behalf in terms of POPIA.
- F. The Customer wishes to supply the Operator with certain Personal Information pertaining to its Data Subjects, which it would like to be processed on its behalf by the Operator.
- G. The Operator has agreed to process this Personal Information on behalf of the Customer, subject to the terms and conditions of this Agreement.

1. Definitions

- 1.1 Unless otherwise expressly stated, or the context otherwise requires, the words and expressions listed below shall, when used in this Agreement, including this introduction, bear the meanings ascribed to them:
 - 1.1.1 **“Agreement”** means this data processing Agreement and any appendices and schedules attached hereto;
 - 1.1.2 **“Data Subject”** refers to a person to whom the Personal Information relates;
 - 1.1.3 **“Main Agreement”** means the agreement or series of agreements entered into between the Customer and the Operator, outside of this Agreement;
 - 1.1.4 **“Operator”** means Skypiom (Pty) Ltd, a private company with registration number 2011/129576/07, with physical address at W17 Watershed, 17 Dock Road, V&A Waterfront, Cape Town, 8002 South Africa, email Address info@skypiom.com, and phone number +27 21 012 5600;
 - 1.1.5 **“Parties”** means the Responsible Party and the Operator and “Party” means either one of them as the context may require/indicate;

- 1.1.6 **“Personal Information”** means personal information relating to any identifiable, living, natural person, and an identifiable, existing juristic person, including, but not limited to –
In the case of an individual:
- 1.1.6.1 name, contact details, date of birth, identity number, passport numbers, address, deeds, CIPC, fraud, and details about the individual’s employment and education; and
- 1.1.6.2 **Special Personal Information** including race, gender, national, ethnic or social origin, colour, physical or mental health, disability and biometric information, such as images.
In the case of a juristic person:
- 1.1.6.3 name, address, contact details, registration details, financials and related history, B-BBEE score card, registered address, description of operations, bank details, details about employees, business partners, customers, tax number, VAT number and other financial information; and
- 1.1.6.4 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;
- 1.1.6.5 the views or opinions of another individual about the person; and
- 1.1.6.6 the name of the person if it appears with other Personal Information relating to the person or if the disclosure of the name itself would reveal information about the person.
- 1.1.7 **“POPIA”** means the Protection of Personal Information Act, Act 4 of 2013;
- 1.1.8 **“Process or processing”** means any operation or activity or any set of operations, whether or not by automatic means, performed by the Operator concerning a Data Subject’s Personal Information, including –
- 1.1.8.1 the collection, receipt, recording, organization, collation, storage, updating or modification, retrieval, alteration, consultation or use;
- 1.1.8.2 dissemination by means of transmission, distribution or making available in any other form; or
- 1.1.8.3 merging, linking, as well as restriction, degradation, erasure or destruction of information;

Notice to non-South African customers: “process” refers to the action of processing by a Responsible Party or by an Operator on its behalf.

As this Operator uses equipment (staff, equipment, etc.) in South Africa to process non-South African customers’ personal information, non-South African customers may need to further comply with their obligations in terms of POPIA, in addition to what is stated in this Agreement.

- 1.1.9 **“Responsible Party” and “Customer”** means the juristic person as outlined in the signed Service Level Agreement, including the respective registration number, physical address, email address and phone number;
- 1.1.10 **“Services”** means the services to be rendered and provided by the Operator to the Responsible Party, which include the provision and maintenance of Skypiom Compliance.

2. Duration

- 2.1. This Agreement shall commence on the date on which the Operator first commenced providing the Services to the Responsible Party in terms of the Service Level Agreement.

3. Roles and Precedence

- 3.1. The Parties hereby acknowledge and agree that while the Operator provides the Services to the Customer and that in rendering the Services, the Customer remains the Responsible Party. The Operator will be acting as a data processor on behalf of the Customer, and undertakes to comply with the terms of this Agreement when doing so. For clarity, it is stated that at no stage will the Operator assume a status equivalent to a Co-Controller under the General Data Protection Rules, with the concomitant obligations and liabilities, regardless of the terminology employed.
- 3.2. The Parties acknowledge and agree that the terms of this Agreement, in so far as they relate to the protection and processing of Personal Information, shall take priority over any similar provisions contained in the Service Level Agreement between the Parties. In the event of a conflict between the terms of this Agreement and any similar provisions contained in the Service Level Agreement, the Parties agree that the terms of this Agreement shall prevail.

4. Processing Personal Information Mandate

- 4.1. Subject to the terms of this Agreement, the Customer authorises the Operator, who hereby accepts such mandate, to process the Customer’s Personal Information solely for the purposes of providing the Services.
- 4.1.1. The Customer hereby grants to the Operator a mandate to process certain Personal Information, as defined under 1.1.6.

5. Obligations of the Operator

- 5.1. The Operator acknowledges and agrees that the Operator shall –

- 5.1.1. comply with applicable South African data protection laws in the processing of the Customer's Personal Information; and
- 5.1.2. only process the Customer's Personal Information for the duration of this Agreement or the Main Agreement, to the extent, and in such a manner, as is necessary for provision of the Services and in accordance with this Agreement;
- 5.1.3. take all reasonable steps to ensure the reliability and confidentiality of any employee, agent or contractor of the Operator who may have access to the Customer's Personal Information. Ensuring in each case, that access is strictly limited to those individuals who need to know and/or access the relevant Customer Personal Information, as strictly necessary for the purposes of rendering the Services;
- 5.1.4. ensure that any employee, agent or contractor of the Operator is subject to confidentiality undertakings or professional or statutory obligations of confidentiality;
- 5.1.5. to the extent necessary and/or required, the Operator shall provide reasonable assistance to the Customer with any data protection impact assessments;
- 5.1.6. if the Customer's Personal Information processed under this Agreement is transferred outside of South Africa, the Parties shall ensure that the Customer's Personal Information is adequately protected.

6. Obligations of the Responsible Party

- 6.1. The Responsible Party acknowledges and agrees that the Responsible Party shall –
 - 6.1.1. provide the Operator with a Data Subject Consent Form to be displayed to its direct users on Skypiom Compliance upon first login;
 - 6.1.1.1. in the event that the Responsible Party does not provide a Data Subject Consent Form to the Operator then the Responsible Party agrees for the Operator to use its Data Subject Consent Form.
 - 6.1.2. the Responsible Party acknowledges and agrees that the onus to obtain permission to process its Data Subject's Personal Information rests solely with the Responsible Party.

7. Security

- 7.1. In relation to the Customer's Personal Information, the Operator shall:
 - 7.1.1. 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 –
 - 7.1.1.1. loss of, damage to or unauthorised destruction of Personal Information; and
 - 7.1.1.2. unlawful access to or processing of Personal Information.
 - 7.1.2. take reasonable measures to –

- 7.1.2.1. identify all reasonably foreseeable internal and external risks to personal information in its possession or under its control;
- 7.1.2.2. establish and maintain appropriate safeguards against the risks identified;
- 7.1.2.3. regularly verify that the safeguards are effectively implemented; and
- 7.1.2.4. ensure that the safeguards are continually updated in response to new risks or deficiencies in previously implemented safeguards.
- 7.1.3. have due regard to generally accepted information security practices and procedures which may apply to it generally or be required in terms of specific industry or professional rules and regulations.
- 7.1.4. The Operator shall take into consideration in particular the risks associated with a breach of Personal Information when assessing the appropriate level of security.

8. Sub Processing

- 8.1. The Operator shall not appoint any sub processor or disclose any of the Customer's Personal Information to any sub processor unless required or authorised by the Customer in writing.
- 8.2. Notwithstanding the above, the Operator may disclose the Customer's and / or Data Subjects as identified by the Customer Personal Information to a credit bureau for purposes of Know Your Customer, Customer Due Diligence, and Extended Customer Due Diligence.

9. Data Breaches

- 9.1. The Operator shall notify the Customer immediately upon the Operator becoming aware of a Personal Information data breach affecting the Customer's Personal Information and shall provide the Customer with sufficient information to allow the Customer to meet any obligations to report and / or inform Data Subjects and regulatory authorities of the Personal Information data breach.
- 9.2. The Operator shall co-operate with the Customer and take reasonable steps as are directed by the Customer to assist in the investigation, mitigation and remediation of each such Personal Information data breach.

10. Deletion or Return of Personal Information

- 10.1. Subject to provisions of this Agreement, the Operator shall promptly but in any event no later than 30 (thirty) business days after the date on which the Service Level Agreement, and in turn this Agreement, terminates ("Termination Date"), or upon written demand from the Customer, return and/or delete any Personal Information

provided to the Operator for processing whether processed or not, together with any information relating thereto.

11. Confidentiality

- 11.1. Subject to the provisions of this clause, each Party undertakes to keep confidential and not to disclose to any third Party, save as may be required in law or permitted in terms of this Agreement, the nature, content or existence of this Agreement and any and all information given by one Party to the other pursuant to this Agreement.
- 11.2. A Party will not make any disclosure regarding this Agreement without the prior written consent of the other Party, except in cases of disclosures or other statements required by law, in which case the Party subject to such disclosure is required to consult with the other Party in order to reach an agreement about the disclosure, which (unless agreed) must not exceed that required by law.
- 11.3. This clause shall not apply to any disclosure made by a Party to its professional advisors or consultants, provided that they have agreed to the same confidentiality undertakings, or to any judicial or arbitral tribunal or officer, in connection with any matter relating to this Agreement or arising out of it.

12. Severability

- 12.1. If any one or more of the provisions of this Agreement shall be declared or adjudged (formally or informally) by competent authority to be illegal, invalid or unenforceable under any law applicable in any jurisdiction in which this Agreement is to be performed ("Severable Provision"), the Severable Provision shall be severable and divisible from the other terms and conditions of this Agreement, and if the Severable Provision is invalid or unenforceable, the Parties shall retain the right to enforce all the other terms of this Agreement and shall retain all such rights as are validly and enforceably conferred upon them by this Agreement.
- 12.2. The Parties record that they would have entered into this Agreement on all the other terms hereof even if the Severable Provision were not agreed upon and therefore record that the remainder of the provisions of this Agreement are intended to remain valid and enforceable even if the Severable Provision is invalid or unenforceable.

13. Limited Remedy in the Event of Breach of this Agreement

- 13.1. In the event of any Party committing a breach of any of the terms of this Agreement ("Defaulting Party") and failing to remedy such breach within a period of 10 (ten) days after receipt of a written notice from the other Party ("Aggrieved Party") calling upon the Defaulting Party so to remedy, then the Aggrieved Party shall be entitled to claim

specific performance of the terms of this Agreement and without further notice, claim and recover damages from the Defaulting Party, but shall not be entitled to cancel this Data Processing Agreement.

- 13.2. It is recorded for the avoidance of any doubt that any claim for damages is independent of and separate to any claim for specific performance.

14. Survival of Obligations

- 14.1. Any provision of this Agreement which contemplates performance or observance subsequent to any termination or expiration of this Agreement shall survive any termination or expiration of this Agreement and continue in full force and effect.

15. Notices and Legal Processes

- 15.1. Each Party chooses as its address as set out in the Service Level Agreement for all purposes under this Agreement (“chosen address”), whether for serving any court process or documents, giving any notice, or making any other communications of whatsoever nature and for any other purpose arising from this Agreement (“notice”).
- 15.2. Any notice required or permitted under this Agreement shall be valid and effective only if in writing.
- 15.3. Any Party may by notice to the other Party change its chosen address to another physical address in the Republic of South Africa and such change shall take effect on the seventh day after the date of receipt by the Party who last receives the notice.
- 15.4. Any notice to a Party contained in a correctly addressed envelope and delivered by hand to a responsible person during ordinary business hours at its chosen address, shall be deemed to have been received on the date of delivery.
- 15.5. Notwithstanding anything to the contrary herein, a written notice actually received by a Party, including a notice sent by email, shall be an adequate notice to it notwithstanding that it was not sent or delivered to its chosen address.

16. Interpretation

- 16.1. Clause and paragraph headings are for purposes of reference only and shall not be used in interpretation.
- 16.2. Unless the context clearly indicates a contrary intention, any word connoting:
- 16.2.1. any gender includes the other two genders;
- 16.2.2. the singular includes the plural and vice versa;
- 16.2.3. natural persons include artificial persons and vice versa; and
- 16.2.4. insolvency includes provisional or final sequestration, liquidation or judicial management.

- 16.3. A reference to a Business Day is a reference to any day excluding Saturday, Sunday and a public holiday in the Republic of South Africa.
- 16.4. When any number of days is prescribed such number shall exclude the first and include the last day unless the last day falls on a Saturday, Sunday, or a public holiday in the Republic of South Africa, in which case the last day shall be the next succeeding Business Day.
- 16.5. A reference to an enactment is a reference to that enactment as at the date of signature hereof and as amended or re-enacted from time to time.
- 16.6. The rule of interpretation that a written agreement shall be interpreted against the Party responsible for the drafting or preparation of that agreement shall not apply.
- 16.7. If any provision in a definition is a substantive provision conferring rights or imposing obligations on any Party, notwithstanding that it is only in the definition clause, effect shall be given to it as if it were a substantive provision in the body of the Agreement.
- 16.8. The ejusdem generis rule shall not apply and accordingly, whenever a provision is followed by the word "including" and specific examples, such examples shall not be construed so as to limit the ambit of the provision concerned.
- 16.9. Where any term is defined within the context of any particular clause in this Agreement, then, unless it is clear from the clause in question that the term so defined has limited application to the relevant clause, the term so defined shall bear the meaning ascribed to it for all purposes in terms of this Agreement, notwithstanding that that term has not been defined in the definition clause.

17. Governing Law

- 17.1. The law governing this Agreement, including without limitation its interpretation and all disputes arising out of this Agreement, is the law of South Africa. The Parties submit to the exclusive jurisdiction of the South African courts in respect of any matter arising from or in connection with this Agreement, including its termination, regardless of where the Personal Information is, will be, or was actually processed.

18. General & Miscellaneous

- 18.1. The Sole record of agreement: this Agreement constitutes the sole record of the agreement between the Parties with regard to the subject matter hereof. No Party shall be bound by any express or implied term, representation, warranty, promise or the like not recorded herein.
- 18.2. No amendments except in writing: no addition to, variation of, or agreed cancellation of, this Agreement or its Annexures, shall be of any force or effect unless in writing and signed by or on behalf of the Parties.

- 18.3. Waivers: no relaxation or indulgence which any Party may grant to any other shall constitute a waiver or an estoppel of the rights of that Party and shall not preclude that Party from exercising any rights which may have arisen in the past or which might arise in future.
- 18.4. Approvals and consents: an approval or consent given by a Party under this Agreement shall only be valid if in writing and shall not relieve the other Party from responsibility for complying with the requirements of this Agreement nor shall it be construed as a waiver of any rights under this Agreement except as and to the extent otherwise expressly provided in such approval or consent, or elsewhere in this Agreement.
- 18.5. Counterparts: this Agreement may be executed in any number of counterparts and by different parties in separate counterparts. Each counterpart when so executed shall be deemed to be an original and all of which together shall constitute one and the same agreement.
- 18.6. Legal Costs: except as otherwise specifically provided herein, each Party will bear and pay its own legal costs and expenses of and incidental to the negotiation, drafting, preparation and implementation of this Agreement.
- 18.7. Legal Advice: each Party hereby acknowledges and agrees that it has been free to secure independent legal and other professional advice as to the nature and effect of this Agreement and it has either taken such independent advice or has dispensed with the necessity of doing so. Further that all of the provisions of this Agreement and the restrictions contained herein are fair and reasonable in all the circumstances and are in accordance with the Party's intentions.
- 18.8. Assignment: No Party may cede, delegate or assign its rights or obligations in terms of the provisions of this Agreement to any third party without the prior written consent of the other Parties first being obtained. Subject to the limitation on the transferability of this Agreement contained herein, this Agreement will be binding upon and inure to the benefit of the heirs, legatees, legal representatives, successors and assigns of the Parties hereto.