



## Spartan Truck Hire (Pty) Ltd

T/A SPARTAN TRUCK HIRE (PTY) LTD  
REGISTRATION NUMBER: 1988/005507/07

# DATA OPERATOR AGREEMENT

Effective Date:

This Third Party Personal Information Processing Agreement ("Agreement") is made as of the Effective Date by and between Spartan Truck Hire (Pty) Ltd and the "Third-Party Service Provider" / "TPSP";

**Whereas** Spartan Truck Hire (Pty) Ltd is required to adhere to the provisions of PoPIA.

**Whereas** the TPSP collects, transmits, stores or otherwise processes Spartan Truck Hire (Pty) Ltd Personal Information (as defined below); and

**Whereas** the TPSP controls or could impact the security and/or confidentiality of Spartan Truck Hire (Pty) Ltd Personal Information in the performance of the services it provides to Spartan Truck Hire (Pty) Ltd.

For purposes of this Agreement, the following terms have been defined:

- "Main Agreement" means the Agreement entered into between Spartan Truck Hire (Pty) Ltd and the TPSP in terms of which the TPSP provides products and/or services to Spartan Truck Hire (Pty) Ltd.
- "PoPIA" means the Protection of Personal Information Act, No. 4 of 2013, as amended.
- "Security Incident" means any actual or potential accidental or unauthorised access, destruction, loss, alteration, disclosure or any other unlawful forms of processing of Spartan Truck Hire (Pty) Ltd Personal Information;
- "Responsible Party" means Spartan Truck Hire (Pty) Ltd, registration number 1988/005507/07, incorporated in accordance with the applicable laws of the Republic of South Africa;
- "Responsible Party Personal Information" means any Personal Information which (a) is provided or made available to the TPSP by Spartan Truck Hire (Pty) Ltd; (b) comes into the possession, or under the control of, the TPSP during the course or arising out of the Main Agreement and/or (c) the TPSP is required to Process for the purposes of performing its obligations under the Main Agreement.

The terms "Data Subject", "Personal Information", "Processing" and "Regulator" shall have the same meaning as in the PoPIA, and their cognate terms shall be construed accordingly.

It is hereby agreed that:

1. The TPSP will only Process Spartan Truck Hire (Pty) Ltd Personal Information solely for the purposes and to the extent described in the Main Agreement or on the specific written instructions of Responsible Party.
2. In performing its obligations under the Main Agreement, the TPSP will comply with PoPIA and not cause Spartan Truck Hire (Pty) Ltd to breach any obligation under PoPIA.
3. The TPSP will:
  - Process Spartan Truck Hire (Pty) Ltd Personal Information only with the knowledge or authorisation of Spartan Truck Hire (Pty) Ltd;
  - Treat Spartan Truck Hire (Pty) Ltd Personal Information as confidential and shall not share, transfer, disclose or otherwise provide access to Spartan Truck Hire (Pty) Ltd Personal Information to any Third Party,Unless to the extent required by applicable Law (in which case the TPSP will notify Spartan Truck Hire (Pty) Ltd in writing of such legal requirement prior to such Processing or disclosure unless such Law prohibits such notice to Spartan Truck Hire (Pty) Ltd) or in the course of the proper performance of its duties and obligations under the Main Agreement or the specific written instructions of Spartan Truck Hire (Pty) Ltd.

4. The TPSP will limit access to Spartan Truck Hire (Pty) Ltd Personal Information only to those employees to whom access is necessary to perform their role in the performance of the Main Agreement and then only on a need to know basis, and will ensure that such employees:
  - Are subject to confidentiality obligations;
  - Comply with this Agreement;
  - Are appropriately reliable, qualified and trained in relation to their Processing of Spartan Truck Hire (Pty) Ltd Personal Data.
5. The TPSP will not engage or use any Third Party for the Processing of Spartan Truck Hire (Pty) Ltd Personal Information or permit any Third Party to Process Spartan Truck Hire (Pty) Ltd Personal Information without the prior written consent of Spartan Truck Hire (Pty) Ltd.
6. If the TPSP subcontracts any of its obligations under the Main Agreement or otherwise appoints a Third Party to Process Responsible Party Personal Information ("Subcontractor"), the TPSP will ensure that, prior to the Processing taking place, there is a written contract in place between the TPSP and the Subcontractor that imposes on the Subcontractor the same terms as those imposed on the TPSP in this Agreement. The TPSP will procure that the Subcontractor will perform all obligations set out in this Agreement and the TPSP will remain responsible and liable to Spartan Truck Hire (Pty) Ltd for all acts and omissions of Subcontractor as if they were its own.
7. The TPSP shall not cause or permit any Responsible Party Personal Information to be transferred outside the Republic of South Africa without the prior written consent of Spartan Truck Hire (Pty) Ltd.
8. The TPSP acknowledges and agrees that the TPSP is responsible for the security and confidentiality of Responsible Party Personal Information that it stores, transmits or otherwise Processes on behalf of Spartan Truck Hire (Pty) Ltd, or to the extent that it could impact the security and/or confidentiality of Spartan Truck Hire (Pty) Ltd's Personal Information Data environment.
9. The TPSP undertakes and warrants that it will secure the integrity and confidentiality of Spartan Truck Hire (Pty) Ltd Personal Information by taking appropriate, reasonable technical and organisational measures to prevent:
  - Loss of, or damage to, or unauthorised destruction of Spartan Truck Hire (Pty) Ltd Personal Information;
  - Unlawful access to, or Processing of, Spartan Truck Hire (Pty) Ltd Personal Information.
10. In order to give effect to clauses 8. and 9. above, the TPSP will take reasonable measures to:
  - Identify all reasonable foreseeable internal and external risks to Spartan Truck Hire (Pty) Ltd Personal Information;
  - Establish and maintain appropriate Safeguards against the risks identified;
  - Regularly verify that the Safeguards are effectively implemented, including conducting security assessments consistent with best industry practice;
  - Ensure that the Safeguards are continually updated in respect of new risks or deficiencies in previously implemented Safeguards, and shall notify Spartan Truck Hire (Pty) Ltd of the risks identified and the Safeguards established and implemented from time to time.
11. The TPSP will comply with:
  - Generally accepted Information Security Practices and Processes;
  - Best industry practices or, where applicable, specific industry or professional Rules and Regulations;
  - Spartan Truck Hire (Pty) Ltd's Security Practices and requirements as Spartan Truck Hire (Pty) Ltd may notify the TPSP, from time to time.
12. Upon Spartan Truck Hire (Pty) Ltd's request, the TPSP will:
  - Promptly provide Spartan Truck Hire (Pty) Ltd with all information necessary to demonstrate compliance with the obligations set out in this Agreement;
  - Allow for and contribute to audits, including without limitation inspections, conducted by Spartan Truck Hire (Pty) Ltd or other person mandated by Spartan Truck Hire (Pty) Ltd to confirm compliance with PoPIA and this Agreement (including without limitation that appropriate security checks on Employees are conducted and that Spartan Truck Hire (Pty) Ltd Personal Information is securely transferred);
  - Assist Spartan Truck Hire (Pty) Ltd in taking measures to address Security Incidents, including without limitation, where appropriate, measures to mitigate their possible adverse effects;
  - Provide reasonable assistance to Spartan Truck Hire (Pty) Ltd in responding to requests, communications and/or complaints from Data Subjects or the Regulator.

13. The TPSP will immediately notify Spartan Truck Hire (Pty) Ltd in writing, on:
- Becoming aware, or if there are reasonable grounds to believe, that a Security Incident has or is likely to occur including (a) the nature of the Security Incident, (b) the approximate number and categories of Data Subjects; (c) the likely consequences of the Security Incident and (d) any measure proposed to be taken to address the Security Incident and to mitigate its possible adverse effects; and (e) any other relevant information;
  - Receipt of any request for access to or correction of Spartan Truck Hire (Pty) Ltd Personal Information or notice, complaints or any other communication from a Data Subject and provide Spartan Truck Hire (Pty) Ltd with a copy thereof;
  - Receipt of any request for disclosure of Spartan Truck Hire (Pty) Ltd Personal Information or any other notice or communication in connection with Spartan Truck Hire (Pty) Ltd Personal Information from the Regulator or any other competent authority and provide Spartan Truck Hire (Pty) Ltd with a copy thereof.
14. The TPSP will provide Spartan Truck Hire (Pty) Ltd with a detailed list of the PoPIA requirements it is responsible for, as well as the requirements where responsibility is shared between it and Spartan Truck Hire (Pty) Ltd.
15. In the event that Spartan Truck Hire (Pty) Ltd determines, at its sole discretion, that the TPSP has committed a material breach of this Agreement and/or PoPIA, Spartan Truck Hire (Pty) Ltd may either:
- Offer the TSPS an opportunity to remedy the breach, provided that Spartan Truck Hire (Pty) Ltd may immediately terminate this Agreement and/or the Main Agreement if the TSPS fails to remedy the breach within the time frame specified by Spartan Truck Hire (Pty) Ltd; or
  - Immediately terminate this Agreement and/or the Main Agreement, if the TPSP has breached a material term of this Agreement and Spartan Truck Hire (Pty) Ltd determines in its sole discretion that the material breach is not capable of being remedied.
16. At the option of Spartan Truck Hire (Pty) Ltd, securely delete or return to Spartan Truck Hire (Pty) Ltd or transfer to any replacement Service Provider (in the format required by Spartan Truck Hire (Pty) Ltd) all Spartan Truck Hire (Pty) Ltd Personal Information promptly upon the termination (for any reason) of the Main Agreement or at any time upon request, and securely delete any remaining copies. Upon Spartan Truck Hire (Pty) Ltd's request, the TPSP shall certify to Spartan Truck Hire (Pty) Ltd that all Spartan Truck Hire (Pty) Ltd Personal Information in its (including its Subcontractors) possession or control has been returned or destroyed. Any Right that the TPSP has to Process Responsible Party Personal Information will terminate immediately upon the termination of the Main Agreement.
17. The TPSP indemnifies, defends and holds Spartan Truck Hire (Pty) Ltd and its Directors, Officers, Employees and Agents harmless against any and all losses, liabilities, damages, claims, fines, penalties, costs and expenses (including legal fees) arising out of or in connection with a breach by the TPSP (or any of its Employees or Subcontractors) of this Agreement, non-compliance with PoPIA and/or any unauthorised access, disclosure, or use of any Spartan Truck Hire (Pty) Ltd Personal Information in the possession or under the control of the TPSP.
18. If any provision of this Agreement is held invalid, illegal or unenforceable for any reason such provision shall be severed and the remainder of the provisions of this Agreement shall continue in full force and effect as if this Agreement had been executed with the invalid, illegal or unenforceable provision eliminated.
19. This Agreement may only be amended, or any Rights under it waived, by a written Agreement executed by the TPSP and Spartan Truck Hire (Pty) Ltd.
20. Any failure of a Party to exercise or enforce any of its Rights under this Agreement will not act as a waiver of such Rights.
21. The Agreement shall be binding upon, and shall inure to the benefit of, the Parties and their respective Successors and permitted Assigns.
22. The TPSP acknowledges that the term of this Agreement shall commence on the Effective Date hereof and continue so long as the TPSP provides services and/or supplies goods under the Main Agreement or until terminated as provided for in this Agreement, whichever occurs first in time.
23. All notices to be given in terms of this Agreement shall be given in writing and shall be addressed and delivered as follows:
- In the case of Spartan Truck Hire (Pty) Ltd: by hand delivery to Spartan Truck Hire (Pty) Ltd at "18 Derrick Road, Spartan, Kempton Park, 1620" marked for the attention of the Chief Information Officer.
  - In the case of TPSP: either by hand delivery to \_\_\_\_\_ or by e-mail to \_\_\_\_\_.
  - A Party shall be entitled to change its address by giving not less than seven (7) days' written notice thereof to the other Party.

24. Termination of this Agreement will not affect the provisions, which are intended to continue to have effect and apply after termination.
25. In the event of any conflict of provisions between this Agreement and the Main Agreement, the provisions of this Agreement will prevail.
26. If there is any unresolved dispute between the Parties arising out of or in connection with this Agreement, including, its existence, application, breach, interpretation, validity, termination or cancellation, the Parties agree first to attempt to resolve the dispute informally by negotiation or mediation, and as far as possible avoid any formal dispute resolution process. Any attempt to resolve the dispute informally shall last no longer than 7 (seven) days, commencing on the date that the dispute is first declared by formal written notice delivered by either Party to the other. If the dispute is not so resolved, it shall be submitted to and decided by arbitration in terms of the Arbitration Act, 42 of 1965, as amended subject to the following provisions:
- The Arbitration Tribunal shall consist of one Arbitrator.
  - The Arbitrator shall be a retired Judge or a practicing Attorney or Advocate of not less than 10 (ten) years' standing, and in the absence of agreement being reached in regard to the identity of the Arbitrator within 7 (seven) days of the conclusion of the 7 (seven) day time period referred to above in this clause 26., the Arbitrator shall be appointed by the Chair of the Society of Advocates, or its Successor Organisation.
  - The arbitration proceedings shall be conducted in accordance with the Uniform Rules of the High Court in force at the time, save that the Arbitrator shall be entitled to reduce any timeframe provided for in the Uniform Rules so as to facilitate adherence to the provisions of clause f) below.
  - The arbitration shall be held in \_\_\_\_\_ and the language of the arbitration shall be English.
  - The Arbitrator's decision shall be binding and shall not be appealable. Any Party may however apply to any Court having competent jurisdiction to have the decision made an Order of Court.
  - The Parties shall endeavour to ensure that the arbitration is completed within 90 (ninety) days after the Arbitrator has been appointed and provides written notification of acceptance of the appointment.
  - The decision of the Arbitrator shall be in writing and the Arbitrator shall give reasons for his award.
  - The proceedings and decision shall be confidential to the Parties and their Advisers.
  - This arbitration clause shall not preclude either Party from seeking urgent interdictory relief in a Court of appropriate jurisdiction, where grounds for urgency exist.
  - In the event of either Party having a claim against the other for a liquidated amount or an amount which arises from a liquid document, then the claiming Party shall be entitled (but not obliged) to institute action in a Court of Law rather than in terms of clause 26, notwithstanding that the other Party may dispute such a claim.

## **Termination of the Information Processing Agreement**

In terms of the processing of Personal Information:

- Where the Operator is found by the Information Regulator to have not fulfilled its obligations in terms of compliance with the Act, Spartan Truck Hire (Pty) Ltd has the Right to cancel the Information Processing Agreement with the Operator with immediate effect.
- Whether for fault or any other termination reason, the Operator must return or effectively destroy all the Personal Information processed on behalf of Spartan Truck Hire (Pty) Ltd without delay, unless the Operator is required to retain such Records in terms of other legislation or regulations.

## RESPONSIBLE PERSON ON BEHALF OF Spartan Truck Hire (Pty) Ltd

Signed at \_\_\_\_\_ on this \_\_\_\_\_ day of \_\_\_\_\_  
LOCATION DAY MONTH YEAR

Signature \_\_\_\_\_ Signed by \_\_\_\_\_  
OF RESPONSIBLE PERSON NAME OF RESPONSIBLE PERSON

DATA OPERATOR AGREEMENT

## THIRD PARTY SERVICE PROVIDER

Signed at \_\_\_\_\_ on this \_\_\_\_\_ day of \_\_\_\_\_  
LOCATION DAY MONTH YEAR

Signature \_\_\_\_\_ Signed by \_\_\_\_\_  
OF THIRD PARTY SERVICE PROVIDER NAME OF THIRD PARTY SERVICE PROVIDER

DATA OPERATOR AGREEMENT

## WITNESS 1

Signed at \_\_\_\_\_ on this \_\_\_\_\_ day of \_\_\_\_\_  
LOCATION DAY MONTH YEAR

Signature \_\_\_\_\_ Signed by \_\_\_\_\_  
OF WITNESS 1 NAME OF WITNESS 1

DATA OPERATOR AGREEMENT

## WITNESS 2

Signed at \_\_\_\_\_ on this \_\_\_\_\_ day of \_\_\_\_\_  
LOCATION DAY MONTH YEAR

Signature \_\_\_\_\_ Signed by \_\_\_\_\_  
OF WITNESS 2 NAME OF WITNESS 2

DATA OPERATOR AGREEMENT