PRIVACY POLICY

In Compliance with the Protection of Personal Information Act 4 of 2013 (“POPIA”)

01 January 2023

M VAN NIEKERK ATTORNEYS

(Sole Proprietor)

PHYSICAL ADDRESS:

642 GREAT DANE STREET, GARSFONTEIN, PRETORIA

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1. DEFINITIONS

The following key definitions contained in section 1 of POPIA are of importance:

'data subject' means the person to whom personal information relates;

'information officer' means the person as identified in this Policy;

'personal information' means information relating to an identifiable, living, natural person, and where it is 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, wellbeing, 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) An identifying number, symbol, e-mail address, physical address, telephone number, location information, online identifier, or other 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 other personal information relating to the person or if the disclosure of the name itself would reveal information about the person;

'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;

'record' means any recorded information –

(a) regardless of form or medium, including any of the following:

(i) writing any material;

(ii) information produced, recorded, or stored by means of any tape-recorder, computer equipment, whether hardware or software or both, or other device, and any material subsequently derived from information so produced, recorded or stored;

(iii) label, making or other writing that identifies or describes any thing of which it forms part, or to which it is attached by any means;

(iv) book, map, plan, graph or drawing;

(v) photograph, film, negative, tape or other device in which one or more visual images are embodied so as to be capable, with or without the aid of some other equipment, of being reproduced;

(b) in the possession or under the control of a responsible party;

(c) whether or not it was created by a responsible party; ad

(d) regardless of when it came into existence;

'responsible party' means a public or private body or any other person which, alone or in conjunction with others, determines the purpose of and means for processing personal information;

'special personal information' means information relating to the religious or philosophical beliefs, race or ethnic origin, trade union membership, political persuasion, health or sex life or biometric information or the criminal behaviour of a data subject.

2. INFORMATION OFFICER (internal)

Should you have any questions/complaints/suggestions regarding the processing of personal information, we encourage you to contact our firm's Information Officer:

Melanie Van Niekerk
012 998 3794
melanie@mvnattorneys.co.za

Our Information Officer is responsible for encouraging and ensuring compliance with POPIA, will deal with requests relating thereto and will work closely with the Information Regulator whenever necessary.

Kindly contact our Information Officer regarding issues specifically relating to –

- Any objection to the processing of your personal information;
- A request for the deletion/destruction/correction of your personal information or records;
- The submission of a complaint relating to the processing of your personal information

Our Information Office is also responsible for –

- Taking steps to ensure that a compliance program is developed, implemented, maintained, and monitored
- Conducting risk analysis to ensure continued compliance with POPIA
- Conducting training and awareness sessions with employees on a regular basis

3. INFORMATION REGULATOR (external)

Should you prefer not to contact our offices directly regarding any personal information related issues, you may forward your complaint/request directly to the Information Regulator at:

inforeg@justice.gov.za

4. POLICY PURPOSE, ACTION PLAN AND APPLICATION

We endeavoured to ensure compliance with POPIA and the lawful and secure processing of your personal information. As such, we implemented the following steps to ensure compliance with POPIA:

- We conducted a risk analysis and developed a POPIA action plan
- Appointed our Information Officer
- Developed our POPIA Policies
- Implemented a strategy and review process for continued compliance with POPIA

We have developed and implemented the following policies regulating the processing of personal information in our business –

- Risk analysis
  - We have identified certain areas that carry more risk than others, specifically relating to those wherein third parties are involved or where mass volumes of electronic data is stored, and have implemented further measures to ensure the security of personal information herein.
  - These measures include cybersecurity checks and updates, and the implementation of Operator Undertakings.

- Privacy Policy
  - An external document (this privacy policy) available to outside parties explaining how we process personal information and regulating all POPIA-related matters;

- POPIA Policy
  - An internal guideline highlighting the principles applicable to the processing of personal information in our business;

- Operator Undertakings
  - M Van Niekerk Attorneys may be required to disclose personal information to third parties. As such, we will ensure to enter into written agreements with these third parties, confirming that they will only process personal information in line with the purpose that it was provided to them for, and in line with the principles enshrined in POPIA.

5. PROCESSING OF PERSONAL INFORMATION

Section 18 of POPIA requires from us to ensure you are aware of the following:

- Your personal information may be processed by us in line with the purpose that it was provided by your for and will be used solely for this purpose; and

- The provision of your personal information is not mandatory, however, please note that failure to provide us with your information as requested may severely prejudice (or completely prevent) our ability to provide our services.

By engaging our services, you therefore consent to us processing your personal information in line with the purpose for which it was provided to us.

M Van Niekerk Attorneys will generally use your personal information for purposes required to operate and manage our normal business operations. These purposes may include one or more of the following non-exhaustive purposes:

- Personal information is processed in providing legal services to our clients;
- Personal information is processed as part of our “Know your Client”/”KYC” Process as required in terms of the Financial Intelligence Centre Act 38 of 2001;
- Personal information is processed in order to conduct due diligence processes on our clients;
- Personal information is processed in the execution of payment processing functions.

6. RETENTION AND DELETION OF PERSONAL INFORMATION

You are further advised that your records will be retained by us for a period of 7 (seven) years from the date of last entry on your file, as required by Rule 54.9.2 of the Legal Practice Council’s Rules, after which it will be destroyed and/or deleted and/or destructed and/or de-identified in a manner that prevents its reconstruction in any intelligible form.

7. GROUNDS FOR PROCESSING PERSONAL INFORMATION

In conducting our business activities as described above, we will generally rely on the following grounds as listed in section 11 of POPIA to process your information:

- Consent;
- Processing is necessary to carry out actions for the conclusion or performance of a contract;
- Processing complies with an obligation imposed on us by law;
- To protect a legitimate interest of a data subject; or
- Processing is necessary for pursuing a legitimate interest of ours or of a third party to whom the information is supplied.

8. GROUNDS FOR PROCESSING SPECIAL PERSONAL INFORMATION

POPIA contains a general prohibition on the processing of special personal information, unless one of the exclusions in POPIA apply.

The processing of the above information involves greater risk, and as such we take special care to protect this information.

Depending on our mandate provided by our clients, we may be required to process other special personal information and will only do so where consent has been provided or where processing is necessary for the establishment, exercise, or defence of a right or obligation by law. Such processing will comply with POPIA and specifically with the provisions of section 26 to 33 of the Act.

9. CONDITIONS FOR LAWFULL PROCESSING OF PERSONAL INFORMATION

Our team is committed to the fulfilment of the following conditions imposed by POPIA:

9.1 ACCOUNTABILITY

We are committed to ensuring that your personal information will only be processed in accordance with the provisions of POPIA and in line with the purpose for which it was supplied to us.

9.2 PROCESSING LIMITATION

Personal information will only be –

- Processed lawfully and in a reasonable manner;
- Processed for a specific purpose and reason for which it was supplied to us; and
- Collected directly from the date subject, subject to justifiable limitations in execution of our services insofar as allowed by POPIA.

As mentioned above, personal information will only be processed by us on the grounds as listed in Section 11 of POPIA.

9.3 PURPOSE SPECIFICATION

Data subjects will always be made aware of the purpose for which their personal information is being processed.

As mentioned above, Section 18 of POPIA requires from us to ensure you are aware that your personal information may be processed by us in execution of our services to you and will be used solely for that purpose.

Personal information will always be collected directly from data subjects, unless –

- The information has been made public;
- Consent;
- The collection from a third party would not prejudice a legitimate interest of the data subject;
- The collection of the information from another source is necessary for the conduct of legal proceedings or to maintain a legitimate interest of ours or of a third party to whom the information is supplied;
- The collection directly from the data subject would prejudice a lawful purpose of the collection; or
- Compliance is not reasonably practicable in the circumstances of the particular case.

Data subjects will be notified by us one their personal information is collected, unless –

- Consent has been granted for the collection thereof;
- Failure to notify would not prejudice a legitimate interest of the data subject;
- It is collected for purposes of legal proceedings;
- Notification would prejudice a lawful purpose of the collection;
- Notification is not reasonably practicable in the circumstances of the particular case; or
- The information will not be used in a form in which the data subject may be identified, or unless the information is merely for historical, statistical or research purposes.

9.4 FURTHER PROCESSING LIMITATION

In line with the previous paragraph, any further/subsequent processing of your personal information will still be done in accordance with the original purpose and only when processing thereof is necessary in the circumstances described above.

9.5 INFORMATION QUALITY

Upon collecting of your personal information, our staff will take all steps necessary to ensure the correctness of your personal information. All your personal information is stored securely for if, and when, we require same to be processed.

9.6 OPENNESS

Your personal information will be stored in a secure system, as explained below. With the implementation of this Privacy Policy we endeavour to ensure that data subjects are made aware of:

- What information is collected and from where;
- Our business' name, address and contact details;
- The purpose for which their personal information is collected;
- Whether or not the supply of personal information is mandatory or voluntary;
- Consequences of failure to provide personal information;
- Their right to access or rectify the information;
- Their right to object to the processing of their personal information; and
- Their right to lodge a complaint to the Information Regulator and providing of the details of the Information Regulator.

9.7 SECURITY SAFEGUARDS

In order to protect our clients' personal information, our team will –

- Implement reasonable, appropriate, technical, and organisational measures; and
- Notify data subjects and the Information Regulator of any security compromises as soon as reasonably possible and state:
    - Possible consequences
    - Steps taken to address the compromise
    - Recommendation to data subjects on what steps to take;
    - Identity of person who accessed the information (if known).

We have implemented the following physical and software/electronic safeguards:

- Electronic data:
    - Our Wi-Fi network is password protected and secure, allowing only certain identified devices to connect;
    - We use trusted and approved software with high security standards;
    - We use strong passwords that are reviewed frequently;
    - We do regular software updates;
    - All devices are secured with access control and lock screens;
    - Data encryption;
    - We have trusted and approved antivirus;
    - We make regular backups of data; and

- Physical safeguards:
    - Our hard copy files are stored off-site in a secure storage unit managed and supervised by an outside party specialising in secure storage;

    - Our hard copy files are stored off-site in a secure unit equipped with –
        - Armed response 24 hours a day
        - In a secure complex

- Security guards patrolling the surrounding areas; and
- Secure locks on all access points.

- Our offices are further equipped with –
  - Alarm system;
  - All access points are securely locked;
  - Armed response 24 hours a day; and
  - Security guards patrolling the surrounding areas.

9.8 DATA SUBJECT PARTICIPATION

Data subjects can request confirmation from us on whether we hold personal information and/or the correct personal information. Data subjects can further request for such information to be deleted or destroyed.

Our team will not process special personal information unless expressly provided for in POPIA and unless specifically necessary for the purpose for which it was provided to us for.

10. STEPS IN EVENT OF A COMPROMISE

The following steps will be taken by us in the unlikely event of a data breach/information compromise:

1. Notify our service provider;
2. Attempt to establish (internal analysis) –
   2.1 Whether there was in fact a breach;
   2.2 What data, if any, was compromised;
   2.3 Which parties were affected; and
   2.4 The extent of the compromise.
3. Draft an internal report with the assistance of our IT services providers;
4. Notify affected persons of the breach;
5. Notify the Information Regulator of the breach;
6. Notify our insurers;
7. Cooperate with our service providers and data subjects to prevent any processing of the compromised data; and
8. Review our safeguarding structures to prevent a reoccurrence.

11. YOUR RIGHTS

You may, as a data subject, have the right under applicable privacy and data protection laws, to –

1. Be informed that your personal information is being collected;
2. Be informed that your personal information has been accessed by an unauthorised person;
3. Establish whether we hold your personal information and request access thereto;
4. Request deletion, destruction, or correction of your personal information;

5. Object to the processing of your personal information (on reasonable grounds);
6. Object to the processing of your personal information for purposes of direct marketing;
7. Not be subject to a decision based solely on the automated processing of your personal information;
8. Submit a complaint to the Information Regulator;
9. Institute civil proceedings regarding an alleged interference with your personal information.

12. YOUR DUTY

In order to properly execute our mandate and provide the best legal assistance possible, we kindly request that you provide us with your accurate and complete personal information required by us to fulfil our mandate. We also request that you kindly update us of any changes to your personal information to enable us to endorse same in our records.

13. CROSS-BORDER TRANSMISSION OF PERSONAL INFORMATION

In conducting our business activities, we may transmit personal information to other countries. We do not transfer special personal information to foreign countries. The processing of the above information involves greater risk, and as such we take special care to protect this information.

We will ensure that the cross-border transmission of your information complies with the standards set out in POPIA, alternatively a higher standard as required in the destination countries (for example, the General Data Protection Regulation applicable in the European Union).

We will not send your personal information abroad unless –

- Consent has been provided;
- It is required to perform in terms of a contract; or
- The foreign laws are equally or more strict than those contained in POPIA.

14. PERSONAL INFORMATION OF CHILDEN

We do not process personal information of any children in the ordinary course of our business. M Van Niekerk Attorneys will only process such information where consent has been provided by a competent person (parent or guardian) or where otherwise authorised by POPIA.

15. ACCOUNT NUMBERS

We will never sell, obtain, or disclose your account number (whether this relates to any sort of bank account details, credit card numbers, or credit application numbers) to any person without your written consent.

16. CONCLUSION

M Van Niekerk Attorneys are committed to complying with POPIA and we acknowledge our clients' right to protection against the unlawful collection, retention, dissemination, and use of personal information, subject to justifiable limitations that are aimed at protecting rights and important interests.

Please contact our Information Officer for any queries relating to the processing of personal information.