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Protection Of Personal Information



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Guidelines to the POPI Act

Guidelines On
The Protection Of Personal Information Act

FOR

FHK Electric (Pty) Ltd

with registration number:

N/A

with main place of business:

**10 Fabriek Street
Franschhoek
7690**



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Introduction:

The **purpose** of this document is to provide a **guideline** on the interpretation of the important rights and obligations as stipulated in the Protection of Personal Information Act (hereafter referred to as POPI) with regards to FHK Electric (Pty) Ltd.

The purpose of this Act:

- To give effect to the constitutional **right to privacy**, in particular the safeguarding of personal information;
- Regulate the **processing** of personal information in harmony with international standards;
- Prescribe minimum **requirements** for the lawful processing of personal information;
- Provide the rights and **remedies** for the protection against abuses of personal information; and
- Establish an **Information Regulator** to promote, enforce and fulfil the rights protected by POPI.

This Act regulates the following:

- **Collection** and **procurement** of personal information;
- **Lawful** processing of personal information;
- **Retention** and **restriction** of records;
- **Security** safeguards and compromises;
- Processing of **special** personal information;
- Processing of personal information of **children**;
- Establishment of **Information Officer** and **Information Regulator**;
- Rights of data subject regarding **direct marketing**;
- **Transborder** information flow;
- Information Regulator's powers and **authorities**; and
- Fines and **penalties**.



Definitions:

In this Act –

“automated means”: means any equipment capable of operating automatically in response to instructions given for the purpose of processing information.

“automatic calling machine”: means a machine that is able to do automated calls without human intervention.

“binding corporate rules”: means personal information processing policies, within a group of undertakings, which are adhered to by FHK Electric (Pty) Ltd or operation within that group of undertakings when transferring personal information to a business or operator within that same group of undertakings in a foreign country.

“data subject”: means the person to whom personal information relates.

“direct marketing”: means to approach a data subject, either in person or by mail or electronic communication, for the direct or indirect purpose of –

- a) Promoting or offering to supply, in the ordinary course of business, any goods or service to the data subject; or
- b) Requesting the data subject to make a donation of any kind for any reason.

“electronic communication”: means any text, voice, sound or image message sent over an electronic communications network which is stored in the network or in the recipient’s terminal equipment until it is collected by the recipient.

“filing system”: means any structured set of personal information, whether centralised, decentralised dispersed on a functional or geographical basis, which is accessible according to specific criteria.

“group undertakings”: means a controlling undertaking and its controlled undertakings.

“information officer”: of, or in relation to, a –

- a) Public body means an information officer or deputy information officer as contemplated in terms of Section 1 or 17 of this Act; or
- b) Private body means the head of a private body as contemplated in Section 1, of The Promotion of Access to Information Act.

“operator”: means a person who processes personal information for a responsible party in terms of a contract or mandate, without coming under the direct authority of that party.

“person”: means a natural person or a juristic person.



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“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, well-being, disability, religion, conscience, belief, culture, language and birth of the person;
- b) Information relating to the education or the medical, financial, criminal or employment history of the person;
- c) Any identifying number, symbol, e-mail address, telephone number, location information, online identifier or other particular assignment to the person;
- d) The biometric information of the person;
- e) The personal opinions, views or preferences of the person;
- f) Correspondence sent by the person that 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.

“private body”: means –

- a) A natural person who carries or has carried on any trade, business or profession, but only in such capacity;
- b) A partnership which carries or has carried on any trade, business or profession; or
- c) Any former or existing juristic person, but excludes a public body.

“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.

“Promotion of Access to Information Act”: means the Promotion of Access to Information Act, 2000 (Act No. 2 of 2000).



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“public body”: means –

- a) Any department of state or administration in the national or provincial sphere of government or any municipality in the local sphere of government; or
- b) Any other functionary or institution when –
 - I. Exercising a power or performing a duty in terms of the Constitution or a Provincial Constitution; or
 - II. Exercising a public power or performing a public function in terms of any legislation.

“public record”: means a record that is accessible in the public domain and which is in the possession of or under the control of a public body, whether or not it was created by that public body.

“record”: means any recorded information –

- a) Regardless of form or medium, including any of the following:
 - I. Writing on 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 divided from information so produced, recorded or stored;
 - III. Label, marking or other writing that identifies or describes anything 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; and
- c) Regardless of when it came into existence.

“re-identify”: in relation to personal information of a data subject, means to resurrect any information that has been de-identified, that –

- a) Identifies the data subject;
- b) Can be used or manipulated by a reasonably foreseeable method to identify the data subject; or
- c) Can be linked by a reasonably foreseeable method to other information that identifies the data subject, and

“re-identified”: has a corresponding meaning.

“**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.

“**restriction**”: means to withhold from circulation, use or publication any personal information that forms part of a filing system, but not to delete or destroy such information.

“**special personal information**”: means personal information as referred to in Section 26 of this Act.

“**terrorist and related activities**”: means those activities referred to in Section 4 of the Protection of Constitutional Democracy against Terrorist and Related Activities Act 33 of 2004.

“**this Act**”: means the Protection of Personal Information Act, No. 4 of 2013.

“**unique identifier**”: means any identifier that is assigned to a data subject and is used by a responsible party for the purposes of the operations of that responsible party and that uniquely identifies that data subject in relation to that responsible party.

Application of this Act:

- 1) This Act applies to the processing of personal information –
 - a) Entered in a **record** by or for a responsible party by making use of **automated or non-automated** means. Providing the recorded personal information is processed by non-automated means, it must form part of a filing system or is intended to form part thereof; and
 - b) The responsible party is –
 - I. Domiciled in the Republic; or
 - II. Not domiciled in the Republic, but makes use of automated or non-automated means in the Republic, unless those means are used only to forward personal information through the Republic.
- 2)
 - a) This Act applies, subject to paragraph (b), to the exclusion of any provision of any other legislation that regulates the processing of personal information and that is materially inconsistent with an object, or a specific provision, of this Act.
 - b) If any other legislation provides for conditions for the lawful processing of personal information that are more extensive than those set out in Chapter 3 of this Act, the extensive provisions will prevail.
- 3) This Act applies to public and private bodies.



Exclusions of this Act:

- 1) This Act **does not apply** to the processing of personal information –
 - a) In the course of a purely **personal** or **household activity**;
 - b) That has been **de-identified** to the extent that it cannot be re-identified again;
 - c) By or on behalf of a public body –
 - I. Which involves **national security**, including activities that are aimed at assisting in the identification of the financing of terrorists and related activities, defence or public safety; or
 - II. The purpose of which is the **prevention**, detection including assistance in the identification of the proceeds of unlawful activities and the combating of money laundering activities, investigation or proof of offences, the prosecution of offenders or the execution of sentences or security measures,
to the extent that adequate safeguards have been established in legislation for the protection of such personal information;
 - d) By the **Cabinet** and its committees or the **Executive Council** of a province; or
 - e) Relating to the **judicial functions** of a court.
- 2) This Act does not apply to the processing of personal information solely for the purpose of **journalistic**, literary or artistic expression to the extent that such an exclusion is necessary to reconcile, as a matter of public interest, the right to privacy with the right to freedom of expression.
- 3) The Regulator may grant **further exemptions** to comply with the conditions for lawful processing of personal information as stipulated in this Act.



Duties and Responsibilities of the Information Officer (Section 55 and 56)

- 1) The Information Officer's responsibilities include –
 - a) The encouragement of **compliance**, by FHK Electric (Pty) Ltd, with the conditions for the **lawful processing** of personal information;
 - b) Dealing with **requests** made to FHK Electric (Pty) Ltd pursuant to this Act;
 - c) Working with the Regulator in relation to **investigations** conducted pursuant to Chapter 6 of this Act in relation to FHK Electric (Pty) Ltd;
 - d) Ensuring **compliance** by FHK Electric (Pty) Ltd with the provisions of this Act.

The Regulations relating to the protection of personal information further stipulates additional roles and responsibilities of the information officer, according to section –

4. (1) An information officer must, in addition to the responsibilities referred to in section 55(1) of the Act, ensure that-

- (a) a compliance framework is developed, implemented, monitored and maintained
- (b) a personal information impact assessment is done to ensure that adequate measures and standards exist in order to comply with the conditions for the lawful processing of personal information;
- (c) a manual is developed, monitored, maintained and made available as prescribed in sections 14 and 51 of the Promotion of Access to Information Act, 2000 (Act No. 2 of 2000);
- (d) internal measures are developed together with adequate systems to process requests for information or access thereto; and
- (e) internal awareness sessions are conducted regarding the provisions of the Act, regulations made in terms of the Act, codes of conduct, or information obtained from the Regulator.

(2) The information officer shall upon request by any person, provide copies of the manual to that person upon the payment of a fee to be determined by the Regulator from time to time.

- 2) The Information Officer must take up his/her duties in terms of this Act only after FHK Electric (Pty) Ltd has **registered** him/her with the Regulator.
- 3) FHK Electric (Pty) Ltd must make provisions, in the manner prescribed in Section 17 of the Promotion of Access to Information Act, for –
 - a) The appointment of such **number of persons**, if any, as **Deputy Information Officers** as is necessary to perform the duties and responsibilities of the Information Officer; and
 - b) Any **power or duty** conferred or imposed on the Information Officer by this Act, to be bestowed a **Deputy Information Officer(s)** of FHK Electric (Pty) Ltd.



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- 4) The Information Officer of a business will be the Chief Executive Officer, Owner or equivalent officer, or any person duly authorised by FHK Electric (Pty) Ltd.
- 5) **It is important to note** that FHK Electric (Pty) Ltd may be charged with an administrative fine or the appropriate person may be sentenced to imprisonment in the event that a section or sections of this Act is contravened. It is therefore suggested that FHK Electric (Pty) Ltd appoints a person with **authority** such as the Chief Executive Officer as the Information Officer to ensure that the sections as discussed hereafter are adhered to.



A. Conditions for Lawful Processing of Personal Information

The Information Officer must ensure that FHK Electric (Pty) Ltd adheres to the following conditions for the lawful processing of personal information:

- 1) Accountability (**Section 8**)
- 2) Processing Limitation (**Section 9 – 12**)
- 3) Purpose Specification (**Section 13 – 14**)
- 4) Further Processing Limitation (**Section 15**)
- 5) Information Quality (**Section 16**)
- 6) Openness (**Section 17 – 18**)
- 7) Security Safeguards (**Section 19 – 22**)
- 8) Data Subject Participation (**Section 23 – 25**)

A.1 Condition 1 – Accountability (Section 8)

FHK Electric (Pty) Ltd must ensure that the **conditions** of lawful processing of personal information and all measures that gives effect to such conditions are **complied** with at all times.

- 1) The implication of this Section is that FHK Electric (Pty) Ltd remains **responsible** for the lawful processing of personal information regardless of it having passed the information on to a third party to process the personal information.
- 2) In order for FHK Electric (Pty) Ltd to exercise **control** over the lawful processing of personal information, the following control measures need to be established and maintained:
 - a) All **personal information** being processed by FHK Electric (Pty) Ltd needs to be **identified**; and
 - b) The **Information Officer and his/her Deputy Officer(s)** must be identified and **appointed** to ensure that all personal information being processed comply with the requirements of this Act.



A.2 Condition 2 – Processing Limitation

2.1 Lawfulness of Processing (Section 9)

Personal information must be processed in a **lawful** and **reasonable manner** that does not infringe the privacy of the data subject.

- 1) FHK Electric (Pty) Ltd may not act **unlawfully** in its collection or processing of personal information.
- 2) To ensure the processing of personal information is done in a reasonable manner, FHK Electric (Pty) Ltd must take into account the **interests** and **reasonable expectations** of data subjects as well as all of the **provisions** that are incorporated in these conditions.

2.2 Minimality (Section 10)

“Personal information may only be processed providing the **purpose** for which it is processed, it is **adequate, relevant** and **not excessive**.”

- 1) This condition is closely linked to the **purpose** for which information may be processed. FHK Electric (Pty) Ltd may only collect personal information that is appropriate for the **purpose** it is being collected for, and should therefore be adequate, relevant and not excessive.

2.3 Consent, justification and objection (Section 11)

2.3.1) FHK Electric (Pty) Ltd may only process the personal information of a data subject if

- 1) The data subject or a competent person where the data subject is a child **consents** to the processing;
- 2) The processing is **necessary** to carry out actions for the conclusion or performance of a contract to which the data subject is a party;
- 3) The processing complies with an **obligation** imposed by law on FHK Electric (Pty) Ltd;
- 4) The processing protects a **legitimate** interest of the data subject;
- 5) The processing is necessary for the proper performance of a **public law** duty by FHK Electric (Pty) Ltd; or
- 6) The processing is necessary for pursuing the legitimate **interests** of FHK Electric (Pty) Ltd or of a third party to whom the information is supplied;

2.3.2) a) **FHK Electric (Pty) Ltd** bears the **burden of proof** to show that the data subject or competent person has consented to the processing of the personal information as referred to in paragraph 2.3.1.1.



- b) The **data subject** or competent person may **withdraw** his, her or its consent, at any time provided that: the lawfulness of the processing of personal information before such withdrawal or processing of personal information in terms of paragraph 2.3.1.2 – 2.3.1.6 will not be affected.

2.3.3) A **data subject** may **object** at any time, to the processing of personal information –

- 1) In terms of paragraph 2.3.1.2 – 2.3.1.6, in the prescribed manner, on **reasonable grounds** relating to his, her or its particular situation, unless legislation provides for such processing; or
- 2) For purposes of **direct marketing** other than direct marketing by means of unsolicited electronic communication as referred to in Section 69 of this Act.

2.3.4) If a **data subject has objected** to the processing of personal information in terms of paragraph 2.3.3, FHK Electric (Pty) Ltd may **no longer** process the personal information.

Note to Information Officer:

- 1) It is important to understand that **consent** plays a vital role in processing personal information, but it is not the only consideration taken into account in order to comply with this Act.
- 2) This Act defines “consent” as meaning “**voluntary, specific and informed expression** of will in terms of which a data subject agrees to the processing of personal information relating to him or her.” The consent must therefore be voluntary and not amount to a submission made by making use of physical force, coercion, undue influence, pressure, duress, harassment, unfair tactics or any similar conduct that may be unfair. This Act **does not require the consent to be in writing**, however, taking into consideration that FHK Electric (Pty) Ltd bears the burden of proof that consent was given, it **would be advisable** to ensure that consent is obtained in writing.
- 3) It is important to note that consent relating to the use of personal information is **revocable** by a data subject at any time.
- 4) The provisions of paragraph (2.3.1.2 – 2.3.1.6) provides for conditions where FHK Electric (Pty) Ltd may **lawfully** process personal information without the consent of the data subject.
- 5) A data subject may **object**, at any time, on reasonable grounds against the processing of personal information, where after FHK Electric (Pty) Ltd must immediately **stop** processing the data subject’s personal information.



2.4 Collection directly from data subject (Section 12)

As far as possible, FHK Electric (Pty) Ltd should collect personal information **directly** from the data subject, except under the following circumstances:

- 1) The information is contained in or derived from a **public record** or has deliberately been made **public** by the data subject;
- 2) The data subject or a competent person where the data subject is a child has **consented** to the collection of the information from **another source**;
- 3) Collection of the information from another source would not **prejudice** a legitimate **interest of the data subject**;
- 4) Collection of the information from another source is **necessary** –
 - a) To avoid **prejudice** to the **maintenance of the law** by any public body, including the prevention, detection, investigation, prosecution and punishment of offences;
 - b) To **comply** with an **obligation imposed by law** or to enforce legislation concerning the collection of revenue;
 - c) For the **conduct of proceedings** in any **court** or **tribunal** that have commenced or are reasonably contemplated;
 - d) In the interest of **national security**; or
 - e) To maintain the **legitimate interests** of FHK Electric (Pty) Ltd or of a third party to whom the information is supplied;
- 5) Compliance would **prejudice** a lawful purpose of the collection; or
- 6) Compliance is **not reasonably practicable** in the circumstances of the particular case.

Note to Information Officer:

- 1) FHK Electric (Pty) Ltd must collect personal information **directly** from the data subject, unless allowed for as stipulated in the exceptions.
- 2) If personal information is collected from a third party, the data subject should be made **aware** of the processing of the information and the **purpose** for which the information has been collected.
- 3) This is a very **strict** requirement that is imposed by this Act, however, the **exceptions** are extensive and the impact of this provision is considerably softened by the application of the exceptions.



A3. Condition 3 - Purpose Specification

3.1 Collection for specific purpose (Section 13)

FHK Electric (Pty) Ltd must adhere to the following requirements as stipulated by this Act:

- 1) FHK Electric (Pty) Ltd may only collect personal information for a **specific, explicitly defined** and **lawful** purpose that relates to the function or activity of FHK Electric (Pty) Ltd.
- 2) FHK Electric (Pty) Ltd must have standard operating procedures in place to ensure that the data subject is **aware** of the purpose for which the information is collected.

Note to Information Officer:

- 1) The purpose of the collection and processing of personal information influences every aspect of the processing of the information which includes, the manner of its collection, periods of retention, further processing, destruction of information, disclosure to third parties and any further matters which may apply to the processing of the information. It is therefore advisable that FHK Electric (Pty) Ltd firstly determines the **purpose** of and the means for processing personal information prior to collecting the information.
- 2) In conjunction with Section 10 of this Act, this Section requires that FHK Electric (Pty) Ltd only collect personal information that is adequate, relevant and not excessive given the purpose for which it will be used. Therefore, FHK Electric (Pty) Ltd should first establish the **purpose** of collecting personal information from a data subject and then ensure that it is **relevant** and **not excessive** for the purpose that the information was collected for.
- 3) FHK Electric (Pty) Ltd must ensure, in collecting the information, that the data subject is aware of the **purpose** for which the information is being collected. This enables the data subject to make an **informed decision** as to whether the personal information should be made available to FHK Electric (Pty) Ltd. FHK Electric (Pty) Ltd will be able to **comply** with this requirement by **stating the purpose** of collecting the personal information on the document or contract on which the information should be supplied.

3.2 Retention and restriction of records (Section 14)

FHK Electric (Pty) Ltd must adhere to the following requirements as stipulated by this Act:

- 1) If the purpose for which information was collected or subsequently processed has been achieved, FHK Electric (Pty) Ltd may then **not retain** that records any longer than necessary, unless—
 - a) Retention of the personal information record is **required** or authorised by law;
 - b) FHK Electric (Pty) Ltd reasonably requires the personal information records for **lawful purposes** which has a direct relation to FHK Electric (Pty) Ltd's functions or activities;



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- c) A contract between the parties requires the personal information records to be retained; or
 - d) The data subject or a competent person where the data subject is a child has **consented** to the retention of the record for a longer period.
- 2) FHK Electric (Pty) Ltd must take note that records of personal information may be retained for periods in excess of those contemplated in paragraph (1) for **historical, statistical or research** purposes if FHK Electric (Pty) Ltd has appropriate **safeguards** in place to prevent personal information records from being used for any other purposes.
- 3) If FHK Electric (Pty) Ltd has used a record of personal information of a data subject to make a decision about the data subject, FHK Electric (Pty) Ltd must –
- a) **Retain** the personal information record for the period as prescribed by law or any other code of conduct; or
 - b) If there is no law or code of conduct prescribing a **retention** period, FHK Electric (Pty) Ltd must retain the record for a period sufficient enough for the data subject to have a reasonable opportunity to **request** access to the record.
- 4) It is important to note that FHK Electric (Pty) Ltd must **destroy, delete or de-identify** a record of personal information as soon as reasonably practicable after FHK Electric (Pty) Ltd is no longer authorised to retain the record.
- 5) The destruction, deletion or de-identifying of a personal information record must be done in a manner that **prevents** its **reconstruction** in an intelligible form.
- 6) FHK Electric (Pty) Ltd must **restrict** processing of personal information if –
- a) Its **accuracy** is contested by the data subject, for a period enabling FHK Electric (Pty) Ltd to verify the accuracy of the information;
 - b) FHK Electric (Pty) Ltd **no longer needs** the personal information for achieving the **purpose** for which the information was collected or subsequently processed, but it has to be maintained for purposes of proof;
 - c) The processing is unlawful and the data subject **opposes** its destruction or deletion and requests the restriction of its use instead; or
 - d) The data subject requests to transmit the personal information into another **automated processing system**.
- 7) Personal information referred to in paragraph (6) may, with the exception of storage, only be processed for **purposes of proof**, or with the data subject's consent, or with the consent of a competent person in respect of a child, or for the protection of the rights of another natural or legal person or if such processing is in the public interest.
- 8) Where processing of personal information is restricted pursuant to paragraph (6), FHK Electric (Pty) Ltd **must inform the data subject before lifting the restriction** on processing.



- 9) FHK Electric (Pty) Ltd should ensure that all personal information retained are **identified, categorised** and appropriately **safeguarded**.

A4. Condition 4 – Further Processing Limitation

4.1 Further processing must be compatible with the purpose of collection

FHK Electric (Pty) Ltd must adhere to the following requirements as stipulated by this Act:

- 1) Further processing of personal information must be done in accordance with the **purpose** for which it was collected originally.
- 2) **To assess whether further processing is compatible** with the purpose of collection, FHK Electric (Pty) Ltd must take account of –
 - a) The **relationship** between the purpose of the intended further processing and the purpose for which the information has been collected;
 - b) The **nature** of the information concerned;
 - c) The **consequences for the data subject’s** intended further processing of his, her or its personal information;
 - d) The **manner** in which the personal information has been collected from the data subject; and
 - e) Any **contractual rights** and **obligations** bestowed on the parties.
- 3) **Further processing of personal information is not incompatible** with the purpose of collection if –
 - a) The data subject or a competent person where the data subject is a child has **consented** to the further processing of the information;
 - b) The information is available in or derived from a **public record** or has deliberately been made **public** by the data subject;
 - c) Further processing is necessary –
 - I. To avoid **prejudice** to the maintenance of the law by any public body, including the prevention, detection, investigation, prosecution and punishment of offences;
 - II. To comply with an **obligation** imposed by law or to enforce legislation concerning the collection of revenue;
 - III. For the conduct of proceedings in any **court or tribunal** that have commenced or are reasonably contemplated;
 - IV. In the interest of **national security**.
 - d) The further processing of the information is necessary to prevent or mitigate a serious and imminent threat to –



- I. **Public health or public safety**; or
 - II. The **life or health** of the data subject or another individual(s);
- e) The information is used for **historical, statistical or research purposes** and FHK Electric (Pty) Ltd ensures that the further processing is carried out solely for such purposes and will not be published in an **identifiable form**.

Note to Information Officer:

- 1) The further processing of personal information may only be processed if it is compatible with the **purpose** for which it was initially collected. For instance, if personal information was collected from a data subject with the purposes of concluding a credit agreement, the information may then not be further processed to contact the data subject to market any other services or products.

A5. Condition 5 – Information Quality

5.1 Quality of information (Section 16)

Note to Information Officer:

- 1) FHK Electric (Pty) Ltd must take reasonably practicable steps to ensure that the personal information is **complete, accurate, not misleading** and **updated** where necessary.
 - 2) It is important for FHK Electric (Pty) Ltd to have consideration for the **purpose** for which personal information is collected or further processed.
 - 3) In order for FHK Electric (Pty) Ltd to ensure that the personal information is complete, accurate, not misleading and updated, it requires that FHK Electric (Pty) Ltd have appropriate information security measures in place to **safeguard** the integrity of the personal information.
 - 4) **Chapter 3 of the Electronic Communications and Transactions Act** also requires that the integrity, reliability and accuracy of electronic information be **maintained** if they are to enjoy the efficacy that the Act bestows upon them.
- 2)
- 1) It is suggested that FHK Electric (Pty) Ltd evaluates its information security measures on a regular basis to ensure that the personal information in its possession, remains accurate and relevant. It is further suggested that areas of concern must be identified and addressed to ensure that no information breaches occur.



A6. Condition 6 – Openness

6.1 Documentation (Section 17)

Note to Information Officer:

- 1) FHK Electric (Pty) Ltd must maintain the documentation of all information processing operations within FHK Electric (Pty) Ltd. This should be done in accordance with **Section 14** and **Section 51 of the Promotion of Access to Information Act**.
 - a) Section 14 stipulates that the Information Officer of a **public body** must compile an information manual in at **least three official languages** containing the following:
 - I. A description of **FHK Electric (Pty) Ltd’s structure** and core functions;
 - II. The **postal and street address**, phone and fax number and, if available, electronic mail address of the Information Officer and his/her Deputy Information Officer(s);
 - III. A **description** of FHK Electric (Pty) Ltd **information guide**;
 - IV. Sufficient detail describing the **process to facilitate a request** for access to a record, including a description of the subjects on which FHK Electric (Pty) Ltd holds records and the categories of records held on each subject;
 - V. The **latest notice**, if any, regarding the categories of records of FHK Electric (Pty) Ltd which are available without a person having to request access in terms of this Act;
 - VI. A **description of the services available** to members of the public, provided by FHK Electric (Pty) Ltd, and how to gain access to those services;
 - VII. A **description of any arrangement or provision** for a person making representations or influence the formulation of policies or exercise powers or performance of duties, by FHK Electric (Pty) Ltd;
 - VIII. A **description of all the remedies** available in respect of an act or a failure to act by FHK Electric (Pty) Ltd;
 - IX. Any **other information** as may be required.
 - b) Section 51 stipulates that the Information Officer of a **private body** must compile a manual containing the following information:
 - I. The postal and street address, phone and fax number and, if available, electronic mail address of the head of FHK Electric (Pty) Ltd;
 - II. A description of FHK Electric (Pty) Ltd information guide and how to gain access to that guide;



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- III. The latest notice, if any, regarding the categories of records of FHK Electric (Pty) Ltd which are available without a person having to request access in terms of this Act;
- IV. A description of the records of FHK Electric (Pty) Ltd which are available in accordance with any other legislation;
- V. Sufficient detail describing the process to facilitate a request for access to a record, including a description of the subjects on which FHK Electric (Pty) Ltd holds records and the categories of records held on each subject;
- VI. Any other information as may be required.

6.2 Notification to data subject when collecting personal information (Section 18)

Note to Information Officer:

- 1) It is important to note that when a business collects personal information to be processed for a specific purpose, FHK Electric (Pty) Ltd must take reasonably practicable steps to ensure that the data subject is aware of –
 - a) The **type of personal information** being collected and where the personal information is not collected directly from the data subject, the **source** from which it is collected;
 - b) The **name** and **address** of FHK Electric (Pty) Ltd;
 - c) The **purpose** for which the personal information is being collected;
 - d) Whether or not the supply of the personal information by that data subject is **voluntary** or **mandatory**;
 - e) The **consequences** of failure to provide the personal information;
 - f) Any particular **law** authorising or requiring the collection of the personal information;
 - g) Whether FHK Electric (Pty) Ltd intends to **transfer** the information to a **third** country or **international** organisation and the level of protection afforded to the information by that third country or international organisation;
 - h) Any further information such as the –
 - I. **Recipient** or category of recipients of the information;
 - II. **Nature** or category of the information;
 - III. Existence of the right of **access** to and the right to **rectify** the information collected;



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- IV. **Existence of the right to object** of the processing of personal information; and
 - V. Right to lodge a **complaint** to the **Information Regulator** and the **contact details** of the Information Regulator.
- 2) Be advised that FHK Electric (Pty) Ltd **do not** have to comply with paragraph 1 if:
- a) The data subject or a competent person where the data subject is a child has provided **consent** for the non-compliance;
 - b) FHK Electric (Pty) Ltd's non-compliance would not prejudice the **legitimate interests** of the data subject;
 - c) FHK Electric (Pty) Ltd's non-compliance is necessary –
 - I. To avoid **prejudice** to the maintenance of the law by any public body, including the prevention, detection, investigation, prosecution and punishment of offences;
 - II. To comply with an **obligation** imposed by law or to enforce legislation concerning the collection of revenue;
 - III. For the conduct of proceedings in any **court or tribunal** that have commenced or are reasonably contemplated;
 - IV. In the interest of **national security**.
 - d) The compliance would **prejudice** a lawful purpose of the collection of personal information;
 - e) The compliance is not reasonably **practicable** in certain circumstances of a particular case; or
 - f) The personal information will –
 - I. **Not be used** in a form in which the data subject may be **identified**; or
 - II. Be used for **historical, statistical or research purposes**.
- 3) It is important for FHK Electric (Pty) Ltd to provide the data subject with the information as stipulated in paragraph 1, to ensure **transparency** and **fairness** in the processing of personal information. There are however **exceptions to the compliance** with paragraph 1 and this should be established prior to any information being collected from a data subject.
- 4) In the event that FHK Electric (Pty) Ltd has previously taken steps to provide the data subject with the information as stipulated in paragraph 1, FHK Electric (Pty) Ltd do not have to comply with paragraph 1 for any further processing of the personal information, providing the information is being processed for the same purpose for which it was collected.



A7. Condition 7 – Security Safeguards

7.1 Security measures on integrity and confidentiality of personal information (Section 19)

Note to Information Officer:

- 1) FHK Electric (Pty) Ltd must secure the **integrity** and **confidentiality** of all personal information that is in its possession or under its control to prevent –
 - a) **The loss** of, **damage** to or **unauthorised** destruction of personal information; and
 - b) **The unlawful access** to or processing of personal information.
- 2) FHK Electric (Pty) Ltd will comply with paragraph 1 if it ensures that appropriate, reasonable technical and organisational measures are in place to –
 - a) **Identify** and **document** all reasonably foreseeable internal and external **risks** that may have an influence on the personal information in its possession or under its control;
 - b) **Establish** and **maintain** appropriate **safeguards** against the risks identified;
 - c) **Regularly verify** and **obtain confirmation** that the safeguards are effectively implemented; and
 - d) Ensure that the safeguards are **continuously updated** in accordance with **newly identified risks** or deficiencies that may influence the current safeguards.
- 3) FHK Electric (Pty) Ltd must **favourably consider** and take into account generally **accepted information security practices** and **procedures** that may be required in terms of specific industry or professional rules and regulations.
- 4) FHK Electric (Pty) Ltd must ensure that **industry specific safety measures** pertaining to its personal information, are implemented, evaluated and updated on a regular basis to counter any existing and potential threats it poses to the current safeguards.
- 5) It is advisable that FHK Electric (Pty) Ltd conduct regular training sessions for its employees, especially employees which form part of the processing of personal information within FHK Electric (Pty) Ltd.
- 6) In order to establish an information security system, the Information Officer must ensure that it addresses the three primary components that are present in the processing of personal information. The three components are **technology**, **process** and **people**.
- 7) FHK Electric (Pty) Ltd must take note that even though certain functions which relates to the processing of personal information **may be outsourced** to third parties, for instance the provision of IT and communication services, the retention and back up of documents or even the storage and destruction of documents, it is ultimately the responsibility of FHK Electric (Pty) Ltd to establish, maintain and review the information security systems.



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- 8) It is important to note that in **allowing external parties access to the premises**, information systems or information, the access should be properly controlled and the external parties will be subject to the express requirements and prohibitions as stipulated in the **Access Control Policy**.

7.2 Information processed by operator or person acting under authority from FHK Electric (Pty) Ltd (Section 20)

Note to Information Officer:

- 1) FHK Electric (Pty) Ltd must ensure that an operator or anyone, including but not limited to, sub- contractors, agents, suppliers, importers, exporters, representatives, service providers or manufactures which process personal information on behalf of FHK Electric (Pty) Ltd, must –
 - a) Process such information only with the **knowledge** or **written authorisation** of FHK Electric (Pty) Ltd; and
 - b) Treat the personal information that comes to their knowledge as **confidential** and **must not disclose it**.
- 2) It is therefore suggested that FHK Electric (Pty) Ltd incorporate a **standard written agreement** with an operator or anyone, including but not limited to, sub-contractors, agents, suppliers, importers, exporters, representatives, service providers or manufactures prior to any personal information being forwarded to him, her or it.

7.3 Security measures regarding information processed by operator (Section 21)

Note to Information Officer:

- 1) FHK Electric (Pty) Ltd must in terms of a **written contract** between the operator and itself, ensure that the required security measures (as stipulated in Section 19), relevant to the processing of personal information, are clearly stipulated and agreed upon. The operator responsible for processing the personal information on behalf of FHK Electric (Pty) Ltd, must ensure that it **establish** and **maintain** the required security measures as he, she or it may also be held liable for any contravention of this Act.
- 2) The operator must **notify** FHK Electric (Pty) Ltd **immediately** where there are reasonable grounds to believe that the personal information of a data subject has been lost, accessed or acquired by any unauthorised person or an information breach has occurred.



7.4 Notification of security compromises (Section 22)

Note to Information Officer:

- 1) If FHK Electric (Pty) Ltd believes or have determined that the personal information of a data subject has been lost, accessed or acquired by any unauthorised person or an information breach has occurred FHK Electric (Pty) Ltd must **notify** –
 - a) The **Regulator**; and
 - b) The **data subject**, unless the identity of such data subject cannot be established.
- 2) It is important to note that this **notification must be made as soon as reasonably possible** after the discovery of the compromise, taking into account the legitimate needs of law enforcement or any measures reasonably necessary to determine the scope of the compromise and to restore the **integrity** of FHK Electric (Pty) Ltd's **information system**.
- 3) FHK Electric (Pty) Ltd may only **delay notification** to the data subject if a **public body** responsible for the prevention, detection or investigation of offences or the Regulator determines that notification will impede a criminal investigation by the public body concerned.
- 4) FHK Electric (Pty) Ltd must **notify the data subject in writing** and ensure that this communication reaches the data subject in at least one of the following ways:
 - a) **Mailed** to the data subject's last know physical or postal address;
 - b) Sent by **e-mail** to the data subject's last known e-mail address;
 - c) Placed in a prominent position on the **website** of FHK Electric (Pty) Ltd;
 - d) **Published** in the news media; or
 - e) As may be **directed by the Regulator**.
- 5) FHK Electric (Pty) Ltd must ensure that the written notification **provide sufficient information** to allow the data subject to take **protective measures** against the potential consequences of the compromise, including –
 - a) A **description** of the possible **consequences** of the security compromise;
 - b) A **description** of the **measures** that FHK Electric (Pty) Ltd intends to take or has taken to address the security compromise;
 - c) A **recommendation** with regard to the measures to be taken by the data subject to **mitigate** the possible adverse effects of the security compromise; and
 - d) If know to FHK Electric (Pty) Ltd, **the identity** of the **unauthorised person** who may have accessed or acquired the personal information.



- 6) FHK Electric (Pty) Ltd must take note that the Regulator may direct him, her or it to **publicise**, in any manner specified by the Regulator, the fact of any compromise to the **integrity** or **confidentiality** of personal information, if the Regulator has reasonable grounds to believe that such publicity would protect a data subject who may be affected by the compromise. Should it be required from FHK Electric (Pty) Ltd to publish a notification, it must be taken into account that FHK Electric (Pty) Ltd's **reputation** is at risk and great consideration should be given to the wording of the notification.
- 7) It is suggested that FHK Electric (Pty) Ltd implement adequate **policies** and **procedures** that govern the notification and reporting of a compromise of personal information.

A8. Condition 8 – Data subject's participation

8.1 Access to personal information (Section 23)

Note to Information Officer:

- 1) Should a data subject provide adequate and/or sufficient proof of identity the data subject has the right to –
 - a) Request FHK Electric (Pty) Ltd to **confirm**, free of charge, whether or not FHK Electric (Pty) Ltd holds personal information about him, her or it; and
 - b) Request from FHK Electric (Pty) Ltd the **record** or a **description** of the personal information about him, her or it held by FHK Electric (Pty) Ltd, including information about the identity of all third parties, or categories of third parties, who have, or have had, access to this personal information -
 - I. Within a **reasonable time**;
 - II. At a **prescribed fee**, if any;
 - III. In a **reasonable manner and format**; and
 - IV. In a form that is **generally understandable**.
- 2) If FHK Electric (Pty) Ltd provides the requested information as described in clause 1, FHK Electric (Pty) Ltd must advise the data subject simultaneously of his, her or its right in terms of Section 24 of this Act, to **request the correction of personal information**.
- 3) Should FHK Electric (Pty) Ltd require the data subject to **pay a fee** for the information and/or services provided in terms of clause 1(b), FHK Electric (Pty) Ltd -
 - a) Must give the data subject a **written estimate of the fee before** providing the information and/or services; and
 - b) May require the data subject to **pay a deposit for all or part** of the fee prior to any requested information and/or services provided.



- 4) FHK Electric (Pty) Ltd must ensure that it comply with the provisions of **Part 2 and Part 3 of Chapter 4 of the Promotion of Access to Information Act**, prior to disclosing information to the data subject. It is crucial that FHK Electric (Pty) Ltd consult with its legal advisor to establish whether the personal information required by the data subject, does not have a restriction or partial restriction prior to it being disclosed.
- 5) If FHK Electric (Pty) Ltd receives a **written request for access to personal information**, FHK Electric (Pty) Ltd must firstly establish which part of the information may not be disclosed, as every other part of the information must be disclosed.

8.2 Correction of personal information (Section 24)

Note to the Information Officer:

- 1) FHK Electric (Pty) Ltd must take note that the data subject **may in writing** and with **sufficient identification**, request FHK Electric (Pty) Ltd to:
 - a) **Correct** or **delete** personal information about the data subject in its possession or under its control that is **inaccurate, irrelevant, excessive, out of date, incomplete, misleading** or **obtained unlawfully**; or
 - b) **Destroy** or **delete** a record of personal information about the data subject that FHK Electric (Pty) Ltd is no longer authorised to retain in **terms of Section 14 of this Act**.
- 2) If FHK Electric (Pty) Ltd receive such a request from the data subject as discussed in clause 1(a) and (b), FHK Electric (Pty) Ltd must as **soon as possible**:
 - a) **Correct** the information;
 - b) **Destroy** or **delete** the information;
 - c) Provide the data subject, to his, her or its satisfaction, with **credible evidence** in support of the information; or
 - d) If an agreement cannot be reached between FHK Electric (Pty) Ltd and the data subject, and if the data subject so requests, take such steps as are reasonable in the circumstances, to **attach to the information** in such a manner that it will always be **read with** the information, an indication that a correction of the information has been requested but has not been made.
- 3) FHK Electric (Pty) Ltd should take note:

If changes have been made on request of the data subject to his, her or its personal information, that an **obligation exists on FHK Electric (Pty) Ltd to disclose those changes** to all responsible parties, persons or bodies to whom these personal information has been disclosed, providing the changed information has an impact on decisions that have been or will be taken in respect of the data subject.



- 4) It is further important that FHK Electric (Pty) Ltd **notify the data subject**, who has made a request in terms of clause (1), of the action taken as a result of the request.

8.3 Manner of access (Section 25)

Note to information Officer:

- 1) FHK Electric (Pty) Ltd must ensure that any request from a data subject in terms of Section 23 of this Act, **must adhere to the stipulations of Section 18 and 53 of the Promotion of Access to Information Act.**
- a) **Section 18 stipulates:**
- I. “A **request for access** must be made in the prescribed form to the information officer of the **public body** concerned at his or her address or fax number or electronic mail address.
 - II. The form for a request of access prescribed in (a) must at least require the requester concerned -
 - To **provide sufficient particulars** to enable an official of the public body concerned to identify the record or records requested and the requester;
 - To indicate which **applicable form of access** is required;
 - To state whether the record concerned is preferred in a **particular language**;
 - To specify a **postal address** or fax number of the requester in the Republic;
 - If, in addition to a written reply, the **requester wishes to be informed of the decision on the request** in any other manner, to state that manner and the necessary particulars to be so informed; and
 - If the request is made on behalf of a person, to **submit proof of the capacity** in which the requester is making the request, to the reasonable satisfaction of the information officer.
 - III. An individual who because of **illiteracy** or a **disability** is unable to make a request for access to a record of a public body in accordance with clause (a), may make that **request orally**. The information officer of that body must reduce that oral request to writing in the prescribed form and provide a copy thereof to the requester.”
- b) **Section 53 stipulates:**



- I. “A **request for access** to a record of a **private body** must be made in the prescribed form to the private body concerned at its address, fax number or electronic mail address.
- II. The form for a request for access prescribed in clause (a) must at least require the requester concerned –
 - To **provide sufficient particulars** to enable the head of the private body concerned to identify the record(s) requested and the requester;
 - To indicate which **applicable form of access** is required;
 - To specify a **postal address** or fax number of the requester in the Republic;
 - To identify the right, the requester is seeking to exercise or protect and provide an **explanation of why the requested record** is required for the exercise or protection of that right;
 - If, in addition to a written reply, the **requester wishes to be informed of the decision on the request** in any other manner, to state that manner and the necessary particulars to be so informed; and
 - If the request is made on behalf of a person, to **submit proof of the capacity** in which the requester is making the request, to the reasonable satisfaction of the head.”



B. Processing of Special Personal Information

FHK Electric (Pty) Ltd must adhere to the following provisions when Special Personal Information is being processed.

- 1) **Prohibition** on processing of personal information (**Section 26**)
- 2) **General authorisation** concerning special personal information (**Section 27**)
- 3) Authorisation concerning data subject's **religious** or **philosophical** beliefs (**Section 28**)
- 4) Authorisation concerning data subject's **race** or **ethnic origin** (**Section 29**)
- 5) Authorisation concerning data subject's **trade union membership** (**Section 30**)
- 6) Authorisation concerning data subject's **political persuasion** (**Section 31**)
- 7) Authorisation concerning data subject's **health** or **sex life** (**Section 32**)
- 8) Authorisation concerning data subject's **criminal behaviour** or **biometric information** (**Section 33**)

B1. Prohibition on processing of personal information (Section 26)

Note to Information Officer:

- 1) FHK Electric (Pty) Ltd is prohibited to process personal information collected from a data subject concerning:
 - a) The **religious** or **philosophical beliefs**, **race** or **ethnic origin**, **trade union membership**, **political persuasion**, **health** or **sex life** or **biometric** information; or
 - b) The **criminal behaviour** of a data subject to the extent that such information relates to:
 - I. The **alleged commission** by a data subject of any offence; or
 - II. **Any proceedings in respect of any offences** allegedly committed by a data subject or the disposal of such proceedings.
 - c) It is important to note that the **Conditions of Lawful Processing** as stipulated and discussed in **Part A** of this document, is also applicable to the processing of **Special Personal Information**.



- d) Unless a **general authorisation** or alternatively a **specific authorisation** relating to the different types of special information apply, FHK Electric (Pty) Ltd is prohibited from processing special personal information.

B2. General authorisation concerning special personal information **(Section 27)**

Note to Information Officer:

- 1) FHK Electric (Pty) Ltd must note that the **prohibition on processing** personal information as stipulated in Section 26, is **not applicable** if the –
- a) Data subject has provided his, her, its **consent** pertaining to the processing of the information;
 - b) Processing is necessary for the **establishment, exercise or defence** of a right or obligation in **law**;
 - c) Processing is necessary to comply with an obligation of **international public law**;
 - d) Processing is for **historical, statistical or research** purposes to the extent that –
 - I. The purpose serves a **public interest** and the processing is necessary for the purpose concerned; or it appears to be **impossible** or would involve a **disproportionate effort** to ask for consent;
 - e) Information has **deliberately** been **made public** by the data subject;
 - f) Provisions of **Sections 29 to 33** are complied with; or
 - g) Business has provided **sufficient guarantees** to ensure that the processing of special personal information **does not adversely affect the individual privacy** of the data subject to a disproportionate extent.
- 2) FHK Electric (Pty) Ltd must note that **Section 27** provides a **general authorisation for the processing of Special Personal Information**. It is therefore important to understand that, obtaining **consent** from a Data Subject plays a **critical part prior to processing Special Personal Information**, however it is not the only condition on which special personal information may be processed, as discussed in Section 27.



B3. Authorisation concerning data subject's religious or philosophical beliefs (Section 28)

Note to Information Officer:

- 1) FHK Electric (Pty) Ltd may process special personal information concerning a data subject's religious or philosophical beliefs, as referred to in Section 26, if the processing is carried out by –
 - a) **Spiritual or religious organisations**, or independent sections of those organisations if –
 - I. The information concerns data subjects **belonging** to those organisations; or
 - II. It is necessary to **achieve their aims** and principles;
 - b) **Institutions founded on religious or philosophical principles** with respect to their members or employees or other persons belonging to the institution, if it is necessary to achieve their aims and principles; or
 - c) Other institutions, provided that the processing is **necessary to protect** the spiritual welfare of the data subjects, unless they have indicated that they object to the processing.
- 2) In the cases referred to in clause 1(a), the **prohibition for processing special personal information** relating to a data subject's religion or philosophy of life of family members, **does not apply** if:
 - a) The **association** concerned **maintains regular contact** with those family members in connection with its aims; and
 - b) The family members have **not objected in writing** to the processing.
- 3) **Personal information** concerning a data subject's religious and philosophical beliefs may not be supplied to third parties **without the consent of the data subject**.

B4. Authorisation concerning data subject's race or ethnic origin (Section 29)

Note to Information Officer:

- 1) The prohibition on processing personal information concerning a data subject's race or ethnic origin, as referred to in Section 26, **does not apply** if the processing is carried out to –
 - a) **Identify data subject(s)** and only when this is essential for that purpose; and



- b) **Comply with laws** and other measures designed to protect or advance persons, or categories of persons, disadvantaged by unfair discrimination.

B5. Authorisation concerning data subject's trade union membership **(Section 30)**

Note to Information Officer:

- 1) The prohibition on processing personal information concerning a data subject's trade union membership, as referred to in Section 26, **does not apply to the processing by the trade union** to which the data subject belongs or the trade union federation to which that trade union belongs, if such processing is necessary to achieve the aims of the trade union federation.
- 2) Furthermore, taking the aforesaid into consideration, **no personal information** may be supplied to third parties without the consent of the data subject.

B6. Authorisation concerning data subject's political persuasion **(Section 31)**

Note to Information Officer:

- 1) The prohibition on processing personal information concerning a data subject's political persuasion, as referred to in Section 26, **does not apply to processing** by or for an institution, founded on political principles, of the personal information of –
 - a) Its members or employees or other persons belonging to the institution, if such processing is necessary **to achieve the aims or principles of the institution**; or
 - b) **Participating in the activities** of, or engaging in the recruitment of members for or canvassing supporters or voters for, a political party.
- 2) It is furthermore important to note that no personal information may be supplied to third parties without the **consent of the data subject**.



B7. Authorisation concerning data subject's health or sex life (Section 32)

Note to Information Officer:

- 1) The prohibition on processing personal information concerning a data subject's health or sex life, as referred to in Section 26, does not apply to the processing by –
 - a) **Medical professionals**, healthcare institutions or facilities or social services, if such processing is necessary for the proper treatment and care of the data subject, or for the administration of the institution or professional practise concerned;
 - b) **Insurance companies**, medical schemes, medical scheme administrators and managed healthcare organisations, if such processing is necessary for –
 - I. **Assessing the risk** to be insured by the insurance company or covered by the medical scheme and the data subject has not objected to the processing;
 - II. **The performance of an insurance** or medical scheme agreement; or
 - III. **The enforcement of any contractual rights** and obligations;
 - c) **Schools**, if such processing is necessary to provide special support for pupils or making special arrangements in connection with their health or sex life;
 - d) **Any public or private body managing the care of a child** if such processing is necessary for the performance of their lawful duties;
 - e) Any public body, if such processing is necessary in connection with the **implementation of prison sentences** or detention measures; or
 - f) **Administrative bodies**, pension funds, employers or institutions working for them, if such processing is necessary for –
 - I. **The implementation of the provisions of laws**, pension regulations or collective agreements which create rights dependent on the health or sex life of the data subject; or
 - II. **The reintegration of or support for workers** or persons entitled to benefit in connection with sickness or work incapacity.
- 2) Notwithstanding the above, **the information may only be processed by responsible parties'** subject to an obligation of confidentiality by virtue of office, employment, profession or legal provision, or established by a written agreement between FHK Electric (Pty) Ltd and the data subject.



- 3) FHK Electric (Pty) Ltd authorised to process information concerning a data subject's health or sex life in terms of this section, **is not subject to an obligation** of confidentiality by virtue of office, profession or legal provision and must treat the information as confidential, unless the responsible party is required by law or in connection with their duties to communicate the information to other parties who are authorised to process such information.
- 4) The prohibition on processing any of the categories of personal information as referred to in Section 26, **does not apply if it is necessary to supplement** the processing of personal information concerning a data subject's health, if the main intention is to properly treat or care for the data subject.
- 5) Personal information concerning inherited characteristics **may not be processed** in respect of a data subject from whom the information concerned has been obtained, **unless**—
 - a) **A serious medical interest prevails**; or
 - b) **The processing is necessary for historical**, statistical or research activity.

B8. Authorisation concerning data subject's criminal behaviour or biometric information(Section33)

Note to Information Officer:

- 1) The prohibition on processing personal information concerning a data subject's criminal behaviour or biometric information, as referred to in Section 26, **does not apply** if the processing is carried out by bodies charged by law with applying criminal law or by responsible parties who have **obtained that information in accordance with law**.
- 2) The **processing of information concerning personnel in the service** of the responsible party must take place in accordance with the rules established in **compliance with labour legislation**.
- 3) The prohibition on processing any of the categories of personal information referred to in Section 26, **does not apply if such processing is necessary to supplement** the processing of information on criminal behaviour or biometric information permitted by this Act.



C. Processing of Personal Information of Children

- 1) Prohibition on processing personal information of children (**Section 34**)
- 2) General authorisation concerning personal information of children (**Section 35**)

C1. Prohibition on processing personal information of children **(Section 34)**

Note to Information Officer:

- 1) It is important to note that FHK Electric (Pty) Ltd may not process personal information concerning a **child**.
- 2) In terms of this Act a “child”, means a natural person **under the age of 18 years** who is not legally competent, when determining the parameters of the processing of personal information of children.
- 3) FHK Electric (Pty) Ltd is prohibited from processing personal information of children, unless **one of the conditions** set out in Section 35 is applicable.

C2. General authorisation concerning personal information of children **(Section 35)**

Note to Information Officer:

- 1) The prohibition on processing personal information of children, as referred to in Section 34, **does not apply** if the processing is –
 - a) Carried out with the prior **consent** of a competent person;
 - b) Necessary for the **establishment, exercise or defence** of a right or obligation in **law**;
 - c) Necessary to comply with an obligation of **international public law**;
 - d) For **historical, statistical or research** purposes to the extent that –
 - I. The purpose serves a **public interest** and the processing is necessary for the purpose concerned; or
 - II. It appears to be impossible or would involve a **disproportionate** effort to ask for consent, and **sufficient guarantees** are provided for to ensure that the processing does not adversely affect the individual privacy of the child to a disproportionate extent; or



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- e) Of personal information which has **deliberately** been **made public** by the child with the consent of a competent person.
- 2) **It is important to note that Section 35 provides a general authorisation for the processing of personal information of children. It is further important to note that consent is not the only condition on which personal information of children may be processed.**



D. Rights of Data Subjects regarding direct marketing by means of unsolicited electronic communication, directories and automated decision making

- 1) Direct marketing by means of unsolicited electronic communications (**Section 69**)
- 2) Directories (**Section 70**)
- 3) Automated decision making (**Section 71**)

D1. Direct marketing by means of unsolicited electronic communication (Section 69)

Note to Information Officer:

- 1) Should FHK Electric (Pty) Ltd process personal information of a data subject for the **purpose of direct marketing** by means of any form of electronic communication, including automatic calling machines, facsimile machines, SMSs or e-mail **is prohibited unless the data subject** –
 - a) Has given his, her or its **consent to the processing**; or
 - b) Is a **customer of FHK Electric (Pty) Ltd**?
- 2) FHK Electric (Pty) Ltd may approach a data subject **only once** in order to request the consent of that data subject and only if the data subject has not previously withheld such consent.
- 3) The data subject's consent must be requested in the prescribed manner and form.
- 4) FHK Electric (Pty) Ltd may only process the personal information of a data subject who is a customer of FHK Electric (Pty) Ltd if –
 - a) FHK Electric (Pty) Ltd **has obtained the contact details** of the data subject in the context of the sale of a product or service;
 - b) The purpose of direct marketing is through FHK Electric (Pty) Ltd's **own similar products** or services; and
 - c) The data subject has been given a **reasonable opportunity to object**, free of charge, and in a manner free of unnecessary formality, to such use of his, her or its electronic details –
 - I. At the time when the information was collected; and
 - II. On the occasion of each communication with the data subject for the purpose of direct marketing if the data subject has not initially refused such use.



- 5) **Any communication for the purpose of direct marketing must contain –**
- Details of the identity of the sender** or the person on whose behalf the communication has been sent; and
 - An address or other contact details** to which the recipient may send a request that such communications cease.

Important:

- 1.1) FHK Electric (Pty) Ltd is reminded that a **data subject must consent** to the processing of his, her or its personal information for the purposes of direct marketing.
- 1.2) FHK Electric (Pty) Ltd is allowed to approach the data subject by whatever means, **only once**, in order to obtain the consent of the data subject for the purposes of Direct Marketing.
- 1.3) The data subject must be given a reasonable opportunity to object to the processing of his, her or its personal information when the information is collected, and on any occasion that the information is used for the purpose of marketing if the data subject has not already refused to allow use of the information for this purpose.
- 1.4) In the event that the data subject objects, any further processing of the information for this purpose would be a breach of this Act.

D2. Directories (Section 70)

Note to Information Officer:

- 1) If FHK Electric (Pty) Ltd has data subjects who are subscribed to a printed or electronic directory of subscribers available to the public or obtainable through directory enquiry services, in which his, her or its personal information is included FHK Electric (Pty) Ltd must inform the data subject(s), free of charge and before the information is included in the directory –
 - a) of the **purpose of the directory**; and
 - b) of **any further uses** to which the directory may possibly be put, based on search functions embedded in electronic versions of the directory.



- 2) FHK Electric (Pty) Ltd must give the data subject a **reasonable opportunity to object**, free of charge, and in a manner free of unnecessary formality, to such use of his, her or its personal information or to request verification, confirmation or withdrawal of such information if the data subject has not initially refused such use.
- 3) If the personal information of data subjects who are subscribed to a fixed or mobile public voice telephony services and have been included in a public subscriber directory in conformity with the conditions for the lawful processing of personal information prior to the commencement of this section, the personal information of such subscribers may remain included in this public directory in its printed or electronic version, after having received the information required by clause (1).

D3. Automated decision making (Section 71)

Note to Information Officer:

- 1) FHK Electric (Pty) Ltd may not hold the data subject, liable upon making a decision **which may result in legal consequences** for him, her or it, or which affects him, her or it to a substantial degree, which is based solely on the automated processing of personal information intended to provide a profile of such person including his or her performance at work, or his, her or its credit worthiness, reliability, location, health, personal preference or conduct.
- 2) The abovementioned does not apply if the decision –
 - a) **Has been taken in connection with the conclusion or execution of a contract**, and –
 - I. The request of the data subject in terms of the **contract has been met**; or
 - II. **Appropriate measures have been taken** to protect the data subject's legitimate interests; or
 - b) **Is governed by a law or code of conduct** in which appropriate measures are specified for protecting the legitimate interests of data subjects.
- 3) It is important to note that appropriate measures must –
 - a) **Provide an opportunity for a data subject to make representations.**
 - b) Require FHK Electric (Pty) Ltd to provide a data subject with **sufficient information about the underlying logic** of the automated processing of the information relating to him, her or it to enable him, her or it to make representations.



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Important:

- 3.1) There have been instances where the **results of decisions made by computers are influenced by incorrect data**, incomplete data or simply by circumstances that are not taken into account when programming the basis on which the computer may make an automated decision.
- 3.2) This Section of the Act confers upon the data subject the **right to be provided with an opportunity to make representations** about a decision and require information pertaining to the underlying logic on which the processing of the information occurred.



E. Transborder Information Flows

1. Transfer of personal information outside the Republic of South Africa
(Section 72)

E1. Transfer of personal information outside Republic (Section 72)

Note to Information Officer:

- 1) FHK Electric (Pty) Ltd may **not transfer personal information** about a data subject to a third party who is in a foreign country unless –
 - a) The recipient (third party) of the personal information is subject to a **law**, binding corporate rules or binding agreement which **provide an adequate level of protection** that –
 - I. **Effectively upholds principles for reasonable processing** of personal information that are substantially similar to the conditions for the lawful processing of personal information relating to a data subject who is a natural person and, where applicable, a juristic person; and
 - II. **Includes provisions, that are substantially similar to this Act**, relating to the further transfer of personal information from the recipient to third parties who are in a foreign country;
 - b) The data subject **consents** to the transfer;
 - c) The transfer is **necessary for the performance of a contract** between the data subject and FHK Electric (Pty) Ltd, or for the implementation of pre-contractual measures taken in response to the data subject's request;
 - d) The transfer is **necessary for the conclusion or performance of a contract** concluded in the **interest** of the data subject between FHK Electric (Pty) Ltd and a third party; or
 - e) The transfer is for **the benefit of the data subject**, and –
 - I. It is **not reasonably practicable to obtain** the consent of the data subject to that transfer; and
 - II. It if was **reasonably practicable to obtain** such consent, the data subject would be likely to give it.



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- 2) FHK Electric (Pty) Ltd has an obligation to ensure that where personal information of a data subject is transferred to a third party in a foreign country, that this country has adequate levels of protection to ensure the privacy of the data subject. This will result in obtaining a service level agreement that stipulates the levels of protection applicable, prior to transferring personal information of a data subject to the third party.



F. Prior Authorisation

- 1) Processing subject to prior authorisation (**Section 57**)
- 2) FHK Electric (Pty) Ltd to notify the Regulator (**Section 58**)

F1. Processing subject to prior authorisation (Section 57)

Note to Information Officer:

- 1) FHK Electric (Pty) Ltd must obtain authorisation from the Regulator, prior to processing any personal information if FHK Electric (Pty) Ltd has the intention to –
 - a) Process any **unique identifiers** of data subjects –
 - I. For a **purpose other than** the one for which the identifier was specifically intended at collection; and
 - II. With the **aim of linking the information** together with information processed by other businesses;
 - b) Process information on **criminal behaviour** or on **unlawful** or **objectionable** conduct on behalf of third parties;
 - c) Process information for the purposes of **credit reporting**; or
 - d) Transfer **special personal information** or the **personal information of children**, to a third party in a **foreign country** that does **not provide an adequate level of protection** for the processing of personal information.

Important:

- 1.1) FHK Electric (Pty) Ltd must obtain prior authorisation from the Regulator only **once** and not each time that personal information is received or processed, **except where the processing departs** from that which has been authorised.



F2. FHK Electric (Pty) Ltd to notify the Regulator (Section 58)

Note to Information Officer:

- 1) FHK Electric (Pty) Ltd **may not conduct any information processing** that has been notified to the Regulator until the Regulator has **completed its investigation** or until they **have received notice** that a more detailed investigation will not be conducted.
- 2) If FHK Electric (Pty) Ltd has requested prior authorization as discussed in Section 57, **the Regulator must inform the responsible party in writing within four weeks** of the notification as to whether or not it will conduct a more detailed investigation.
- 3) Should the Regulator decide that a more detailed investigation is required based on the request to prior authorization from FHK Electric (Pty) Ltd, the **Regulator must indicate the period which it plans on conducting this investigation**, which period **must not exceed 13 weeks**.
- 4) If the more detailed investigation has been concluded, **the Regulator must issue a statement concerning the lawfulness of the information processing**.
- 5) Should the Regulator find, based on the request of prior authorization from FHK Electric (Pty) Ltd, **that the processing of the personal information is not lawful, an enforcement notice** will be served in terms of Section 95 of this Act.

Important:

- 2.1) If FHK Electric (Pty) Ltd has suspended its processing of personal information while awaiting the outcome of the Regulator's decision to proceed, and FHK Electric (Pty) Ltd does not receive the Regulator's decision within the said time limits, FHK Electric (Pty) Ltd may presume a decision in its favour and **continue** with its processing.



G. Supervision – Information Regulator

1. Establishment of Information Regulator (**Section 39**)
2. Powers, duties and functions of the Regulator (**Section 40**)
3. Regulator to have regard to certain matters (**Section 44**)

G1. Establishment of Information Regulator (Section 39)

- 1.1) FHK Electric (Pty) Ltd must take note that the Information Regulator is established as a juristic person by this Act, which:
 - a) Has **jurisdiction throughout the Republic of South Africa**;
 - b) **Is independent** and is subject only to the Constitution and to the law and must be impartial and perform its functions and exercise its powers without fear, favour or prejudice;
 - c) **Must exercise its powers** and perform its functions in accordance with this Act and the Promotion of Access to Information Act; and
 - d) **Is accountable** to the National Assembly.
- 1.2) Therefore, taking the aforesaid into consideration, the Information Regulator acts **independently** of government or a political party, is accountable to the National Assembly and is required to be impartial and perform its functions and exercise its powers without fear, favour or prejudice.

G2. Powers, Duties and Functions of the Regulator (Section 40)

Important:

- 2.1) It is important for you as an Information Officer to understand the powers, duties and functions of the Information Regulator which include the following:
 - a) To **provide education**, including the promotion of understanding and acceptance of the Conditions of Lawful Processing of Personal Information;
 - b) To **monitor and enforce compliance** through the powers vested in it by the legislation;
 - c) To **consult with interested parties** on a national and international basis;
 - d) To **handle and investigate complaints**;
 - e) To **conduct research** and report to Parliament on international developments;



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- f) To **assist in the establishment and development of codes of conduct**;
- g) To **facilitate cross-border cooperation** in the enforcement of privacy laws with other jurisdictions; and
- h) To **generally do everything necessary to fulfil these duties**, and foster a culture which protects personal information in South Africa.”

Note to Information Officer:

- 1) Complaints may be lodged with the Information Regulator, where after the Information Regulator will investigate the alleged offence or contravention in accordance with the stipulations of this Act.

G3. Regulator to have regard to certain matters (Section 44)

Important:

- 3.1) During the fulfilment of the Information Regulator’s duties and functions, it must take the following into consideration:
 - a) Have due regard for the **conditions for the lawful processing** of personal information;
 - b) Have due regard for **the protection of all human rights and social interests** that compete with privacy, including the general desirability of a free flow of information recognition of the legitimate interests of the public and private bodies in achieving their objectives in an efficient way;
 - c) Take account of **international obligations** accepted by South Africa; and
 - d) Consider any developing general **international guidelines** relevant to the better protection of individual privacy.

Note to Information Officer:

- 1) The Regulator will not only assess whether the lawful conditions of processing personal information have been complied with before determining an outcome of a complaint that has been lodged, but will also take (b) – (d) mentioned above into consideration in order to ensure that this Act is being enforced fairly and reasonably.



H. Enforcement and Penalties

- 1) Complaints to the Regulator
- 2) Penalties

H1. Complaints to the Regulator

Important:

- 1) FHK Electric (Pty) Ltd must take note that:
 - a) Any contravention and/or dispute in terms of this Act may be lodged to the Information Regulator, which possesses the authority to **lodge an investigation and subsequently issue information-, enforcement- and infringement notices.**
 - b) If FHK Electric (Pty) Ltd receives an **information or enforcement notice**, FHK Electric (Pty) Ltd may **lodge an appeal to the High Court** having jurisdiction for the setting aside or variation of the notice, **within 30 days after receiving the notice.**

Risk:

It is important to note that the data subject is not limited to lodge a complaint only to the Information Regulator, but may decide to institute a **civil action** for damages in a court having jurisdiction against a responsible party for breach of any provision of this Act, whether or not there is intent or negligence on the part of FHK Electric (Pty) Ltd. The data subject may request the Information Regulator to institute civil proceedings on his, her or its behalf.

Risk:

A Court issuing any order for damages must order it to be published in the Gazette and by such other appropriate public media announcement as the Court considers appropriate.



H2. Penalties

Note to Information Officer:

- 1) It is important to note, that should FHK Electric (Pty) Ltd or its responsible party be convicted of an offence in terms of this Act, FHK Electric (Pty) Ltd or its representative will be liable –
 - a) To a **fine or to imprisonment for a period not exceeding 10 years**, or to both a fine and such imprisonment in the following circumstances:
 - I. **Obstruction** of Regulator – Section 100;
 - II. **Failure to comply** with enforcement notice – Section 103(1);
 - III. **False evidence** given by witnesses under oath – Section 104(2);
 - IV. **Unlawful acts by FHK Electric (Pty) Ltd** in connection with account numbers – Section 105(1);
 - V. **Unlawful acts by third parties** in connection with account numbers – Section 106;
 - b) To a **fine or to imprisonment for a period not exceeding 12 months**, or to both a fine and such imprisonment in the following circumstances:
 - I. **Failure to notify** processing subject to prior authorisation – Section 59;
 - II. **Breach of confidentiality** – Section 101;
 - III. **Obstruction of execution** of warrant – Section 102;
 - IV. **Failure to comply** with information notice – Section 103(2);
 - V. **Witness failing to comply** with the terms and conditions of a summons.

Important:

- 2.1) The amount of an administrative fine that may be imposed on FHK Electric (Pty) Ltd by the Information Regulator may not exceed **R 10 million**.



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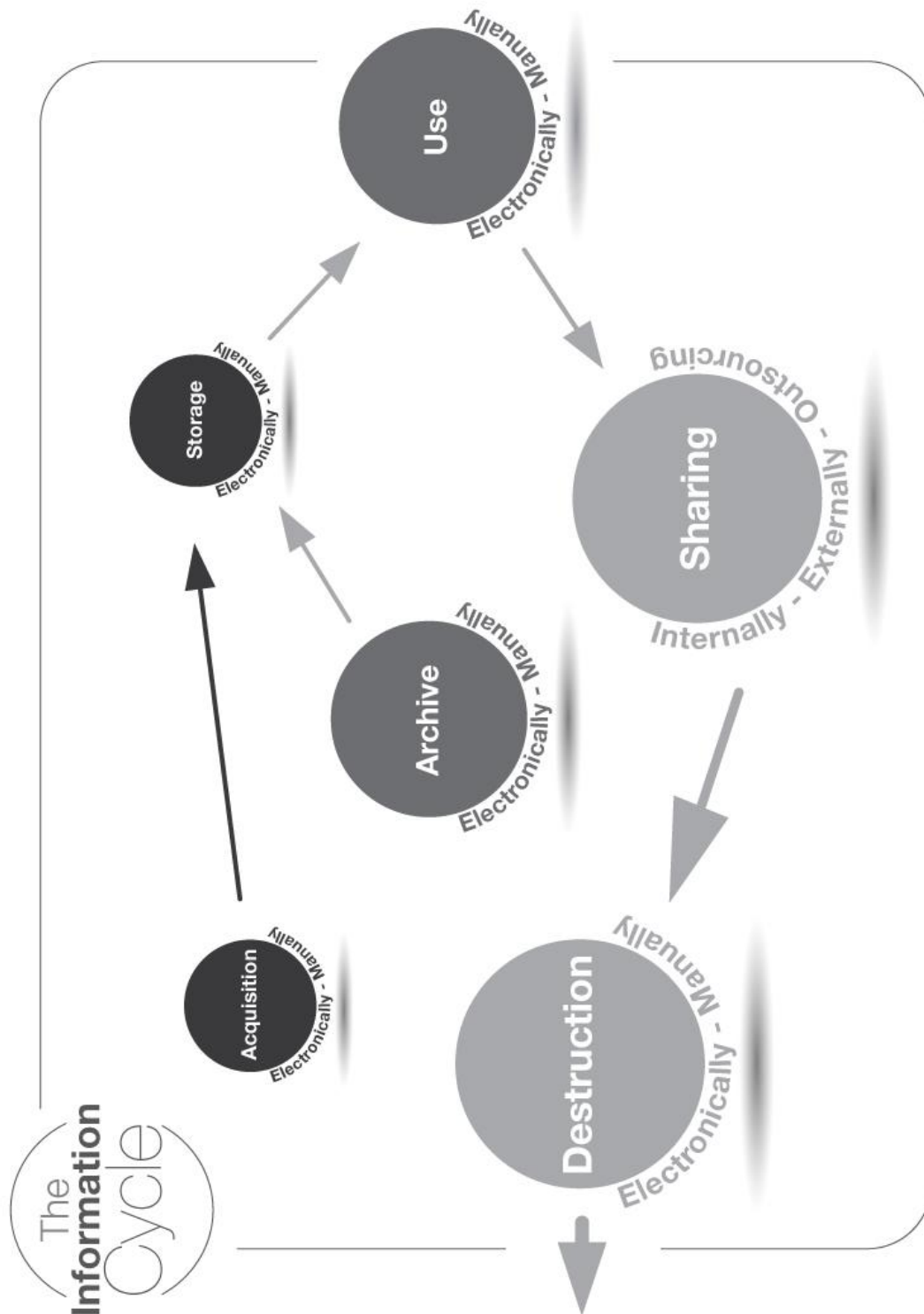
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I. Summary

- 1) Information Cycle
- 2) What is the next step?
- 3) Areas of concern





12. What is the next step?

- 1) **Take Stock** - Know what personal information you have in your files and on your computers.
- 2) **Scale Down** – Keep only what you need for your business – **PURPOSE SPECIFIC!** This will mean that terms and conditions will have to be redrafted.
- 3) **Lock It** – Protect the information you keep. Physical security, electronic security, training of employees and the security practises of contractors'/service providers. This will include new policies drafted and implemented, e.g. Access Control Policy, Data Retention Policy, Data Destruction Policy, Handheld & Mobile Device Policy, Access Control Policy.
- 4) **Pitch It** – Properly dispose (de-identify) of personal information that you no longer need. Where the **PURPOSE** for collecting no longer exists.
- 5) **Plan Ahead** – Create an action plan to respond to security incidents and have quarterly meetings with the Deputy Information Officer(s) to discuss, establish and ensure that no information breaches have occurred and the current security safeguards remains adequate to address possible risk areas.

Important:

- 2.1) It is suggested that the Information Officer conduct regular meetings with his/her Deputy Information Officer(s) to insure the above steps are adhered to. These regular meetings should include discussions pertaining to:
 - a) Additional risk areas;
 - b) Policy amendments;
 - c) Pitfalls;
 - d) Information breaches;
 - e) Policy implementations;
 - f) Training of relevant staff;
 - g) Roles and responsibilities of Information Officer and Deputy Information Officer(s) and;
 - h) Implementation of the proposed guidelines as stipulated in the Information Guide.



13. Areas of concern

Registration of your Information Officer

The Information Regulator had initially stated that all Responsible Parties must register their Information Officer by 30 June 2021.

However due to numerous technical difficulties relating to the registration process, the Information Regulator has confirmed that Responsible Parties, at the date hereof, will not be penalised for late registration. Please ensure that you submit your application via email if you have not done so yet.

Designated representatives are encouraged to familiarise themselves with the content of the Guidance Note on Information Officers and Deputy Information Officers in order to ensure that they fully understand their obligations.

It is highly recommended to address the below matters in order to comply with the provisions of the act regulating processing of personal information, thus avoiding future compliance orders, fines, compensation claims and in some cases imprisonment.

The policies referred to in our POPI INTERNAL APPROVAL documents is customized for your needs, these should be read carefully to ensure you implement everything in the workplace and issue to all employees. It is important to note that due to the nature of FHK Electric (Pty) Ltd, it a Responsible Party as defined by the Act.

A Responsible Party is a body which determines the purpose/means of processing of personal information. For example, a Responsible Party receives personal information directly from data subjects such as employees, suppliers or clients. The obligations conferred are extensive and are set out within this document.

Below are recommendations and the amendments that FHK Electric (Pty) Ltd must make to limit the risk areas of POPI.

Processing of Special Personal Information (Section 26 & 27)

FHK Electric (Pty) Ltd has advised that it processes special personal information with regards to the **criminal background, race/ethnic origin and the health** of certain data subjects.

The aforementioned processing would be in order if required by legislation (race & health).

Should FHK Electric (Pty) Ltd process the information for any further purpose (criminal background), such processing must comply with Section 26 of POPI which regulates that special personal information may only be processed if it:



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- is done with the necessary *consent* of the data subject;
- is necessary for the *establishment of an obligation* in law;
- is for *historical, statistical or research* purposes.

Requesting Personal Information (Sections 13 & 18)

The Responsible Party must ensure that the data subject, in accordance with Section 18(1), is made aware of the purpose of the collection of the information unless the provisions of Section 18(4) is not applicable.

Please see our Privacy Notice below which you can add on your website and as a link on your email signature.

You can then refer to this statement on all documentation issued to clients (quotations/invoices/delivery notes/statements/indemnity), suppliers (purchase orders) etc.

“We process all personal information in accordance with our privacy notice, to view, visit our website www.franschoekelectric.co.za or follow link on our email signature.”

PRIVACY NOTICE

POPI (PROTECTION OF PERSONAL INFORMATION)

What is the POPI Act

We respect your right to privacy and therefore aim to ensure that we comply with the legal requirement of the POPI Act which regulates the manner in which we collect, process, store, share and destroy any personal information which you have provided to us.

What information will we collect

Please complete the type of personal information you request of data subjects;

1. _____
2. _____

and if applicable, authorised or required by the following Acts (name them).

We collect information directly from you where you provide us with your personal details. Where possible, we will inform you what information you are required to provide to us and what information is optional.



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You agree to provide accurate personal information. The following consequences will apply if you fail to provide accurate Personal Information we may refuse to process your request for goods/services.

Why do we collect Personal Information

We collect personal information in order to liaise with you telephonically, via our website or email so that we may:

1. respond to any query or comment received from you;
2. inform you of new services;
3. enable us to process, validate and verify information and requests for the supply of services;
4. for the purposes for which you specifically provided the information; and
5. generally to improve your experience on our website.

Please add any other purposes for which you might use personal information.

Minors

If you are under 18 years of age (minor), we will require the consent of your parent/guardian/competent person before we process such personal information.

Processing of Information

We will share your personal information:

1. in order to comply with applicable law or with legal process served on our company;
2. in order to protect and defend the rights or property of our company; and
3. with employees and/or third parties who assist us in providing services to you and thus require your personal information in order to render a proper and efficient service. We will ensure that all such employees and third party service providers, having access to your personal information, are bound by confidentiality agreements.
4. Please add any other



Security Measures

We will:

1. treat your personal information as strictly confidential;
2. take appropriate technical and organisational measures to ensure that your personal information is kept secure and is protected against unauthorised or unlawful processing, accidental loss, destruction or damage, alteration, disclosure or access;
3. promptly notify you if we become aware of any unauthorised use, disclosure or processing of your personal information;
4. provide you with reasonable evidence of our compliance with our obligations under this policy on reasonable request; and
5. We will not retain your personal information longer than the period for which it was originally required, unless we are required by law to do so, or you consent to us retaining such information for a longer period.

ALTHOUGH WE TAKE THE AFOREMENTIONED PRECAUTIONS IN PROTECTING YOUR PERSONAL INFORMATION, WE SHALL HOWEVER NOT BE LIABLE FOR ANY LOSS OR DAMAGE, HOWSOEVER ARISING, SUFFERED AS A RESULT OF THE DISCLOSURE OF SUCH INFORMATION IF BEYOND OUR REASONABLE CONTROL.

Collection of Information by “Cookies”

You are aware that information and data is automatically collected through the standard operation of the Internet servers and through the use of "cookies." "Cookies" are small text files a website can use to recognise repeat users, facilitate the user's ongoing access to and use of the website and allow a website to track usage behaviour and compile aggregate data that will allow content improvements and targeted advertising. Cookies are not programs that come onto your system and damage files. Generally, cookies work by assigning a unique number to you that has no meaning outside the assigning site. If you do not want information collected through the use of cookies, there is a simple procedure in most browsers that allows you to deny or accept the cookie feature; however, you should note that cookies may be necessary to provide you with certain features (e.g., customized delivery of information) available on our Websites.



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Your rights

You have the right at any time to:

1. rectify the Personal Information collected by us;
2. object to the processing of Personal Information (subject to legislation);
3. request the return or destruction of Personal Information (subject to legislation);
4. lodge a complaint with the company.

Personal Information processed by us will not be routed/transferred to a third party in a foreign country or International organization.

All enquiries must be addressed to the information officer: _____, (name & surname) who can be contacted via email at _____ or via telephone on (021) _____

In compliance with the provisions of the Promotion of Access to Information 2 of 2002 (PAIA), a copy of our manual is available for your perusal _____(insert link).

If you are not satisfied with our response to your query, you may approach the following regulatory body for further assistance:

The Information Regulator (South Africa)

JD House

27 Stiemens Street

Braamfontein

Johannesburg

2001

Complaints email: POPIAcomplaints.IR@justice.gov.za

Please therefore ensure that the purpose of the collection complies with the requirements of Section 13 and Section 18 of POPI.



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Filing and Storage of Personal Information:

Hard copies

We have been advised that all hard copies with personal information related to HR kept in locked cabinets. Clients information is digitally stored and kept in files in an open space. Please remember that only authorised persons should have access to personal information.

Please see our physical security policy in this regard.

Electronic

In order to meet the pre-requisite guidelines requiring businesses to safeguard information entrusted to it, the Responsible Party must ensure that:

Passwords are installed in the computers;

Employees do not share passwords;

Passwords are updated regularly;

Computers have software installed allowing review capabilities;

Anti-virus programs have been installed;

Software is encrypted;

There are sufficient firewalls in place.

Please ensure all hard drives / external devices are encrypted and also stored in a locked / secure place to which only authorised persons have access.

Please refer to our access control policy, physical security policy, internet policy, email policy and anti-virus policy in this regard.

Retention Period

You indicated that you retain personal information for 5 (five) years.

Please note that personal information should not be retained any longer than is necessary for achieving the purpose for which the information was collected or subsequently processed.

FKH Electric (Pty) Ltd may however retain documents due to pending or reasonable foreseeable litigation; audits, government investigations or similar proceedings; or if it is for historical, research or statistical purposes and the necessary safeguards are in place.



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If there is no law applicable the information should be kept for a sufficient period for the data subject to have a reasonable opportunity to have access to the records.

Please refer to our data retention policy in our POPI internal approval document.

Data destruction: See Section 14 (4) & (5)

Please note that documents with personal information on should be destroyed to such an extent that it cannot be re-identified, which includes personal information which is stored electronically.

All forms of data whether held electronically or manually must be disposed of in a secure manner when no longer necessary. This applies to data captured on all information systems owned by FHK Electric (Pty) Ltd including personal computers, Macs, laptops, mobile phones, handheld computers, servers and external or removable storage devices.

In order to ensure the secure disposal of excessive information the following procedures should be adhered to:

- no paper documents or removable media containing personal or confidential information should be exposed of in a bin or deposited in refuse tips;
- all electrical waste, electrical equipment and data on disk devices should be physically removed and destructed in such a way that it will not be virtually retrieved;
- all paper documents should be shredded locally at FHK Electric (Pty) Ltd and then recycled. If not possible, bulk quantities of the restricted paper should be held in waste sacks and then disposed of by employees instructed by FHK Electric (Pty) Ltd's information officer;

Please refer to our data destruction policy for practical guidelines.



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OPERATORS:

An Operator is a person/body which processes personal information on behalf of a Responsible Party in terms of a mandate, without coming under the Responsible Party's direct authority. The obligations imposed on Operators, although onerous, is fairly limited compared to those imposed on a Responsible Party. An Operator must therefore ensure that:

1. Personal information is processed with the knowledge and written authorization of the Responsible Party.
2. The information is only used for the purpose for which it was provided;
3. Any personal Information is treated as confidential;
4. It has established and maintains required security measures in order to protect the said personal information.
5. It immediately notifies the Responsible Party in the event of any loss, theft or breach to the information received.

The below is an example of such an agreement which should be undersigned by all your operators. **You identified your IT service provider and Payroll service provider as operators.**

DATA PROCESSING AGREEMENT

ENTERED INTO BETWEEN:

FHK Electric (Pty) Ltd a private company in terms of the laws of South Africa, having its registered office at 10 Fabriek Street, Franschoek, 7690 and principal place of business 10 Fabriek Steet, Franschoek, 7690 (hereinafter to be referred to as: the “Responsible Party”),

AND

_____ [The Operator], a _____
[insert business type] incorporated in terms of the laws of _____ [country],
having its registered and principal place of business in _____ [city] at
_____ [address], (hereinafter to be referred to as: the “Operator”).



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HEREBY AGREE AS FOLLOWS:

1. Definitions:

“Data subject”: means the person to whom personal information relates.

“Information officer”: of, or in relation to, a –

a) Public body means an information officer or deputy information officer as contemplated in terms of Section 1 or 17 of this Act; or

b) Private body means the head of a private body as contemplated in Section 1, of The Promotion of Access to Information Act.

“Operator”: means a person who processes personal information for a Responsible Party in terms of a contract or mandate, without coming under the direct authority of that party.

“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, well-being, disability, religion, conscience, belief, culture, language and birth of the person;

b) Information relating to the education or the medical, financial, criminal or employment history of the person;

c) Any identifying number, symbol, e-mail address, telephone number, location information, online identifier or other particular assignment to the person;

d) The biometric information of the person;

e) The personal opinions, views or preferences of the person;

f) Correspondence sent by the person that 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 –



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- 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.

“Promotion of Access to Information Act”: means the Promotion of Access to Information Act, 2000 (Act No. 2 of 2000).

“Protection of Personal information Act”: means the Protection of Personal information Act, 2013 (Act No. 4 of 2013)

“Pseudonymisation”: It requires that personal data must not be able to be attributed to a specific data subject without the use of additional information kept separately, and subject to “technical and organisational measures.

“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.

2. Subject matter of this Data Processing Agreement

- 2.1. This Data Processing Agreement applies to the processing of personal information subject to the Protection of Personal information Act (hereinafter referred to as POPIA) in the scope of the [insert type of agreement] entered into on [date] between the parties.
- 2.2. Insofar as the Operator will be processing personal information subject to POPIA on behalf of the Responsible Party in the course of the performance of the [insert what type of agreement] with the Responsible Party, the terms of this Data Processing Agreement shall apply. In the event of a conflict between any provisions of the [Insert type of agreement] and the provisions of this Data Processing Agreement, the provisions of this Data Processing Agreement shall govern and control. An overview of the categories of personal information, the categories of Data Subjects, and the nature and purposes for which the personal information are being processed is provided in Annexure 2.



3. The Responsible Party and the Operator

- 3.1. Subject to the provisions of the [insert type of agreement], to the extent that the Operator's personal information processing activities are not adequately described in the [insert type of agreement], the Responsible Party will determine the scope, purposes, and manner by which the personal information may be accessed or processed by the Operator. The Operator will process the personal information only as set forth in the Responsible Party's written instructions and no personal information will be processed unless explicitly instructed by the Responsible Party.
- 3.2. The Operator will only process the personal information on documented instructions of the Responsible Party to the extent that this is required for the provision of the services. Should the Operator reasonably believe that a specific processing activity, beyond the scope of the Responsible Party's instructions, is required to comply with a legal obligation to which the Operator is subject, the Operator shall inform the Responsible Party of that legal obligation and seek explicit authorization from the Responsible Party before undertaking such processing. The Operator shall never process personal information in a manner inconsistent with the Responsible Party's documented instructions.
- 3.3. The parties have entered into a [insert type of agreement] in order to benefit from the capabilities of the Operator in securing and processing the personal information for the purposes set out in Annexure 2. The Operator shall be allowed to exercise its own discretion in the selection and use of such means as it considers necessary to pursue those purposes, provided that all such discretion is compatible with the requirements of this Data Processing Agreement, in particular the Responsible Party's written instructions.
- 3.4. The Responsible Party warrants that it has all necessary rights to provide the personal information to the Operator for the processing to be performed in relation to the services, and that one or more justification grounds set forth in POPIA support the lawfulness of the processing. To the extent required by the POPIA, the Responsible Party is responsible for ensuring that all necessary privacy notices are provided to Data Subjects, and unless another justification ground is set forth in POPIA supports the lawfulness of the processing, that any necessary Data Subject consent to the processing is obtained, and for ensuring that a record of such consent is maintained. Should such a consent be revoked by a Data Subject, the Responsible Party is responsible for communicating the fact of such revocation to the Operator, and the Operator remains responsible for implementing the Responsible Party's instruction with respect to the processing of that personal information.



4. Confidentiality

4.1. Without prejudice to any existing contractual arrangements between the parties, the Operator shall treat all personal information as confidential and it shall inform all its employees, agents and/ or approved sub-Operators engaged in processing the personal information of the confidential nature of the personal information. The Operator shall ensure that all such persons or parties have signed an appropriate confidentiality agreement, are otherwise bound to a duty of confidentiality, or are under an appropriate statutory obligation of confidentiality.

5. Security

5.1. Taking into account the industry norm, the costs of implementation, the nature, scope, context and purposes of processing as well as the risk of varying likelihood and severity for the rights and freedoms of Data Subjects, the Responsible Party and Operator shall implement appropriate, reasonable technical and organisational measures to ensure a level of security of the processing of personal information appropriate to the risk. These measures shall include, at a minimum, the security measures agreed upon by the parties in Annexure 3.

5.2. Both the Responsible Party and the Operator shall maintain written security policies that are fully implemented and applicable to the processing of personal information. At a minimum, such policies should include assignment of:

- Internal responsibility for information security management;
- Devoting adequate personnel resources to information security;
- Carrying out verification checks on permanent staff who will have access to the personal information;
- Requiring employees, vendors and others with access to personal information to enter into written confidentiality agreements, and
- Conduct training to make employees and others with access to the personal information aware of information security risks presented by the Processing.

5.3. The Operator's adherence to either an approved code of conduct or to an approved recognised security certification standard, may be used as an element by which the Operator may demonstrate compliance with the requirements set out, provided that the requirements contained in Annexure 3 are also addressed by such code of conduct or recognised security certification standard.



6. Improvements to Security

- 6.1. The parties acknowledge that security requirements are constantly changing and that effective security requires frequent evaluation and regular improvements of outdated security measures. The Operator will therefore evaluate the measures as implemented on an on-going basis in order to maintain compliance with the requirements set out in POPIA.
- 6.2. Where an amendment to the [insert type of agreement] is necessary in order to execute a Responsible Party's instruction to the Operator to improve security measures as may be required by changes in terms of the POPIA from time to time, the parties shall negotiate an amendment to the [insert type of agreement] in good faith.

7. Information Transfers

- 7.1. The Operator shall promptly notify the Responsible Party of any planned permanent or temporary transfers of personal information to a third country, without an adequate level of protection, and shall only perform such a transfer after obtaining authorisation from the Responsible Party, which may be refused at its own discretion. Annexure 4 provides a list of transfers for which the Responsible Party grants its authorisation upon the conclusion of this Data Processing Agreement.

8. Information Obligations and Incident Management

- 8.1. When the Operator becomes aware of an incident that has a material impact on the processing of the personal information that is the subject of the [insert type of agreement here], it shall promptly notify the Responsible Party about the incident, shall at all times cooperate with the Responsible Party, and shall follow the Responsible Party's instructions with regard to such incidents, in order to enable the Responsible Party to perform a thorough investigation into the incident, to formulate a correct response, and to take suitable further steps in respect of the incident.
- 8.2. The term "incident" used in paragraph 8.1 shall be understood to mean in any case:
- (a) a complaint or a request with respect to the exercise of a Data Subject's rights in terms of POPIA;
 - (b) any unauthorized or accidental access, processing, deletion, loss or any form of unlawful processing of the personal information;
 - (c) any breach of the security and/or confidentiality as set out in this Data Processing Agreement leading to the accidental or unlawful destruction, loss, alteration, unauthorized disclosure of, or access to, the personal information, or any indication of such breach having taken place or being about to take place;
 - (d) where, in the opinion of the Operator, implementing an instruction received from the Responsible Party would violate applicable laws to which the Responsible Party or the Operator are subject.



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- 8.3. The Operator shall at all times have in place written procedures which enable it to promptly respond to the Responsible Party about an incident. Where the incident is reasonably likely to require a data breach notification by the Responsible Party in terms of the POPIA, the Operator shall implement its written procedures in such a way that it is in a position to notify the Responsible Party without undue delay after the Operator becomes aware of such an incident.
- 8.4. Any notifications made to the Responsible Party shall be addressed to the employee of the Responsible Party whose contact details are provided in Annexure 1 of this Data Processing Agreement and, in order to assist the Responsible Party in fulfilling its obligations in terms of the POPIA, should contain:
- (a) a description of the nature of the incident, including where possible the categories and approximate number of Data Subjects concerned and the categories and approximate number of personal information records concerned;
 - (b) the name and contact details of the Operator's Information Officer or another contact point where more information can be obtained;
 - (c) a description of the possible consequences of the incident;
 - (d) a description of the measures taken or proposed to be taken by the Operator to address the incident including, where appropriate, measures to mitigate its possible adverse effects; and
 - (e) if known, the identity of the unauthorised person who may have accessed or acquired the personal information.

9. Contracting with Sub-Operators

- 9.1. The Operator shall not subcontract any of its service-related activities consisting (partly) of the processing of the personal information or requiring personal information to be processed by any third party without the prior written authorisation of the Responsible Party.
- 9.2. The Responsible Party authorises the Operator to engage the sub-Operators listed in Annexure 4 for the service-related personal information processing activities described in Annexure 2. Operators shall inform the Responsible Party of any addition or replacement of such sub-Operators giving the Responsible Party an opportunity to object to such changes. If the Responsible Party timely sends the Operator a written objection notice, setting forth a reasonable basis for objection, the Parties will make a good-faith effort to resolve the Responsible Party's objection. In the absence of a resolution, the Operators will make commercially reasonable efforts to provide Responsible Party with the same level of service described in the [insert type of agreement here], without using the sub-Operator to process personal information. If the Operator's efforts are not successful within a reasonable time, each party may terminate the portion of the service which cannot be provided without the sub-Operator, and the Operator will be entitled to a pro-rated refund of the applicable service fees.



9.3. Notwithstanding any authorisation by the Responsible Party within the meaning of the preceding paragraph, the Operator shall remain fully liable vis-à-vis the Responsible Party for the performance of any such sub-Operator that fails to fulfil its information protection obligations.

9.4. The Operator shall ensure that the sub-Operator is bound by data protection obligations compatible with those of the information processed in terms of this Data Processing Agreement, shall supervise compliance thereof, and must in particular impose on its sub-Operators the obligation to implement appropriate, reasonable technical and organizational measures in such a manner that the processing will meet the requirements of the POPIA.

10. Returning or Destruction of Personal Information

10.1. Upon termination of this Data Processing Agreement, upon the Responsible Party's written request, or upon fulfilment of all purposes agreed in the context of the services whereby no further processing is required, the Operator shall, at the discretion of the Responsible Party, either delete, destroy or return all personal information to the Responsible Party and destroy or return any existing copies.

10.2. The Operator shall notify all third parties supporting its own processing of the personal information of the termination of the Data Processing Agreement and shall ensure that all such third parties shall either destroy the personal information or return the personal information to the Responsible Party, at the discretion of the Responsible Party.

11. Assistance to the Responsible Party

11.1. The Operator shall assist the Responsible Party by appropriate technical and organisational measures, insofar as this is possible, for the fulfilment of the Responsible Party's obligation to respond to requests for exercising the data subject's rights in terms of the POPIA.

11.2. Taking into account the nature of processing and the information available to the Operator, the Operator shall assist the Responsible Party in ensuring compliance with obligations pursuant to Section 4 (Security), as well as other Responsible Party obligations in terms of POPIA that are relevant to the information processing described in Annexure 2, including notifications to the Information Regulator or to Data Subjects.

11.3. The Operator shall make available to the Responsible Party all information necessary to demonstrate compliance with the Responsible Party's obligations and allow for and contribute to audits, including inspections, conducted by the Responsible Party.



12. Duration and Termination

- 12.1. This Data Processing Agreement shall come into effect on the effective date of the [insert agreement type here].
- 12.2. Termination or expiration of this Data Processing Agreement shall not discharge the Operator from its confidentiality obligations in terms of this agreement.
- 12.3. The Operator shall process personal information until the date of expiration or termination of the [Insert type of agreement here], unless instructed otherwise by the Responsible Party, or until such data is returned or destroyed on instruction of the Responsible Party.

13. Miscellaneous

- 13.1. In the event of any inconsistency between the provisions of this Data Processing Agreement and the provisions of the [insert type of agreement here], the provisions of this Data Processing Agreement shall prevail.
- 13.2. This Data Processing Agreement is governed by the laws of [Country]. Any disputes arising from or in connection with this Data Processing Agreement shall be brought exclusively before the competent court of [Jurisdiction].

Signed for and on behalf of the Responsible Party:

Name:

Title:

Date:

Signed for and on behalf of the Operator:

Name:

Title:

Date:



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Annexure 1:

Contact information of the information officer of the Responsible Party

Name and Surname:

Contact number:

Email address:

Contact information of the information officer of the Operator.

Name and Surname:

Contact number:

Email address:

Annexure 2:

Types of personal information that will be processed in the scope of the [insert
_____ agreement type here]:

Categories of Data Subjects:

Nature and purpose of the information processing:



Annexure 3: Security Measures

Operator shall:

1. Ensure that the personal information can be accessed only by authorized personnel for the purposes set forth in Annexure 2 of this Data Processing Agreement;
2. Take all reasonable measures to prevent unauthorized access to the personal information through the use of appropriate physical and logical (passwords) entry controls, securing areas for information processing, and implementing procedures for monitoring the use of information processing facilities;
3. Build in system and audit trails;
4. Use secure passwords, network intrusion detection technology, encryption and authentication technology, secure logon procedures and virus protection;
5. Account for all the risks that are presented by processing, for example from accidental or unlawful destruction, loss, or alteration, unauthorized or unlawful storage, processing, access or disclosure of personal information;
6. Ensure pseudonymisation and/or encryption of personal information, where appropriate;
7. Maintain the ability to ensure the ongoing confidentiality, integrity, availability and resilience of processing systems and services;
8. Maintain the ability to restore the availability and access to personal information in a timely manner in the event of a physical or technical incident;
9. Implement a process for regularly testing, assessing, and evaluating the effectiveness of technical and organisational measures for ensuring the security of the processing of personal information;
10. Monitor compliance on an ongoing basis;
11. Implement measures to identify vulnerabilities with regard to the processing of personal information in systems used to provide services to the Responsible Party;
12. Provide employee and contractor training to ensure ongoing capabilities to carry out the security measures established in policy.



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Annexure 4:

Transfers to sub-Operators in third countries, including outside the Republic of South Africa, without an adequate level of protection for which the Responsible Party has granted its authorisation:

Sub-Operator:

Registration number:

Contact number:

Email Address:

Country:



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Employment contract:

The document you submitted is in order.

Please take note of the following when dealing with Personal Information of Staff members:

The POPI Act also applies to all personal information of staff members. The information below are guidelines how to deal with the personal information of prospective employees, current employees and employees that left your service:

Applications:

- Inform job applicants of the name of the organisation to which they will be providing their information and how it will be used unless this is self-evident.
- Ensure that the name of the organisation appears in all recruitment advertisements.
- Ensure that the organisation is named on the answer phone message which invites potential applicants to leave details.
- Ensure that the organisation is named on the website before personal information is collected on an online application form.
- To the extent that it is not self evident describe in the advertisement the purposes for which the organisation may use personal information, for example, to market the organisation's products and service.
- Recruitment agencies, used on behalf of an employer, should identify themselves and explain how personal information they receive will be used and disclosed unless this is self-evident.
- If you use a recruitment agency check that it identifies itself in any advertisement, and that it informs applicants if the information requested is to be used for any purpose of which the applicant is unlikely to be aware.
- On receiving identifiable particulars of applicants from an agency ensure, as soon as you can, that the applicants are aware of the name of the organisation holding their information.
- Inform the applicant as soon as you can of the employer's identity and of any uses that the employer might make of the information received that are not self-evident.

OR



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- If the employer does not wish to be identified at an early stage in the recruitment process, ensure the agency only sends basic information about applicants. Ensure the employer is identified to individuals whose applications are to be pursued further.

Recruitment Records:

- When advertising for a vacancy, only seek personal information that is relevant to the recruitment decision to be made.
- Determine whether all questions are relevant for all applicants.
- Consider customising application forms where posts justify the collection of more intrusive personal information.
- Remove or amend any questions which require the applicant to provide information extraneous to the recruitment decision.
- Remove questions that are only relevant to people your organisation goes on to employ (e.g. banking details) but are not relevant to unsuccessful applicants.
- Assess who in your organisation retains recruitment records (e.g. are they held centrally, at departmental level or in the line).
- Ensure that no recruitment record is held beyond the statutory period in which a claim arising from the recruitment process may be brought unless there is a clear business reason for exceeding this period.
- Consider sorting any recruitment information that is to be held longer than the period necessary for responding to claims.
- Check who in your organisation retains information from vetting. Ensure that vetting records are destroyed after 6 months. Manual records should be shredded and electronic files permanently deleted from the system.
- Inform those responsible for the destruction of this information that they may keep a record that vetting was carried out, the result and the recruitment decision taken.
- Ensure that application forms or surrounding documentation tell applicants that, should they be unsuccessful, their details will be kept on file unless they specifically request that this should not be the case.



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Keeping General Records:

- Provide each worker with a copy of information that may be subject to change, e.g. personal details such as home address, annually or allow workers to view this on-line.
- Ask workers to check their records for accuracy and ensure any necessary amendments are made to bring records up-to-date.
- Decide whether data that change could easily be viewed electronically and make any changes to systems necessary to enable this.
- Ensure that the system restricts access to individuals' records so that each worker can only get access to his or her own record.
- Make provision to amend any details that are incorrect on individual workers' files.
- Incorporate accuracy, consistency and validity checks into systems.
- Remember that legal responsibility for data protection compliance rests with users rather than suppliers of systems.

Disciplinary Procedures:

- Employers need to assess the company's disciplinary procedures and grievance procedures and decide whether the existing procedures comply with the Act.
- Employers need to ensure that whoever (whether this be another employee of the company or an outsourced company) is responsible for collecting information to be used in these types of proceedings is aware that the proposed legislation grants employees the right to access any personal information and that when they gather the information they have a duty to disclose the purpose for which they are gathering the information.
- Employers must note that they should not use or access information collected for the purposes of disciplinary or dismissal proceedings if such access or use would be incompatible with the purpose(s) that the information was obtained for.

Destruction, use, modification or disclosure of data:

- Ensure that security standards take account of the risks of unauthorised access to, accidental loss of, destruction of, or damage to employment records.



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- Institute a system of secure cabinets, access controls and passwords to ensure that staff can only gain access to employment records where they have a legitimate business need to do so. Check whether computerised systems that retain personal information currently have audit trail capabilities. If they do, check that the audit trail is enabled.
- If they do not, see if it would be possible to create audit trails of who accesses and amends personal information.
- If you have a system with audit trails, ensure that regular checks occur to detect unauthorised or suspicious use. Set up a procedure to investigate patterns of unusual or unauthorised access of personal information.
- Take steps to ensure the reliability of staff that have access to workers' records.
- Ensure that if employment records are taken off-site, e.g. on laptop computers, this is controlled. Make sure only the necessary information is taken and there are security rules for staff to follow.
- Take account of the risks of transmitting confidential worker information by telephone or email.

Employee's Access to Information:

- Establish a system that enables the organisation to recognise an employee's access request and to locate all the information about a worker in order to be able to respond promptly and in any case within 20 calendar days of receiving a request.
- Check the identity of anyone making a subject access request to ensure information is only given to the person entitled to it.
- Provide the worker with a hard copy of the information kept, making clear any codes used and the sources of the information.
- Ensure that the information supplied is intelligible, that it includes sources and that if at all possible it is in hard copy form.
- Make a judgement as to what information it is reasonable to withhold concerning the identities of third parties.
- Inform managers and other relevant people in the organisation of the nature of information that will be released to individuals who make subject access requests.



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- Ensure that on request, promptly and in any event within 20 calendar days, workers are provided with a statement of how any automated decision-making process, to which they are subject, is used, and how it works.
- When purchasing a computerised system ensure that the system enables you to retrieve all the information relating to an individual worker without difficulty.

References Requests:

- Do not provide confidential references about a worker unless you are sure that this is the worker's wish.
- Set out a clear company policy stating who can give corporate references, in what circumstances, and the policy that applies to the granting of access to them.
- Make anyone who is likely to become a referral aware of this policy.
- As part of the policy, include a requirement that all those giving corporate references must be satisfied that the worker wishes the reference to be provided.
- **As part of an Exit Policy, include on file a record of whether the worker wishes references to be provided after he/she has left.**



GENERAL INFORMATION

PAIA Manual:

The purpose of the Promotion of Access to Information Act (PAIA) is to give effect to our Constitutional right to access to information. Consequently, PAIA required juristic persons to disclose, via a PAIA Manual, how interested persons could access certain information. The duty of monitoring and enforcing compliance was initially mandated to the Human Rights Commission, however on 1 July 2021 such duties were conferred on the Office of the Information Regulator. The Regulator has since issued a notice indicating that private companies are exempt from compiling a PAIA Manual until 31 December 2021, unless said private Company has more than 50 employees or has an annual turnover in excess of the prescribed threshold for the particular sector in which it operates.

To view and/or access to a free PAIA manual, please log into your free SEESA Profile account at <https://profile.seesa.co.za/>

Databases: Opt in or Opt out? (in the event that you will do direct marketing in future)

Clients who were loaded onto your database before 1 July 2021, do not have to opt into your database. You therefore did not and do not have to forward them communications advising them that they have the right to opt out and/or unsubscribe from further communications. You could however do so as a courtesy, by forwarding said parties a communication. It is however not mandated that you do so in this instance.

However, any persons added on or after the aforementioned date must explicitly consent thereto and said persons must be advised how you will be processing their personal information. Please therefore ensure that you have updated your Privacy Notice/Policy to meet POPIA requirements.

Please further ensure that all persons on your database are from date hereof afforded an opportunity to opt out of or unsubscribe from receiving such email and sms communication from your Company.

The Information Regulator has released various further Guidance Notes and Guidelines in order to guide and clarify processes and authorizations required by the Responsible Parties in the following instances:



Guidance Note on Prior Authorisation:

Numerous clients have contacted our offices under the impression that POPIA compliance had been delayed to February 2022. Please note that this is not the case. The extension referred to relates one specific section (Section 57) of POPIA only.

Prior authorisation is required by Responsible Parties which:

- a) Processes any *unique identifiers –
 - for a purpose other than the one for which the identifier was specifically intended at collection; and
 - with the aim of linking the information collected together with information processed by another Responsible Party (that is another company); or
- b) Process information on criminal behaviour or on unlawful or objectionable conduct on behalf of third parties; or
- c) Process information for the purposes of credit reporting; or
- d) Transfers special personal information or the personal information of children, to a third party in a foreign country that does not provide an adequate level of protection for the processing of personal information.

* A “unique identifier”: means any identifier that is assigned to a data subject and is used by a responsible party for the purposes of the operations of that responsible party and that uniquely identifies that data subject in relation to that responsible party.

If your business activity includes one or more of the above, FHK Electric (Pty) Ltd must apply for prior authorization, which application must be submitted by 1 February 2022. Please note that the process could take up to 17 weeks. It is therefore imperative that applications are submitted timeously. Businesses which have not received the required authorisation by the aforementioned date will be suspended from processing personal information for the activity requiring authorisation, until such time as they are approved by the Regulator to do so. Please see the Guidance Note on Applications for Prior Authorisation.

Guidance Note on Processing of Special Personal Information:

Insofar as the processing of minor children’s information is concerned, the Guidance Note illustrates the circumstances, processes and documentation which must be completed and submitted to the Information Regulator, by certain Responsible Parties, when requesting authorization.



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Who must apply for authorization?

Any Responsible Party which processes information of minor children where the processing does not fall within the criteria set out in POPIA. The Information Regulator will however only grant such approval if it is satisfied that the processing is in public interest and the Responsible Party has appropriate security measures in place.

Guidance Note on the Conditions for Lawful Processing:

The aforementioned Guidance Note sets out the processes to be followed and the documentation which must be submitted to the Information Regulator by a Responsible Party seeking exception from complying with the conditions of lawful processing.

Guidelines to develop a Code of Conduct:

These guidelines seek to aid industries which processes personal information in an industry specific manner. Examples of industries which have approached the Information Regulator with proposed Codes of Conduct are the Banking Association of South Africa and the Credit Bureau Association.

Copies of the aforementioned Guidance Notes and notices can be obtained from the Information Regulator's website at <https://www.justice.gov.za/infoereg/index.html>

It should be noted that POPIA compliance is an ongoing process as such the Responsible Party must ensure that policies, procedures, documentation and security safeguards are implemented and reviewed where necessary. Where required, we will gladly furnish you with a letter confirming that we assist you with POPIA compliance. Please contact us should you require a copy of the said letter.

