

# Terms of Use

## 1. Definitions and interpretation

### 1.1. *Definitions.* In the agreement

**[principal\_agreement]**, the Vumacam General Terms of Service & Maintenance Agreement, and any accompanying Video Management as a Service agreements signed between the two parties.

**[responsible\_party]**, means the person who determines the purpose ('why') and means ('how') of processing the personal information alone or in conjunction with others, although it is more important that they determine why to process the personal information than how, and those related to it;

**[responsible\_party] data** means data or information (including personal information) that:

- [responsible\_party], its operators (or any third party on [responsible\_party]'s behalf) generates and provides to [responsible\_party]; or
- [operator] generates, processes, or supplies to [responsible\_party] (or its customers) in providing the services;

**information officer** means the chief executive officer of a private body, equivalent officer of a public body, or someone that they have delegated the role to in their stead;

**personnel** means any:

- director, employee, or other person who works (permanently or temporarily) under [responsible\_party]'s supervision; or
- person who renders services to [responsible\_party] for purposes of [operator]'s obligations under this [operator agreement] as their agent, consultant, contractor, or other representative;

**personal information** means any information about a living human being or an existing company, close corporation, or other juristic person, provided that the human being or juristic person is capable of being identified;<sup>2</sup>

**processing** means doing anything with personal information, including gathering it, disclosing it, or combining it with other information.<sup>3</sup>

**reasonably necessary steps or measures** means with respect to a given goal, the technical and organisational efforts that a reasonable person in the position of [responsible\_party] would use to achieve that goal as quickly, effectively, and efficiently as possible;

**related** means natural and juristic persons who are connected to one another in the manner contemplated in sections 2 and 3 of the Companies Act 71 of 2008;

**[operator]**, means the person:

- who processes personal information on behalf of [responsible\_party] in terms of a contract or mandate without being under their direct control;<sup>4</sup> and
- that enters into this [operator agreement] with [responsible\_party];

and those related to it; and

**subcontract** means to engage a subcontractor or anyone else outside of [operator]'s organisation to do work as part of an activity that [operator] does on [responsible\_party]'s behalf.

## 2. Processing limitation

[Operator] may collect, disclose, use, or otherwise process personal information in order to provide certain services to [responsible\_party] as agreed between the parties in writing from time to time. The processing will only be in respect of:

- the personal information or classes of personal information necessary to perform the services; or
- certain personal information or classes of personal information as agreed between the parties in writing from time to time.

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<sup>1</sup> Definition of 'responsible party' in section 1 of POPI.

<sup>2</sup> Definition of 'personal information' in section 1 of POPI.

<sup>3</sup> Definition of 'processing' in section 1 of POPI.

<sup>4</sup> Definition of 'operator' in section 1 of POPI.

### 3. Further processing

[responsible\_party] will not process the personal information for any purpose other than to provide the services under the [principal\_agreement].

### 4. Security measures

[Operator] and [responsible\_party] will establish and maintain appropriate security measures to secure the integrity and confidentiality of any personal information that is processed for, or used by, the [responsible\_party] by satisfying the following requirements:

- **integrity and confidentiality** — [operator] and [responsible\_party] must keep the personal information in their possession secure and confidential by taking appropriate and reasonably necessary steps or measures to stop it from being lost, damaged or destroyed, or unlawfully accessed or processed;<sup>5</sup>
- **reasonable measures** — [operator] and [responsible\_party] must take steps to identify all risks to the personal information, create safeguards for those risks, check that those safeguards are working, and update those safeguards for any new risks accordingly;<sup>6</sup> and
- **applicable information security** — [operator] and [responsible\_party] must comply with any appropriate information security practices that apply generally or to their industry specifically.<sup>7</sup> Information security is the practice of protecting information and information systems from unauthorized access. Any systems used for complying with the appropriate information security practices must be from a reputable organisation which offers suitable guarantees as to the quality and performance of their system.

### 5. Minimum standards

[Operator] and [responsible\_party] will take all reasonably necessary steps or measures to prevent any personal information from being accessed by an unauthorised third party. This means that [operator] and [responsible\_party] will not process any of this information unless they have implemented and maintain security measures that ensure the confidentiality, integrity, and availability of the information in terms of generally accepted information security practices and procedures. Apart from those technical and organisational security measures that [operator] and [responsible\_party] must implement, these measures must include:

- information security management systems;
- physical security;
- access control;
- encryption during transmission across any publicly accessible network;
- security and privacy enhancing technologies;
- awareness, training and appropriate security checks in relation to the personnel;
- incident and response management;
- business continuity;
- audit controls; and
- due diligence.

### 6. Knowledge or authorisation

[Operator] may only process personal information for [responsible\_party] if [responsible\_party] knows about it or [operator] has their permission, unless the operator is required to process it in terms of a separate agreement, or by law or in the course of properly performing their duties.<sup>8</sup> Therefore, [operator] will:

- only process the personal information for the purposes that [responsible\_party] determines and communicates to [operator];
- only collect, disclose, use, or otherwise process personal information in accordance with [responsible\_party]'s lawful and reasonable instructions; and
- otherwise only act in terms of instructions from the responsible party, when it comes to their data processing relationship as operator and responsible party.

Persons are permitted to use the data only to the extent necessary for the purpose. An access request form will need to be completed and sent to us to gain access. Any requests to change personnel's access rights must be

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<sup>5</sup> Section 19(1) of POPI.

<sup>6</sup> Section 19(2) of POPI.

<sup>7</sup> Section 19(3) of POPI.

<sup>8</sup> Section 20(a) of POPI.

submitted in writing.

## 7. Supervision arrangements

The parties will supply one another with reports which indicate that the both of them are complying with obligations regarding processing personal information in terms of this [operator agreement] on an annual basis, or more frequently as either party may request with good cause shown.

## 8. Confidentiality and non-disclosure

[Operator] must treat any personal information they process on behalf of [responsible\_party] as confidential and may not disclose it, unless required to do so by law or in the course of properly performing their duties.<sup>9</sup>

## 9. Confidentiality

[Operator] will keep all personal information it receives confidential and will not (or allow anyone else to) disclose it for any purpose other than for performing their contractual obligations in terms of this [operator agreement] or as otherwise allowed in terms of the law, regardless of whether they received it before or after the effective date of this [operator agreement]. All personal information falls within the definition of confidential information.

### 9.1. *Third party confidentiality.* [Operator] will:

- ensure that any third parties providing services to them involving the personal information enter into confidentiality agreements on terms no less stringent than the terms of this [operator agreement]; and
- provide [responsible\_party] with a list of those third parties and update it on an ongoing basis.

[Operator] must provide those confidentiality agreements to [responsible\_party] on request.

### 9.2. *Grounds for no confidentiality.* Each party will keep the other party's confidential information confidential, unless or until the party receiving it can show that:

- it is already in the public domain (through no fault of theirs);
- they got it lawfully from a third party that was under no obligation to keep it confidential;
- they already knew about it lawfully when they got it (and they are not obliged to keep it confidential); or
- someone disclosed it to them to satisfy a court order, a government or regulatory notice, to comply with a law, or for another similar reason;

Provided that they will:

- only disclose the portion of the confidential information which they are required to disclose; and
- do their best to keep the confidential information confidential.

## 10. Limitation of liability

### 10.1. *Direct damages limited.* Each party shall only be liable to the other for any direct damages for anything giving rise to any legal action up to the amount which the aggrieved party may show it has suffered as a result of the conduct of the breaching party.

### 10.2. *Indirect damages excluded.* Neither party shall be liable for any other damages or losses that the either party may cause the other.

### 10.3. *Exclusions.* The limitation contained in this clause will not apply to:

- any breach by a party of the other party's proprietary or confidential information or intellectual property; or
- damages arising from a party's gross negligence or willful misconduct.

### 10.4. *[Operator]'s default.* [responsible\_party] is not liable for any damage or loss that [operator]'s breach, misrepresentation, or mistake causes to their confidential information and intellectual property.

### 10.5. *Other goods or services.* [responsible\_party] is not liable for any other deliverable, including website, goods, or service provided by any third party.

### 10.6. *Indemnity.* [responsible\_party] agrees to indemnify, defend and hold [operator] (and their personnel) harmless against any and all:

- loss of or damage to any property or injury to or death of any person; and
- loss, damage (including attorneys' fees on an attorney and own client basis), costs and expenses that [operator] may suffer or incur arising directly or indirectly from: (i) any wilful misconduct or fraud by [responsible\_party] or [responsible\_party]'s personnel; or (ii) a breach by [responsible\_party] of [operator]'s proprietary or confidential information, or intellectual property.

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<sup>9</sup> Section 20(b) of POPI.

## 11. Notification

The parties will:

- notify the other party's information officer immediately of an incident, where there are reasonable grounds to believe that an unauthorised person has accessed or acquired personal information processed by [operator] for [responsible\_party];
- do so as soon as reasonably possible if it has reasonable grounds to believe that the personal information it processes is inaccurate, false, or out of date;
- comply with the other party's breach policy (updated on an ongoing basis and available from each party on request in electronic form or via access to the Intranet website);
- provide the other party with additional information about the reasonable grounds specifically or the incident in general on request; and
- once a party has notified the other party of an incident, the parties will be in regular contact with each other to discuss, provide detail on, and offer assistance with resolving the incident.

## 12. Access to information

[Operator] will help [responsible\_party] comply with any valid requests it receives for access to information. [Operator] will notify [responsible\_party] if [operator] receives any requests for access to personal information and follow [responsible\_party]'s related instructions. The operator will only disclose personal information in accordance with instructions from the responsible party, and the responsible party shall comply with any procedural requirements, including but not limited to the completion of formal request forms, where prescribed by the [Operator] from time to time.

## 13. Personnel and contracts

[Operator] will bind its personnel and contractors with appropriate confidentiality and non-use obligations similar to the provisions of this [operator agreement] in relation to any personal information.

## 14. Foreign laws

If [responsible\_party] is not domiciled in South Africa, [responsible\_party] will comply with any laws that protect personal information in the territory in which [responsible\_party] is domiciled.

## 15. Compliance with laws

[Operator] and [responsible\_party] will comply with all applicable laws that affect VumaCam's data, including data protection, retention, and destruction. This means that they must act in accordance with all laws that are:

- **relevant** to them, because they apply to people and organisations in the country where they reside or are registered;
- **appropriate** to them, because they apply to the industry in which they operate, the conduct in which they participate, or the circumstances in which they find themselves.

## 16. Compliance with policies

[responsible\_party] will comply (and ensure that its personnel comply) with all [Operator]'s policies or procedures, which are incorporated into this [operator agreement] by this reference. These policies include our:

- Privacy Policy;

They are updated on an ongoing basis and available from [operator] on request in electronic form or via access to the Intranet website.

## 17. Ownership of personal information

[responsible\_party] and or its data subjects will own all personal information that is processed related to this [operator agreement].

## 18. Disaster recovery

Both Parties will maintain procedures for disaster recovery. If either or both parties do not have any procedures for disaster recovery at the commencement of this [operator agreement], they must draft or otherwise obtain such procedures within six months of the commencement of this [operator agreement]. The parties must provide them to one another as soon as reasonably possible after:

- the commencement of this [operator agreement], where they exist already; or
- before the end of the six month period, where they do not exist yet.

the parties may audit these procedures on reasonable notice to the other

#### 19. Trans-border data flows

Trans-border data flows include any situations where data crosses an international border, such as cloud computing or outsourced data processing.

[Operator] may only transfer any [responsible\_party] data to the countries specified on the cover page of this [operator agreement] or across a country border with [responsible\_party]'s prior written consent. [Operator] will ensure that the transfer of any personal information across a country border complies with applicable laws. If [operator] wishes to transfer personal information to any country with worse data protection laws than South Africa, the must obtain [responsible\_party]'s prior written permission to enter into the necessary binding agreement with the recipient that provides for an adequate level of protection.

#### 20. Subcontracting

Subcontracting involves engaging a subcontractor outside your organisation to do work as part of providing the services.

**Restricted.** [Operator] may only subcontract its rights or obligations relating to the processing of personal information for [responsible\_party] with the prior written consent of [responsible\_party]. If it does, it will conclude a written contract with the sub-contractor, which imposes the same obligations in relation to the processing on the sub-contractor as are imposed on [operator] under this [operator agreement].

**Liability.** If the sub-contractor fails to fulfil its obligations under the sub-contractor contract, [operator] will remain fully liable to [responsible\_party] for the fulfilment of its obligations under this [operator agreement].

**Enforceability.** Any sub-contract agreement must ensure that the [operator] can enforce the terms of the sub-contract agreement against the sub-contractor if there is a breach of that sub-contracting agreement.

#### 21. Return

At the end of this [operator agreement], each party will give back all personal information that it has to the other party, in the manner that the requesting party instructs. If the requesting party agrees, the other party may destroy the personal information it has in a manner that the requesting party agrees to instead.

#### 22. Insurance

[responsible\_party] will, at its cost, take out and maintain adequate insurance cover to meet any liability under this [operator agreement] with a reputable insurance company to be approved by [Operator] in writing. If [operator] asks for it, [responsible\_party] will produce proof:

- that the insurance policy exists;
- that it is paying all premiums; and
- that the insurance policy is in full force and effect

[responsible\_party] will remain liable to [Operator] for any loss or damage caused to [Operator] as a result of [responsible\_party] providing the goods or services, or a breach of any warranties, which is not recoverable from the insurer or which [operator] suffers or incurs as a result of no or insufficient insurance cover for any reason. The insurance cover will prohibit the substitution of another party without the written consent of the insurer and [operator].

#### 23. Material breach

If [responsible\_party] breaches this [operator agreement], [operator] may regard it as a material breach of the [principal\_agreement\_short].

#### 24. Warranties

[responsible\_party] warrants that it will comply with all its obligations under this [operator agreement], specifically all obligations pertaining to the use, storage, protection and dissemination of personal information.