

DATA PROCESSING AGREEMENT I.T.O THE POPI ACT

Document Approval

	Name	Designation	Date
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This Data Processing Agreement entered into between:

Quality Filtration Systems (Pty) Ltd

Company Registration Number: 2013/067840/07

Conducting Business Primarily at
Quality Filtration Systems Office & Workshop
60 de Kock Street,
Strand, 7140

(Hereinafter referred to as “QFS”)

and

(Business Name)

Company Registration:

(Company Reg No.)

Conducting Business Primarily at

(Hereinafter referred to as the “Interested Party”)

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1. DEFINITIONS

- 1.1. **“The / This Agreement”** means this Agreement together with any annexures and/or addendums thereto.
- 1.2. **“The Parties”** means the signatories to this Agreement.
- 1.3. **“The Client”** means any party engaging the services of Quality Filtration Systems in terms of this Agreement.
- 1.4. **“The Business” or “the Business Owner” or “the Service Provider”** means Quality Filtration Systems.
- 1.5. **“Service” or “Services”** shall mean any task(s) that are executable at the client’s instance for a predetermined fee.
- 1.6. **“Product” or “Products”** shall mean any solution offering, physical or virtual in nature, that are offered to the client for a predetermined fee.
- 1.7. **“Quality Filtration Systems”** means Quality Filtration Systems (Pty) Ltd, registered in terms of the Companies Act of South Africa, with company registration number 2013/067840/07. Also referred to as the *“Data Processor”*.
- 1.8. **“Interested Party”** means the Client, whose data privacy interests are of significance to this Agreement. Also referred to as the *“Data Custodian”* and the *“Client”*, interchangeably.
- 1.9. **“PoPI”** means the Protection of Personal Information Act, Act 4 of 2013, and as modified from time to time.
- 1.10. **“CPA”** means the Consumer Protection Act, Act 68 of 2008, and as revised from time to time.
- 1.11. **“PAIA”** means the Promotion of Access to Information Act, Act 2 of 2000, and as revised from time to time.
- 1.12. **“Laws”** shall include any applicable legislation, by-laws, provincial statutes, regulations, guidelines, and other relevant pronouncements of the Republic of South Africa.
- 1.13. **“Data Subject”** means an entity, including natural persons and juristic persons, to whom personal information relates.
- 1.14. **“Data Custodian”** means an entity, including natural persons and juristic persons, whom maintains the liability to aggregate personally identifiable information about a data subject, responsibly under the provisions of the PoPI Act.
- 1.15. **“Data Processor”** means an entity, including natural persons and juristic persons, whom aggregates personally identifiable information about a data subject, on behalf of the data custodian, responsible under the provisions of the PoPI Act.
- 1.16. **“Personally Identifiable Information”** means information relating to a data subject, as defined within the provisions of the PoPI Act.
- 1.17. **“Breachable Event / Events”** means an event in time where access to systems and/or Personally Identifiable Information are gained by unauthorised third parties.
- 1.18. Any reference to gender includes the other gender.
- 1.19. Any reference to the singular includes the plural, and *vice versa*, unless specifically stated otherwise.
- 1.20. Any reference to natural persons includes legal and juristic persons, and *vice versa*.
- 1.21. The clause headings in the Agreement have been inserted for convenience only and shall not be taken into account in interpreting the Agreement.
- 1.22. Words and expressions defined in any clause of the Agreement shall, for the purpose of the clause in question, bear the meaning assigned to such words and expressions in that clause.

2. PREAMBLE & RECORDAL

- 2.1. **WHEREAS** the Client has pre-existing services engagements, and / or the intention to have service engagements, with QFS, in order to utilize their services defined in this agreement and other existing agreements, and;
- 2.2. **WHEREAS** QFS wishes to ensure a high quality of service for the client, and endeavours to fulfil all contractual obligations to the client in return for the agreed upon fees quoted by QFS to, and accepted by the Client, from time to time, and;
- 2.3. **WHEREAS** the Parties wish to ensure that the necessary understanding is undertaken between each of the Parties as to their roles and responsibilities for the responsible and safe aggregation of Personally Identifiable Information under the custodianship of the Data Custodian, and;
- 2.4. **WHEREAS** the parties wish to record their agreement in writing.

NOW THEREFORE IT IS AGREED AS FOLLOWS:

3. RELATIONSHIP

- 3.1. The Parties contract with each other as Mandant (the Client) and Mandatory (QFS). Nothing contained in this agreement shall be construed as implying that QFS is engaged as an agent on behalf of the Client, or as an employee of the Client, or *vice versa*.

4. DURATION OF AGREEMENT

- 4.1. This Agreement will subsist for a period of five years after the termination of the last existing Service or Product Agreement between the Parties, whereafter the liabilities contained within this Agreement shall fully transfer to the Client, or where QFS is acquitted of its responsibilities and/or liabilities under the provisions of the PoPI Act, by a judicial ruling.
- 4.2. This Agreement shall automatically renew for the period of which Service and / or Product Agreements are established or renew between the Mandant and Mandatory, concluding only in terms of the provisions of 4.1.
- 4.3. Modifications to pre-existing Agreements, and new Agreements undertaken between the Parties shall not have an effect on this Agreement, except in the instance of entering into Agreements, or terminating Agreements, whereby the provisions of 4.1. shall govern the duration of this Agreement.

5. SCOPE OF AGREEMENT

- 5.1. This Agreement governs the roles and responsibilities of each Party, and commitments to each other, in terms of the provisions of the PoPI Act.
- 5.2. Within this Agreement, QFS undertakes to fulfil the role of a Data Processor, baring the best interests of the Client and the Interested Party, at all times and in good faith.
- 5.3. The Client undertakes to ensure that a similar reciprocal Data Processing Agreement is established between the Client and its other Service Providers and Agents, where Agreements previously engaged in, or is planned to be engaged in, overlaps or provides a similar offering to that of the pre-existing or future planned Agreements between QFS and the Client.

5.4. The Business undertakes to provide all required actions listed in this Agreement, subject to the terms, conditions and obligations imposed by this Agreement.

5.5. The Business shall inform the Client timeously of any happenings which may have an adverse effect on the scheduled and / or agreed upon provisions stipulated within this Agreement, or which may potentially place the Client in a matter of legal breach of its obligations imposed by various Laws. This undertaking shall be reciprocal.

5.6. The Parties undertake that this Agreement's undertakings and obligations shall be extended to each Party's employees, members, agents and sub-contractors.

6. THE BUSINESS' OBLIGATIONS

6.1. The Business shall ensure that it maintains a high degree of care and habit of exercising its legal obligations under the provisions of the PoPI Act, in the role undertaken as the Data Processor, for the Client and the Interested Party. This shall include:

6.1.1. Ensuring that Personally Identifiable Information owned by, or collected by the Data Custodian, and where such information is processed or stored on systems and solutions provided by the Business, are of a secure nature not easily breachable.

6.1.2. Ensuring that Personally Identifiable Information collected by, processed and stored, on behalf of the Client, by the Business, is safeguarded to the best abilities of the Business, so as to not expose such Personally Identifiable Information to breachable events.

6.2. The Business shall ensure that its own systems employed, and methodologies adopted, for the execution of various Agreements between the Business and the Data Custodian, are aligned with the best practices of the PoPI Act.

6.3. The Business shall not expose, accidentally or purposefully, information owned or maintained by the Data Custodian, or information stored or processed by the Business on behalf of the Data Custodian, without express consent of the Client, and/or where consent by Data Subjects permitting the Data Custodian to collect, store and maintain its Personally Identifiable Information, exists, to third parties.

6.4. The Business shall ensure that it establishes and maintains Data Processing Agreements with its own Employees, Agents, Service Provider and Sub-Contractors, or ensure that Data Processing Agreements exist between the Data Custodian and elected Third Parties for which consent was provided to the business in terms of 6.3.

6.5. The Business shall not provide or cede access to its own systems, systems owned or leased by the Data Custodian, or systems of third parties, which are employed to collect, store, process and/or maintain Personally Identifiable Information, without the express written consent of the Client, and where such access is legally transferrable under the provisions of the PoPI Act.

6.6. The Business shall ensure that events in which a breach is identified, is timeously reported to the Data Custodian, and the relevant Authorities, including the Information Regulator, in the manners prescribed by the PoPI Act. In line with this, the Business shall provide its continued support and assistance to the relevant Authorities where it is required or mandated.

6.7. The Business shall ensure that it reports potentially breachable events identified to the Data Custodian, and assist the Data Custodian where mandated, to remedy the potentially breachable event.

6.8. The Business shall destroy, in a responsible manner, Personally Identifiable Information, upon instruction of the Data Custodian, and provide proof thereof.

6.9. The Business shall not store or transfer Personally Identifiable Information owned by, stored or maintained on behalf of the Data Custodian, with third parties which are based outside of the legal boundaries of the Republic of South Africa, except:

- 6.9.1. Where the third party conforms to the provisions of the PoPI Act, or its local Data Protection Regulations including but not limited to the GDPR, and / or HIPAA, or maintains certification of conformance with the provisions of ISO 27001, and;
- 6.9.2. Where a Transborder Information Flow Agreement is established between the Business and the elected third party, and;
- 6.9.3. Where a Data Processing Agreement is established between the Business and the elected third party.

6.10. The Business shall not, accidentally or purposefully, expose the Data Custodian to legal risk, whilst executing its legally obligated duties as the Data Processor.

6.11. The Business takes a common-sense approach to executing its duties defined within this Section 6, and reserves its rights as far as are necessary to attend to matters as soon as is possible.

6.12. The Business shall ensure that it is compliant with any and all relevant Laws of the Republic of South Africa as defined in clause 1.

7. THE DATA CUSTODIAN'S OBLIGATIONS

7.1. The Data Custodian shall ensure that it maintains a high degree of care and habit of exercising its legal obligations under the provisions of the PoPI Act, in the role undertaken, for the Client and the Interested Party, protecting the interest of the Business simultaneously. This shall include:

- 7.1.1. Ensuring that Personally Identifiable Information owned by, or collected by the Data Custodian, and where such information is processed or stored on systems and solutions provided by the Business, are of a secure nature not easily breachable.
- 7.1.2. Ensuring that Personally Identifiable Information collected by, processed and stored, on behalf of the Data Custodian, by the Business, is safeguarded to the best abilities of the Data Custodian, so as to not expose such Personally Identifiable Information to breachable events.

7.2. The Data Custodian shall ensure that its own systems employed, and methodologies adopted, for the execution of various Agreements between the Business and the Data Custodian, are aligned with the best practices of the PoPI Act.

7.3. The Data Custodian shall not expose, accidentally or purposefully, information owned or maintained by itself, or information stored or processed by the Business on behalf of the Data Custodian, unless consent by Data Subjects permitting the Data Custodian to collect, store, transfer and maintain its Personally Identifiable Information, exists, to third parties, and with the notification to the Business of intent to expose such, taking place which may implicate the Business in a legal manner.

7.4. The Data Custodian shall ensure that it establishes and maintains Data Processing Agreements with its own Employees, Agents, Service Provider and Sub-Contractors, or ensure that Data Processing Agreements exist between the Data Custodian and elected Third Parties for which consent was provided to the business in terms of 7.3.

7.5. The Data Custodian shall not provide or cede access to systems it owns or leases, systems owned or leased by the Business, or systems of third parties, which are employed to collect, store, process and/or maintain Personally Identifiable Information, without notifying the Business of the

intent to expose such, potentially implicating the Business in a legal manner, and where such access is legally transferrable under the provisions of the PoPI Act.

7.6. The Data Custodian shall ensure that events in which a breach is identified, is timeously reported to the Business where the Business may be implicated in a legal manner, and the relevant Authorities, including the Information Regulator, in the manners prescribed by the PoPI Act. In line with this, the Data Custodian shall provide its continued support and assistance to the relevant Authorities where it is required or mandated.

7.7. The Data Custodian shall ensure that it reports potentially breachable events identified to the Business where the Business may be implicated in a legal manner, and assist the Business where mandated, to remedy the potentially breachable event.

7.8. The Data Custodian shall not, accidentally or purposefully, expose the Business to legal risk, whilst executing its legally obligated duties as the Data Custodian.

7.9. The Data Custodian shall be prohibited from accessing any QFS systems or portals which do not pertain to the activities of the Data Custodian.

8. INDEMNITY

8.1. The Data Custodian indemnifies the Business for breachable events, caused intentionally or unintentionally under the care of the Data Custodian and its elected third parties.

8.2. The Data Custodian indemnifies the Business for breachable events, caused by unauthorised parties in a manner which is not reasonably under the control of the Business.

9. CONFIDENTIALITY AND NON-DISCLOSURE

9.1. The Data Custodian agrees to maintain strict confidentiality and not to disclose or cause to be disclosed any information relating to any Personally Identifiable Information, financial, operational, marketing, personnel and human resource practices, online portals, policies, strategies and research, or current planned projects relating the QFS business or brand.

9.2. The Client recognises that the trade secrets and proprietary business methods of QFS were conceived, developed and perfected by QFS and, as such, constitute a protectable intellectual property interest on the part of QFS.

9.3. Any action(s) or omission(s) on the part of the Data Custodian contrary to the confidentiality provisions contemplated in this paragraph shall constitute a material breach of this Agreement.

9.4. QFS agrees to maintain strict confidentiality with respect to all Personally Identifiable Information, financial, operational, marketing, personnel, and/or other related information pertaining to or belonging to the Data Custodian; and agrees further not to share or to disclose any such information with or to any party without prior written consent of the Data Custodian.

9.5. Any action(s) or omission(s) on the part of QFS contrary to the confidentiality provisions contemplated in this paragraph shall constitute a material breach of this Agreement.

9.6. The parties agree and acknowledge that their rights and obligations concerning confidentiality will survive the termination of this agreement irrespective of the reason for its termination.

10. TERMINATION OF AGREEMENT

10.1. This Agreement shall only terminate in terms of the provisions of 4.1, or where the Agreement in its entirety is annulled by means of a legal or judicial ruling.

10.2. The nature of this Agreement is governed by the PoPI Act, and does not permit the early termination of the Agreement, except where provisions of 4.1. is met, and it can be proven that no

further Personally Identifiable Information is collected, stored or maintained by the Business on behalf of the Data Custodian.

10.3. Should the provisions of 10.1 and/or 10.2 be met, either party may elect to terminate this agreement upon one calendar months' notice or on such other notice as may be agreed to between the parties.

10.4. Should the Client submit their written notice in terms the above paragraph, QFS shall enjoy a discretion as to whether to give effect to the termination at any time before the period of one calendar month expires.

10.5. Upon termination of this Agreement at the Client's instance, the Client shall relinquish control of all materials pertaining to QFS, moveable and immovable, which it controls in terms of this Agreement. The relinquishing of the above is deemed billable for the Client's cost. The requirement may be waived by written agreement between the parties.

10.6. The Business shall deliver all materials to the Data Custodian within 30 working days, after which the personally identifiable information becomes the sole responsibility of the Data Custodian and the Business will not take any responsibility for anything stemming from such information. The Business will destroy all copies of the information in its possession after delivering to the client in terms of the relevant legislation.

11. FORCE MAJEURE

11.1. Force Majeure shall include natural occurrences, political occurrences, pandemics, financial crises, acts of God, war, hostilities, revolution, riots, and acts of terrorism.

11.2. Both parties agree that neither shall be in breach of this agreement nor liable to the other for any delay and/or failure in performance of performance of any obligations, if the failure is the result of objectively unforeseen circumstances, beyond the control of the offending party.

11.3. In such instance, the non-performing party shall inform the other party in writing of how and why they are prevented from performing in terms of this agreement, within 48 hours of the unforeseen circumstances becoming objectively apparent.

11.4. It is the individual responsibility of each party to avoid or minimize any delay and/or failure and to resume performance in terms of this agreement as soon as reasonably possible.

12. BREACH

12.1. If either party ("the defaulting party") fails to comply with any obligation which arises in terms of this Agreement, and persists in such failure for a period of 7 (seven) days after receipt of written notice given by the other party ("the aggrieved party") calling upon the defaulting party to remedy such default, then the aggrieved party may, without prejudice to any other rights which it may have in terms hereof or at law:

12.1.1. Claim specific performance, or;

12.1.2. Report the matter to the Information Regulator, or;

12.1.3. Claim damages.

12.2. The aggrieved party may enforce, without prejudice to itself, any other remedies available to it in law, including clauses 12.1.1, 12.1.2 and 12.1.3.

13. GOVERNING LAW AND JURISDICTION

13.1. The rights of both parties to this agreement are governed in terms of the Laws of the Republic of South Africa as defined in clause 1.

13.2. The party raising a dispute concerning or arising from this Agreement shall communicate to the other party in writing the nature of the dispute and what requirements must be met for it to be resolved.

13.3. The dispute reference in clause 13.2., if unresolved by the parties, must be referred for conciliation, failing which, mediation, failing which, arbitration. Should these avenues fail, the dispute shall then proceed to litigation or referral to the Information Regulator.

13.4. Both parties irrevocably submit to the Jurisdiction of the Magistrates' Court of South Africa.

14. LEGAL COSTS

14.1. The Data Custodian shall be liable for all legal costs incurred by the Business with regard to the enforcement of this Agreement by the Business on an attorney and own client scale.

15. ENTIRE AGREEMENT

15.1. This agreement constitutes the whole agreement between the parties to this agreement. The parties hereby confirm that this agreement replaces any other agreement which exists or may have existed between them in any form whatsoever with regard to the subject matter dealt with herein.

15.2. No concession, allowance or postponement which the parties may grant each other with regard to claims and/or disputes shall in any way restrict any of the parties to exercise their rights or mean the cession or restriction of any of their respective rights.

15.3. An amendment or addition to this agreement shall only be of force and effect if it is in writing, signed by both parties and annexed to this agreement as an addendum.

15.4. The heading to and numbering of the paragraphs of these conditions are used for the purpose of convenience only and shall not be taken into consideration in interpreting the meaning and effect of any paragraph.

16. TRANSFERABILITY, ASSIGNMENT, CESSION & DELEGATION

16.1. Neither party shall be entitled to assign, cede or delegate their rights and obligations under this agreement to any third party without the prior written consent of the other party.

16.2. Should the Client wish to sell or otherwise alienate their business interest(s) to a third party, QFS shall have the right to be notified within 48 hours in order to assess its options.

17. NON-VARIATION

17.1. In order for any variation of this agreement to be valid it shall be reduced to writing, signed by both parties and annexed to this agreement as an addendum.

17.2. Any other purported variation whether made verbally or otherwise shall be of no force or effect.

17.3. Any indulgences granted to any party by QFS must not be interpreted to form part of the main agreement.

18. DOMICILIUM AND NOTICES

18.1. The parties choose as their respective *domicilium citandi et executandi* (“*Domicilium*”) for all purposes under this agreement, whether in respect of court process, notices or other documents or communications of whatsoever nature, as follows:

18.1.1. Quality Filtration Systems
60 de Kock Street,
Strand, 7140

18.1.2. Interested Party:

18.2. Any party may, by written notice to the other party, change the physical address chosen.

18.3. Any notice sent or any payment made by either party to the other party:

18.3.1. Delivered by hand to a representative of the business during ordinary business hours at its *domicilium citandi et executandi* shall be deemed to have been received on the day of delivery, or;

18.3.2. Transmitted by email to the email address of the other party during ordinary business hours will be deemed to have been received by such other party on the date of emailing, if after hours, on the following day.

18.3.3. Sent by prepaid registered post in a correctly addressed envelope to it at its *domicilium* shall be deemed to have been received on the seventh business day after the date of posting.

THUS DONE AND SIGNED AT _____ ON THIS _____ DAY OF _____ 20____.

_____ (on behalf of QFS, being duly authorised thereto)

_____ (Witness)

THUS DONE AND SIGNED AT _____ ON THIS _____ DAY OF _____ 20____.

_____ (on behalf of Interested Party, being duly authorised thereto)

_____ (Witness)