

Respiratory Care Africa

Reg No: 1998/17606 | VAT No: 4940179676 | www.rca.co.za

SUB-OPERATOR AGREEMENT

between

Registration number:
(Hereinafter referred to as “the Company”)
and

Registration number:
(Hereinafter referred to as the “Operator”)
And

Registration number:
(Hereinafter referred to as the “Sub-Operator”)

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1. INTRODUCTION

1.1 In terms of section 20 of POPIA, where a Responsible Party asks other parties (hereinafter referred to as "an Operator") to process Personal Information or further process Personal Information belonging to its Data Subjects on its behalf, whether in South Africa or outside South Africa, then any such processing must be subject to a written agreement concluded between the parties which contractually obliges the Operator to:

1.1.1 comply with the provisions of POPIA and the POPIA processing conditions when processing such Personal Information on behalf of the Company;

1.1.2 only process the Personal Information in accordance with the mandate or written instruction received from the Responsible Party and/or in accordance with the provisions set out under Annexure "A", "B" and "C".

1.1.3 keep all the Personal Information on behalf of the Responsible Party and/or belonging to the Responsible Party's Data Subjects, confidential;

1.1.4 put measures in place to keep all such Personal Information held by the Operator, and processed on behalf of the Responsible Party, confidential, safe and secure from misuse, abuse and/or unauthorised use or access.

1.2 Furthermore, where any Operator is desirous of appointing a sub-Operator to process any Personal Information which belongs to the Responsible Party's Data Subjects on its behalf, any such processing must be subject to a written agreement concluded between the Responsible Party, the Operator and the sub-Operator which contractually obliges the sub-Operator to comply with the requirements set out under clause 1.1.1 - 1.1.4 above.

1.3 The Operator is desirous of providing the sub-Operator with certain Personal Information which pertains to certain of the Company's Data Subjects, for processing on its behalf, and the Company has agreed that this may take place subject to the terms and conditions set out under this sub-Operator Agreement.

2. DEFINITIONS

2.1 The parties must take note of the following definitions, which will be used throughout this sub-Operator Agreement, unless the context indicates a contrary meaning:

2.1.1 **"Data Subject(s)"** means the person(s) who own(s) the Personal Information which is to be processed by the sub-Operator on behalf of Operator in terms of this sub-Operator Agreement;

2.1.2 **"The Company"** shall meanwho has mandated the Operator to process certain Personal Information belonging to Data Subjects on its behalf, in accordance with the terms of an Operator Agreement and who has in turn agreed that the Operator may sub-contract certain of its processing duties and obligations to the sub-Operator;

2.1.3 **"Operator"** means (full name) situated at..... who has been mandated by the Company in terms of the Operator Agreement to processes Personal Information belonging to certain Data Subject(s) on its behalf;

2.1.4

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2.1.4 **"Operator Agreement"** means the Operator Agreement concluded between the Company and the Operator;

2.1.5 **"person"** means an identifiable, living, natural person, or an identifiable, existing juristic person;

2.1.6 **"Personal Information"** means personal information relating to any identifiable, living, natural person, and an identifiable, existing juristic person, including, but not limited to:

- **in the case of an individual:** o name, address, contact details, date of birth, place of birth, identity number, passport number, bank details, details about your employment, tax number and financial information;
 - o vehicle registration;
 - o dietary preferences;
 - o financial history;
 - o information about next of kin and/or dependants;
 - o information relating to education or employment history; and
- **Special Personal Information** including race, gender, pregnancy, national, ethnic or social origin, colour, physical or mental health, disability, criminal history, including offences committed or alleged to have been committed, membership of a trade union and biometric information, such as images, fingerprints and voiceprints, blood typing, fingerprinting, DNA analysis, retinal scanning and voice recognition;
- **in the case of a juristic person:** o name, address, contact details, registration details, financials and related history, B-BBEE score card, registered address, description of operations, bank details, details about employees, business partners, customers, tax number, VAT number and other financial information; and
- _correspondence sent by the person that is implicitly or explicitly of a private or confidential nature or further correspondence that would reveal the contents of the original correspondence;
- _the views or opinions of another individual about the person; and
- _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.

2.1.7 **"process or processing"** means any operation or activity or any set of operations, whether or not by automatic means, performed by the sub-Operator concerning a Data Subject's Personal Information, including:

- (a) the collection, receipt, recording, organization, 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;

2.1.8 **"record"** means any recorded information:

- (a) regardless of form or medium, including any of the following:
 - (i) writing on any material;

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

(iii) label, 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;

(c) whether or not it was created by a Responsible Party; and

(d) regardless of when it came into existence.

2.1.9 "sub-Operator" means (full name) situated at....., who has been appointed by the Operator, on approval by the Company, to process certain Personal Information on its behalf in terms of this sub-Operator Agreement;

2.1.10 "sub-Operator Agreement" means this sub-Operator Agreement.

3. MANDATE TO PROCESS

The Operator hereby grants to the sub-Operator a mandate to process certain Personal Information, which mandate is set out under Annexure "A" attached hereto, on its behalf for the purpose and period set out under Annexure "A" and the Company agrees that this sub-processing may take place on the terms set out under this sub-Operating Agreement.

4. OBLIGATIONS OF THE SUB-OPERATOR

4.1 The sub-Operator expressly warrants and undertakes that it will:

4.1.1 process the Personal Information strictly in accordance with its mandate set out under the sub-Operator Agreement read together with Annexures "A", "B" and "C" and any specific instructions provided to it the Company or the Operator from time to time;

4.1.2 not use the Personal Information for any other purpose, save for the purpose set out under this sub-Operator Agreement and "Annexure A";

4.1.3 only disclose, transfer and/or hand over the Personal Information to those person(s) identified under Annexure A;

4.1.4 save for the provisions housed under clause 4.1.3, treat the Personal Information as confidential and not disclose the Personal Information to any other person unless required by law and only once it has provided the Company with adequate warning of this requirement to disclose and the related details thereof, including the identity of the person who is to receive the Personal Information, the reason for the disclosure and confirmation that the person to whom the Personal Information is to be disclosed to, has signed the POPIA onwards transmission / receipt notice attached hereto marked Annexure "B";

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4.1.5 has, and will continue to have in place, appropriate technical and organizational measures to protect and safeguard the Personal Information against accidental or unlawful destruction or accidental loss, alteration, unauthorised disclosure or access and which, in addition, provides a level of security appropriate to the risk represented by the processing and the nature of the Personal Information to be protected and which safeguards comply with the requirements set out under POPIA, which measures are in line with the requirements described under the attached the Company Security Service Level Requirements, marked Annexure "C";

4.1.6 notify the Operator and the Company immediately where it has reasonable grounds to believe that the Personal Information which has been provided to it, including any Personal Information which it has processed, has been lost, destroyed, or accessed or acquired by any unauthorised person;

4.1.7 process the Personal Information strictly in accordance with POPIA and the POPIA processing conditions;

4.1.8 not use the Personal Information for any direct marketing or advertising, research or statistical purposes, unless expressly authorised to do as described under Annexure "A", read together with the Agreement, and when conducting such activity ensure that this is done strictly in compliance with the requirements of POPIA and its regulations especially those applicable to direct marketing detailed under section 69;

4.1.9 not treat the Personal Information as its own, it expressly acknowledging that it has been tasked with processing the Personal Information in its capacity as the Company's Operator / sub - Operator and agent, and that ownership of all the records housing the Personal Information and any records comprising such Personal Information pertaining to the Data Subject, will always remain with the Company;

4.1.10 not sell, alienate or otherwise part with the Personal Information or any of the records housing the Personal Information;

4.1.11 where it is allowed to transfer the Personal Information onwards as per Annexure "A" to any third party, for the purposes of performing its mandate, ensure that such party concludes a written onwards transfer agreement with it and the Company which compels the third party receiving the Personal Information to respect and maintain the confidentiality and security of the Personal Information, and which shall be concluded before the Personal Information is transferred.

4.1.12 where it is allowed to transfer the Personal Information onwards to another sub -Operator for processing, for the purposes of performing its mandate, ensure that such party concludes a written sub-Operator Agreement with it, the Operator, and the Company which compels the sub- Operator receiving the Personal Information to respect and maintain the confidentiality and security of the Personal Information, which sub-Operator Agreement shall be concluded before the Personal Information is transferred.

4.1.13 ensure that any person acting under the authority of the sub-Operator, including any employee or sub-operator, shall be obligated to process the Personal Information only on instructions from the sub-Operator and strictly in accordance with this sub-Operator Agreement.

4.2 The sub-Operator warrants that it has the legal authority to give the above-mentioned warranties and fulfil the undertakings set out in this sub-Operator Agreement.

4.3 The Company will, in order to ascertain compliance with the warranties and undertakings housed under this sub-Operator Agreement, have the right on reasonable notice and during regular business hours, to view and/or audit, either by itself or through

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an independent agent, the sub-Operator's (and where applicable any sub-Operator's) facilities, files, and any other data processing documentation needed for the required review, audit and/or independent or impartial inspection and the sub-Operator undertakes to provide all necessary assistance which may be needed to give effect to this right.

5. LIABILITY OF THE OPERATOR AND THIRD-PARTY RIGHTS

5.1 In the event of the sub-Operator, the Operator or their respective employees or agents breaching any of the warranties and undertakings housed under this sub-Operator agreement, or failing to comply with any of the provisions of POPIA and/or the POPIA Personal Information conditions or principles, then in such an event, the sub-Operator shall be liable for all and any damages it may have caused in consequence of said breach or non-compliance, including patrimonial, non-patrimonial and punitive damages suffered by the Company and/or any of its Data Subject(s) and the sub-Operator indemnifies and holds the Company, including its directors, employees or its affiliated companies, or their directors or employees and its Data Subjects harmless against any such loss, damage, action or claim which may be brought by whomsoever against the Company or any of its directors, employees, or its Data Subjects, or against any of its affiliated companies, or their directors or employees, and Data Subjects and agrees to pay all and any such amounts on demand.

5.2 At the request of the Company, or the Operator, the sub-Operator will provide the Company or the Operator with evidence of financial resources sufficient to fulfil its responsibilities set out under the sub-Operator Agreement, and in particular to cover any of its liabilities set out under clause 5.1 above, which may include insurance coverage.

6. APPLICABLE LAW

The laws of South Africa shall apply to this sub-Operator Agreement, regardless of where the Personal Information is, will be, or was actually processed.

7. TERMINATION

7.1 In the event of:

7.1.1 the sub-Operator Agreement being terminated for whatsoever reason;

7.1.2 the Operator Agreement being terminated for whatsoever reason;

7.1.3 the transfer of Personal Information to the Operator being temporarily suspended by the Company for longer than one month, for whatever reason;

7.1.4 the sub-Operator being in breach of its obligations under the sub-Operator Agreement or has failed to comply with POPIA or the Information Processing Principles, and has failed when called upon to do so by the Company or the Operator to rectify the breach or area of non-compliance;

7.1.5 the sub-Operator being in substantial or persistent breach of any warranties or undertakings given by it under the sub-Operator Agreement, notwithstanding that the Company or the Operator has not given the sub-Operator notice of such breach;

7.1.6 an application is filed for the placing of the Operator or sub-Operator under business rescue, under administration, or winding up whether interim or final, which application is not dismissed within the applicable period for such dismissal under applicable law; or any equivalent event in any jurisdiction occurs,

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then the Company or the Operator, without prejudice to any other rights, which it may have against the sub-Operator, shall be entitled to terminate, where applicable the sub-Operator Agreement, as well as, where applicable, any other sub-Operator agreement.

7.2 The Parties agree that the termination of the sub-Operator Agreement at any time, in any circumstances and for whatever reason, does not exempt them from the rights and obligations set out under this sub-Operator Agreement with regards to the processing of the Personal Information detailed under Annexures "A", "B" and "C", read together with the obligations under POPIA.

7.3 In the event of the sub-Operator Agreement being terminated whenever, and for whatsoever reason, the sub-Operator undertakes to:

7.3.1 restore and/or transfer back to the Company all and any Personal Information which has been provided to the sub-Operator for processing, including that held by any sub-Operators, whether same has been processed or not, and/or which has been processed, together with any related documentation and/or information, all of which documentation must without exception, be returned to the Company within a period of 30 (thirty) days from date of service of the termination notice.

7.3.2 to confirm in writing simultaneously when the transfer under clause

7.3.1 takes place, that all such Personal Information will be kept confidential as per the provisions of clause 4.1 and that it will not under any circumstances use the aforementioned information for whatsoever reason.

7.4 Notwithstanding termination of the sub-Operator Agreement and for whatsoever reason, the clauses 4, 5, 6 and

7.2 will survive any such termination.

8. GENERAL

8.1 The parties may not modify the provisions of this sub-Operator Agreement, including the information in Annexures "A", "B" or "C", unless such variation is reduced to writing and signed by the Parties.

8.2 Notices

All notices to be provided in terms of the Agreement or the Addendum, as the case may be, must be sent to the respective Company's Information Officer or Deputy Information Officer by email: which details are housed under ANNEXURE "COMPANIES AND INFORMATION OFFICERS".

LIST OF ATTACHMENTS

ANNEXURE "A"

Mandate and Details of Processing

ANNEXURE "B"

Technical and organizational measures for contract data processing implemented by the contractor

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ANNEXURE "C"

Onwards transmission / receipt notice

ANNEXURE "D"

Sub-Operator agreement

ANNEXURE- INFORMATION OFFICERS