

SEA COTTAGE AQUATIC CENTRE CC and AQUA CATS PROPRIETARY
LIMITED t/a STARFISH SWIM SCHOOL

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PROTECTION OF PERSONAL INFORMATION PRIVACY POLICY

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PART 1: GENERAL PRINCIPLES

1 POLICY STATEMENT

- 1.1 Starfish is an educational centre with a focus on water safety for both adults and minors. Starfish requires the collection of personal information for the purposes of conducting its business as detailed herein.
- 1.2 The purpose of this Policy is to develop and secure sound and sustainable management of the processing of Personal Information and, where relevant, Special Personal Information within Starfish by establishing principles, norms, standards and other requirements to :
- 1.2.1 regulate the processing of Personal Information and, where relevant, Special Personal Information in a manner which complies with the provisions of the Act and gives effect to the right to privacy as envisaged in section 14 of the Constitution of the Republic of South Africa Act, No 108 of 1996, subject to justifiable limitations;
- 1.2.2 govern the manner in which Personal Information is collected, stored, recorded and transferred regardless of the form or medium thereof;
- 1.2.3 regulate and prescribe the retention of Records and the periods thereof; and
- 1.2.4 ensure compliance with all other relevant legislation which governs the processing of Personal Information.
- 1.3 Employees and other parties who are bound by or otherwise required to recognise and abide by this Policy who compromise or violate the provisions of this Policy could significantly damage the Starfish's interests, including its relationships with third parties and its reputation, and expose it to un-intended legal and commercial consequences, risks and liabilities. Accordingly, any violation of this Policy will be subject to appropriate action by the Starfish, including *inter alia* possible termination of employment or damages claims, should circumstances so require.

2 DEFINITIONS

In this Policy, unless otherwise indicated by the context, the following terms shall have the meaning ascribed to them:

- 2.1 "**Act**" means the Protection of Personal Information Act, No 4 of 2013, as amended from time to time;
- 2.2 "**Business Day**" means a day which is not a gazetted public holiday, a Saturday or a Sunday;
- 2.3 "**CIPC**" means the Companies and Intellectual Property Commission established in terms of section 185 of the Companies Act;
- 2.4 "**Companies Act**" means the Companies Act, No 71 of 2008, as amended from time to time;
- 2.5 "**Consent**" means any voluntary, specific and informed expression of will in terms of which permission is given for the processing of Personal Information;
- 2.6 "**Data Subject**" means the person to whom the Personal Information relates;
- 2.7 "**Employees**" means individuals employed by Starfish;
- 2.8 "**Information Officer**" means the individual contemplated in paragraph 7.2.1;
- 2.9 "**Manager**" means the Employee responsible for the day to day management of Starfish;
- 2.10 "**Operator**" means a person who processes Personal Information for Starfish in terms of a contract or mandate, without coming under the direct authority of Starfish;
- 2.11 "**Owner**" means the sole member of Starfish;
- 2.12 "**PAIA**" means the Promotion of Access to Information Act, No 2 of 2000, as amended from time to time;
- 2.13 "**Personal Information**" means personal information as defined in the Act as contemplated in paragraph 9.1;
- 2.14 "**Policy**" means the policy set out in this document and includes all annexures hereto (if any) and any sub-policies prepared from time to time;
- 2.15 "**processing**" means processing as contemplated in paragraph 4.3;
- 2.16 "**Record**" means a record as defined in the Act and currently comprising of any recorded information:
 - 2.16.1 regardless of form or medium, including any of the following:
 - 2.16.1.1 writing on any material;
 - 2.16.1.2 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;
 - 2.16.1.3 label, marking or other writing that identifies or describes anything of which it forms part, or to which it is attached by any means;
 - 2.16.1.4 book, map, plan, graph or drawing;
 - 2.16.1.5 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 of some other equipment, of being reproduced;
 - 2.16.1.6 in the possession or under the control of a responsible party;
 - 2.16.1.7 whether or not it was created by a responsible party; and

- 2.16.1.8 regardless of when it came into existence;
- 2.17 "**Regulator**" means the information regulator established in terms of section 39 of the Act;
- 2.18 "**Responsible Party**" bears the definition accorded to it in section 1 of the Act;
- 2.19 "**SARS**" means the South Africa Revenue Service.
- 2.20 "**South Africa**" means the Republic of South Africa;
- 2.21 "**Special Personal Information**" means Personal Information concerning:
- 2.21.1 the religious or philosophical beliefs, race or ethnic origin, trade union membership, political persuasion, health or sex life or biometric information of a data subject; or
- 2.21.2 the criminal behaviour of a data subject to the extent that such information relates to:
- 2.21.2.1 the alleged commission by a data subject of any offence; or
- 2.21.2.2 any proceedings in respect of any offence allegedly committed by a data subject or the disposal of such proceedings; and
- 2.21.2.3 any Personal Information concerning a child being a natural person under the age of 18 (eighteen) years who is not legally competent, without the assistance of a competent person, to take any action or decision in respect of any matter concerning him- or herself;
- 2.22 "**Starfish**" means Sea Cottage Equatic Centre CC, registration number **[2009/188917/23]**, a close corporation duly registered in the Republic of South Africa and Aqua Cats Proprietary Limited, with registration number **[2018 / 481681 / 07]**, a private company duly registered in the Republic of South Africa;
- 2.23 The words "**include**" and "**including**" mean "include without limitation" and "including without limitation". The use of the words "**include**" and "**including**" followed by a specific example or examples shall not be construed as limiting the meaning of the general wording preceding it.
- 2.24 Words and expressions defined in any clause shall, unless the application of any such word or expression is specifically limited to that clause, bear the meaning assigned to such word or expression throughout this Policy.
- 2.25 Unless otherwise provided, defined terms appearing in this Policy in title case shall be given their meaning as defined, while the same terms appearing in lower case shall be interpreted in accordance with their plain English meaning.
- 2.26 A reference to any statutory enactment shall be construed as a reference to that enactment as at the date of issue or date of revision as the case may be and as amended or substituted from time to time.
- 2.27 Unless specifically otherwise provided, any number of days prescribed shall be determined by excluding the first and including the last day.
- 2.28 Where figures are referred to in numerals and in words, and there is any conflict between the two, the words shall prevail, unless the context indicates a contrary intention.
- 2.29 In this Agreement the words "**clause**" or "**clauses**" and "**annexure**" or "**annexures**" refer to clauses of and annexures to this Policy.

3 INTRODUCTION

- 3.1 During the course and scope of its business activities Starfish obtains Personal Information from a variety of sources including customers, Employees, suppliers and various third parties who may engage with Starfish from time to time.
- 3.2 The Act governs the processing of Personal Information, including but not limited to Special Personal Information and imposes certain obligations on Starfish in relation to this information and the manner in which it is processed.
- 3.3 Accordingly, Starfish wishes to govern, regulate and administer the processing of Personal Information through this Policy in order to comply with the provisions of the Act.
- 3.4 Starfish, its Employees and other officials, agents, representatives of Starfish shall be bound by, observe and implement this Policy at all times.

4 BACKGROUND TO THE ACT

- 4.1 The Act aims to give effect to the constitutional right to privacy by safeguarding Personal Information when processed by a Responsible Party. The Act sets forth various provisions which will, *inter alia*, regulate the manner in which Personal Information may be processed.
- 4.2 The Act will apply to the processing of Personal Information entered in a Record by a Responsible Party by making use of automated or non-automated means, where the Responsible Party is either domiciled in the Republic or makes use of the automated or non-automated means in the Republic, unless those means are used only to forward Personal Information within the Republic.
- 4.3 For the purposes of the Act, "processing" means any operation or activity or any set of operations, whether or not by automatic means, concerning personal information, including:
 - 4.3.1 the collection, receipt, recording, organisation, collation, storage, updating or modification, retrieval, alteration, consultation or use;
 - 4.3.2 dissemination by means of transmission, distribution or making available in any other form; or
 - 4.3.3 merging, linking, as well as restriction, degradation, erasure or destruction of information.'
- 4.4 The Act prescribes certain conditions for the lawful processing of Personal Information which can be summarised as follows:
 - 4.4.1 *Condition 1: Accountability:* the Responsible Party (i.e. in this instance Starfish) must ensure that measures are taken which give effect to the conditions set out in the Act.
 - 4.4.2 *Condition 2: Processing Limitation:* Personal Information must be processed lawfully and in a reasonable manner that does not infringe the privacy of a Data Subject. Personal information may only be processed if, given the purpose for which it is processed, the processing is adequate, relevant and not excessive. Further, subject to certain exceptions, personal information may only be processed with the Consent of a Data Subject and must be collected directly from a Data Subject.
 - 4.4.3 *Condition 3: Purpose Specification:* Personal Information must be collected for a specific, explicitly defined and legitimate purpose. Personal Information may also not be kept for longer than is necessary for achieving the purpose for which it is collected or subsequently processed.

- 4.4.4 *Condition 4: Further Process Limitation:* Personal Information must not be further processed in a way incompatible with a purpose for which it has been collected in the first instance.
- 4.4.5 *Condition 5: Information Quality:* The Responsible Party must take reasonable practical steps to ensure that the Personal Information is complete, accurate, not misleading, and updated where necessary.
- 4.4.6 *Condition 6: Openness:* The Responsible Party must maintain the documentation for all processing operations in accordance with its responsibility referred to in sections 14 and 51 of the Promotion of Access to Information Act, No 2 of 2000. Further, if Personal Information is collected, the Responsible Party must take reasonable practicable steps to ensure that the Data Subjects are, *inter alia*, aware of the information being collected and the purpose for such collection.
- 4.4.7 *Condition 7: Security Safeguards:* Appropriate technical and organisational measures must be taken to secure the integrity of Personal Information by safeguarding against the risk of loss or damage or destruction of Personal Information and against the unauthorised or unlawful access to, or processing of Personal Information.
- 4.5 We will refer to these conditions where relevant herein and particularly the applicability thereof to Starfish.
- 4.6 The Act also regulates the certain direct marketing activities and these will be referred to where relevant in the context of Starfish particularly the marketing function.

5 PURPOSE

- 5.1 Personal Information is crucial to the running of Starfish's business and is one of our most valuable business assets. Our clients and Employees in particular, need to be able to trust us with the information they provide to us. Starfish must, accordingly, respect and protect the integrity of the Personal Information it holds by, in particular, treating it with care and keeping it confidential.
- 5.2 The goal of this Policy is to ensure that Personal Information is processed and recorded in accordance with the provisions of the Act, whilst still enabling Starfish to use the Personal Information for lawful and legitimate purposes in the furtherance of its business aims and objectives.

6 APPLICATION, COMMENCEMENT AND OBJECTIVES

6.1 Application

- 6.2 This Policy applies to the processing of all Personal Information by or on behalf of Starfish by all Employees, officials, agents, and representatives of Starfish. The processing of Personal Information must comply with the provisions of this Policy read in conjunction with the Act.
- 6.3 This Policy prevails over all other policies of Starfish pertaining to the processing of Personal Information. All persons involved in the processing and recording of Personal Information shall:
- 6.3.1.1 comply with the relevant provisions of the Act as read with this Policy;
- 6.3.1.2 interpret and apply this Policy congruently with any other policies of Starfish to the extent that such congruency is possible;
- 6.3.1.3 apply this Policy in preference to any other policies of Starfish in the event that ambiguity and/or conflict and/or vagueness exists between this Policy and other policies of Starfish.
- 6.3.2 Starfish must, however, use its best endeavours to ensure that all other policies confirm and are aligned with the terms and conditions set out herein where relevant.

6.4 Commencement

This Policy shall come into effect on 31 July 2021.

6.5 Objectives

6.5.1 The objectives of this Policy are to ensure that the processing of Personal Information by Starfish:

6.5.1.1 complies with all applicable legislation, including the Act; and

6.5.1.2 occurs in a manner that facilitates and enhances the ability of Starfish to achieve its business objectives but with due regard to safeguarding the interests of Data Subjects in relation to their Personal Information.

6.5.2 This Policy also strives to ensure that consistency is achieved and maintained in relation to the processing of Personal Information throughout Starfish at all times.

7 OVERSIGHT AND RESPONSIBILITIES

7.1 General

7.1.1 The Owner is generally responsible for the management oversight and control of the business of Starfish.

7.1.2 The Manager of the business is, however, responsible for day to day management.

7.1.3 The Owner shall ensure that the terms and conditions set out in this Policy are observed at all times by introducing and maintaining the appropriate procedures and deploying the appropriate resources to achieve this.

7.2 Information Officer

7.2.1 The Information Officer for Starfish is the Manager.

7.2.2 The Information Officer will be deemed to have delegated, on a revocable basis, aspects of his authority to Employees in respect of the following matters:

7.2.2.1 to provide general guidance on the processing and Recording of Personal Information in accordance with this Policy as read with the Act;

7.2.2.2 encourage the compliance, by Starfish and each department, and Employee, with the conditions for the lawful processing of Personal Information;

7.2.2.3 dealing with requests made to Starfish pursuant to the Act as well as this Policy;

7.2.2.4 working with the Regulator in respect of any investigations conducted pursuant to the Act;

7.2.2.5 otherwise ensure compliance by Starfish and all Employees with the provisions of the Act and this Policy; and

7.2.2.6 generally to implement all processing activities in accordance with this Policy as read with the Act.

7.2.3 The Information Officer shall only be required to perform the functions contemplated in paragraph 7.2.2 upon being registered with the Regulator.

8 ETHICAL OBLIGATIONS AND STANDARDS

8.1 Employees shall be obliged to observe the following duties so as to act in the best interests of Starfish and in due cognisance of the right to privacy of Data Subjects at all times during the processing of Personal Information and after the completion thereof:

8.1.1 Employees shall not exceed the powers conferred upon them in terms of the Act, this Policy and their respective employment agreements;

- 8.1.2 Employees shall not exercise their powers for an improper or collateral purpose by abusing their positions as employees or office bearers of the Starfish in order to derive personal or private benefit or advantage; and
- 8.1.3 Employees shall avoid a conflict between the interests of Starfish and their personal or private interests or benefit.
- 8.2 In the event that any Employee breaches any terms or conditions of this Policy, Starfish shall be entitled, without prejudice to any of its rights in terms of this Policy or at law, to take such action against such Employee in terms of any disciplinary code which Starfish may have in place or the relevant code of conduct or behaviour that applies to such Employee.

PART 2: PROCESSING AND RECORDING

9 GENERAL

- 9.1 Personal Information is defined by the Act as information relating to an identifiable, living, natural person, and where it is applicable, an identifiable, existing, juristic person, including, but not limited to:
- 9.1.1 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;
 - 9.1.2 information relating to the education or the medical, financial, criminal or employment history of the person;
 - 9.1.3 any identifying number, symbol, e-mail address, physical address, telephone number, location information, online identifier or other particular assignment to the person;
 - 9.1.4 the biometric information of the person;
 - 9.1.5 the personal opinions, views or preferences of the person;
 - 9.1.6 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;
 - 9.1.7 the views or opinions of another individual about the person; and
 - 9.1.8 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;
- 9.2 Subject to the provisions of the Act, Personal Information does not include publicly available directories containing information an individual has voluntarily consented to have publicly disseminated or listed, including name, address and telephone number and does not include information made lawfully available to the general public.
- 9.3 **Collection of Personal Information**
- 9.3.1 Subject to the provisions of paragraph 9.3.3 as read with the Act, Personal Information must be collected directly from the Data Subject. This includes particularly all Personal Information required from clients and prospective clients which include all customers, Employees and persons applying for these positions.
 - 9.3.2 Any request (which will include, but not be limited to all application forms as well as other information requests, in whatsoever medium or format) to a Data Subject for Personal Information must be in writing and contain at least the following:
 - 9.3.2.1 details pertaining to the Personal Information being collected and where the Personal Information is not collected from the Data Subject, the source from which it is collected;
 - 9.3.2.2 the name and address of Starfish;
 - 9.3.2.3 the purpose for which the Personal Information is being collected;
 - 9.3.2.4 whether or not the supply of the Personal Information by that Data Subject is voluntary or mandatory;
 - 9.3.2.5 the consequences of failure to provide the Personal Information;
 - 9.3.2.6 any particular law authorising or requiring the collection of the Personal Information;

- 9.3.2.7 whether the Personal Information will or may be transferred to a third party residing outside of South Africa and the level of protection afforded to the Personal Information by that non-resident third party;
 - 9.3.2.8 the recipient or category of recipients of the Personal Information;
 - 9.3.2.9 nature or category of the Personal Information;
 - 9.3.2.10 existence of the right of access to and the right to rectify the Personal Information collected;
 - 9.3.2.11 existence of the right to object to the processing of Personal Information; and
 - 9.3.2.12 right to lodge a complaint to the Regulator and the contact details of the Regulator.
- 9.3.3 Notwithstanding the provisions of paragraph 9.3.1, Personal Information need not be collected directly from the Data Subject in the event that:
- 9.3.3.1 the Personal Information is derived from a public record or has been deliberately made public by the Data Subject. A public record is defined in the Act as 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. Examples of public records include deeds office records and CIPC records;
 - 9.3.3.2 the Data Subject or, where the Data Subject is under the age of 18 (eighteen), his or her parent and/or guardian has consented to the collection of the Personal Information from another source;
 - 9.3.3.3 the collection of information from another source would not prejudice a legitimate interest of the Data Subject;
- 9.3.4 the collection of the Personal Information from another source is necessary:
- 9.3.4.1 to avoid prejudice to the maintenance of the law by any public body, including the prevention, detection, investigation, prosecution and punishment of offences;
 - 9.3.4.2 to comply with an obligation imposed by law or enforce legislation concerning the collection of revenue as defined in section 1 of the South African Revenue Service Act, No 34 of 1997;
 - 9.3.4.3 for the conduct of proceedings in any court or tribunal that have commenced or are reasonably contemplated;
 - 9.3.4.4 in the interest of national security; or
 - 9.3.4.5 to maintain the legitimate interests of Starfish or of a third party to whom the information is supplied;
 - 9.3.4.6 the collection would prejudice the lawful purpose thereof; or
 - 9.3.4.7 it is not reasonably practical in the circumstances of the particular case.
- 9.4 **Requests for Personal Information**
- 9.4.1 Any person who receives a written request from a Data Subject to obtain a Record or description of the Personal Information held by Starfish in respect of a Data Subject, shall be required to:
 - 9.4.1.1 obtain a certified copy of the proof of identification of that Data Subject; and
 - 9.4.1.2 refer such request to the Information Officer who must deal with such request in the manner and form prescribed under PAIA as read with the promotion of access to information manual of Starfish available at **[insert hyperlink]**.
- 9.5 **Correction of Personal Information**

- 9.5.1 A Data Subject is entitled to provide Starfish with a written request to:
- 9.5.1.1 correct or delete the Personal Information of the Data Subject in Starfish's possession or control which is inaccurate, irrelevant, excessive, out of date, incomplete, misleading or obtained unlawfully; or
- 9.5.1.2 destroy or delete a Record of Personal Information of the Data Subject which Starfish is no longer authorised to retain.
- 9.5.2 Within 20 (twenty) business days (or if this period is not reasonable, then such extended period as may be reasonable in the circumstances) of receipt of the written request contemplated in paragraph 9.5.1, the relevant person so designated by the Information Officer shall:
- 9.5.2.1 correct the Personal Information;
- 9.5.2.2 destroy or delete the Personal Information;
- 9.5.2.3 provide the Data Subject, subject to his or her satisfaction, with credible evidence in support of the Personal Information; or
- 9.5.2.4 where agreement cannot be reached between Starfish and the Data Subject concerned and if so requested by the Data Subject, take such steps, as are reasonable in the circumstances to attach to the Personal Information in question, in such a manner that it will always be read with the Personal Information, an indication that a correction of the Personal Information has been requested but not been made; and
- 9.5.2.5 provide the Data Subject with written confirmation of the relevant steps taken.
- 9.5.3 In the event of amendments being made to the Personal Information as contemplated in paragraph 9.5.1, and where such amended information has an impact on decisions that Starfish has taken or may be taken about the Data Subject in question, the Information Officer must, if reasonably practicable, within 10 (ten) business days (or if such period is not reasonable then such extended period as may be reasonable in the circumstances) of such amendment taking place, inform each person or body to whom the Personal Information has been disclosed of the steps taken in respect of the amendments.

10 PROCESSING OF PERSONAL INFORMATION

- 10.1 Starfish has a general and overriding duty to ensure that at the time of determining the purpose and means of processing of any Personal Information of a Data Subject as well as during the processing of the aforesaid, the provisions contemplated in this paragraph 10 as read with the Act, are complied with.
- 10.2 **Consent, Justification and Objection**
- 10.2.1 For Personal Information to be lawfully processed by Starfish, the following requirements must be complied with, namely the following:
- 10.2.1.1 The Consent of the Data Subject to such processing must be obtained.
- 10.2.1.2 In the case of the Data Subject being under the age of 18 (eighteen), the parent and/or guardian of such Data Subject must provide his or her consent to the processing.
- 10.2.1.3 Processing of the Personal Information is necessary to carry out actions for the conclusion or performance of a contract to which the Data Subject is a party. This would include any signed franchise agreements, lease agreements or offers to purchase.
- 10.2.1.4 Processing complies with an obligation imposed by law on Starfish.

- 10.2.1.5 Processing protects a legitimate interest of the Data Subject.
- 10.2.1.6 Processing is necessary for the proper performance of a public law duty by a public body, (a department of state, national or provincial sphere of government or any municipality).
- 10.2.1.7 Processing is necessary for pursuing the legitimate interests of Starfish or a third party to whom the Personal Information is supplied.
- 10.2.2 The Consent contemplated in paragraph 10.2.1.1 may be withdrawn by the Data Subject or, where relevant, the parent and/or guardian of the Data Subject at any time. Such withdrawal shall not affect the lawfulness of the processing of the Personal Information of the Data Subject which took place prior to Starfish receiving notification of the withdrawal.
- 10.2.3 The Data Subject may, at any time, object to the processing of his or her Personal Information on reasonable grounds relating to his or her particular situation, unless legislation provides for such processing. Where Starfish receives an objection as contemplated herein, it may no longer process the Personal Information of such Data Subject.
- 10.3 **Further processing**
- 10.3.1 Further processing of Personal Information must be in accordance with the purpose for which the information was collected. Where this is not the case, the written Consent of the Data Subject to such further processing must be obtained.
- 10.3.2 Notwithstanding the provisions of paragraph 10.3.1, in the event of:
- 10.3.2.1 the information being available from a public record; or
- 10.3.2.2 further processing is necessary (1) to avoid prejudice to the maintenance of the law by any public body; (2) to comply with an obligation imposed by law or to enforce legislation concerning the collection of revenue; (3) for the conduct of proceedings in any court or tribunal that have commenced or are reasonably contemplated; or (4) in the interests of national security; or
- 10.3.2.3 the further processing being necessary to prevent or mitigate a serious and imminent threat to public health, public safety or the life or health of the Data Subject; or
- 10.3.2.4 the further processing being for historical, statistical or research purposes,
the further processing may take place without the consent of the Data Subject or his or her parent and/or guardian, where applicable.
- 10.4 **Restrictions**
- 10.4.1 Starfish shall be required to place restrictions on the processing of Personal Information in the event of:
- 10.4.1.1 the accuracy of the Personal Information being contested by the Data Subject; or
- 10.4.1.2 Starfish no longer requires the Personal Information for the purpose for which it was collected, but such information is being retained as proof; or
- 10.4.1.3 the processing being unlawful and the Data Subject requesting the restriction of the use of the Personal Information; or
- 10.4.1.4 the Data Subject requests to transmit the personal data into another automated processing system.
- 10.4.2 Where a restriction as contemplated in this paragraph 10.4 has been placed on the processing of the Personal Information of a Data Subject, such information may only

be processed for the purposes of proof, or with the Data Subject's Consent or, where relevant, the Consent of the Data Subject's parent and/or guardian, or for the protection of the rights of another natural or legal person, or where such processing is in the public interest.

10.5 **Minors**

- 10.5.1 In the event of Starfish wishing to process the Personal Information of a Data Subject who is under the age of 18 (eighteen), such processing may only occur:
- 10.5.1.1 where Starfish has obtained the prior Consent of either the parent and/or guardian of the Data Subject concerned;
 - 10.5.1.2 if necessary for the establishment, exercise or defence of a right or obligation in law;
 - 10.5.1.3 if for a historical, statistical or research purposes which serves a public interest and the processing will not adversely affect the individual privacy of the Data Subject concerned; or
 - 10.5.1.4 where such Personal Information has been deliberately made public by the Data Subject concerned with the consent of his or her parent and/or guardian.
- 10.5.2 Where Starfish is of the opinion that the processing of the Personal Information is within the public interest and appropriate safeguards have been put in place, make an application to the Regulator in order to obtain the required authorisation for the processing of the Personal Information by Starfish.

11 **RETENTION AND RECORD KEEPING**

- 11.1 The Act requires that Starfish only retains Records for as long as is necessary for achieving the purpose for which the information was collected or subsequently processed, unless:
- 11.1.1 retention of the Record is required or authorised by law;
 - 11.1.2 Starfish reasonably requires the Record for lawful purposes related to its function or activities;
 - 11.1.3 retention of the Record is required by a contract between the parties thereto; or
 - 11.1.4 the Data Subject with the consent of his or her parent or legal guardian where relevant, has consented to the retention of the Record.
- 11.2 Personal Information collected in accordance with paragraph 9 shall be retained:
- 11.2.1 in the case of Employees for the duration of the Employee's employment and for a period of not more than 5 (five) years thereafter, provided that in the case of information relating to any remuneration including benefits received by former Employees will, if this is in the interest of the former Employee, be retained for an indefinite period;
 - 11.2.2 in the case of Data Subjects who are customers and having regard to any existing or future relationship that Starfish has or may have with such persons, be retained for a period of not more than 7 (seven) years unless the Data subject has objected to the retention or otherwise requested a shorter retention period;
 - 11.2.3 in the case of any other person including applicants for enrolment or employment, for a period of 3 (three) years after receipt of the Personal Information; or
 - 11.2.4 until such Personal Information is superseded, in which case any obsolete Personal Information shall be destroyed.

- 11.3 After expiration of the period contemplated in paragraph 11.1, Starfish shall be required to destroy, delete or de-identify the Record of Personal Information as soon as reasonably possible thereafter provided that Starfish will be entitled to retain Records of Personal Information for period in excess of those contemplated in clause 11.2 above for historical, statistical or research purposes provided that Starfish has established appropriate safeguards against the records being used for any other purpose.

12 SPECIAL PERSONAL INFORMATION

- 12.1 No person shall be entitled to process the Special Personal Information of a Data Subject, unless:

12.1.1 the 3 is for historical, statistical or research purposes to the extent that:

12.1.1.1 the purpose serves a public interest and the processing is necessary for the purpose concerned; or

12.1.1.2 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 Data Subject to a disproportionate extent;

12.1.2 information has deliberately been made public by the Data Subject; or

12.1.3 the necessary authorisations have been complied with.

PART 3: TRANSBORDER INFORMATION FLOWS

13 TRANSFER OUTSIDE OF SOUTH AFRICA

- 13.1 Subject to the provisions paragraph 13.2, Starfish, shall not be entitled to transfer the Personal Information of a Data Subject to a third party who does not reside within South Africa.
- 13.2 Personal Information of a Data Subject may be transferred outside of South Africa where:
- 13.2.1 the third party concerned is subject to a law, binding corporate rules or a binding agreement which provides an adequate level of protection that:
- 13.2.1.1 effectively upholds principles for reasonable processing of the information that are substantially similar to the conditions for the lawful processing of person information relating to a Data Subject who is a natural person and, where applicable, a juristic person; and
- 13.2.1.2 includes provisions, that are substantially similar to this paragraph 13, relating to the further transfer of Personal Information from the recipient to another third party who is in a foreign country;
- 13.2.2 the Data Subject consents to the transfer;
- 13.2.3 the transfer is necessary for the performance of a contract between the Data Subject and Starfish, or for the implementation of pre-contractual measures taken in response to the Data Subject's request;
- 13.2.4 the transfer is necessary for the conclusion or performance of a contract concluded in the interest of the Data Subject between Starfish and a third party; or
- 13.2.5 the transfer is for the benefit of the Data Subject, and:
- 13.2.5.1 it is not reasonably practical to obtain the Consent of the Data Subject to that transfer; and
- 13.2.5.2 if it were reasonably practical to obtain such Consent, the Data Subject would be likely to give it.
- 13.3 In the event of a transfer of Personal Information as contemplated in this paragraph 13 taking place, the person responsible for such transfer shall be required to provide the Information Officer with details pertaining to the transfer, including but not limited to whether the consent to the transfer was obtained from the Data Subject and proof of such consent.

PART 4: DIRECT MARKETING

14 UNSOLICITED ELECTRONIC COMMUNICATIONS

- 14.1 The Consent of the Data Subject must be obtained in the event of Starfish wishing to process the Personal Information of such Data Subject for the purpose of direct marketing by means of electronic communications, including automatic calling machines, facsimile machines, SMSs or emails unless:
- 14.1.1 the Data Subject is a customer of Starfish;
 - 14.1.2 the contact details of the customer was obtained by Starfish in the context of the sale of a product or service;
 - 14.1.3 the processing (including contact) is for the purpose of direct marketing of Starfish's own similar services;
 - 14.1.4 the customer is given an opportunity to "opt out" on the basis that he, she or it is entitled to object, free of charge and in a manner free of unnecessary formality, to such use of his, her or its electronic details:
 - 14.1.4.1 at the time when the information was collected; and
 - 14.1.4.2 on the occasion of each communication with the customer for the purpose of direct marketing if the customer has not initially refused such use.
- 14.2 For purposes of clause 14.1, the reference to electronic communication bears the meaning ascribed to this term in the Act being currently "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". Accordingly, telephone contact where no message is left, does not constitute electronic communication for purposes of the Act and this Policy.
- 14.3 The Consent envisaged on clause 14.1 can be obtained by contacting the Data Subject to obtain the relevant Consent and provided that the Data Subject has not previously withheld such Consent, such Consent need only be obtained once. Where the form and manner of obtaining such Consent has been prescribed under the Act then this must be complied with.
- 14.4 Any communication by Starfish for the purpose of direct marketing must contain:
- 14.4.1 details of the identity of the sender or the person on whose behalf the communication has been sent; and
 - 14.4.2 an address or other contact details to which the recipient may send a request that such communications cease.
- 14.5 For purposes of this paragraph 14, "direct marketing" shall mean :
- 14.5.1.1 to approach a Data Subject, either in person or by mail or electronic communication, for the direct or indirect purpose of:
 - 14.5.1.2 promoting or offering to supply, in the ordinary course of business, any goods or services to the Data Subject; or
 - 14.5.1.3 requesting the Data Subject to make a donation of any kind for any reason.
- 14.6 In the case of any form of direct marketing conducted other than via electronic communications (as defined) the remaining provisions of this Policy and the Act remain applicable and must be complied with.
- 14.7 The provisions of this clause 14 must be complied with in addition to the remaining provisions of this Policy and the Act where processing of Personal Information for purposes of direct marketing is concerned.

PART 5: INFORMATION SECURITY SUPERVISION

15 IMPLEMENTATION OF SECURITY SAFETYGUARDS

15.1 General

- 15.1.1 Starfish, must secure the integrity and confidentiality of Personal Information in its possession or under its control by taking appropriate, reasonable technical and organisational measures to prevent:
- 15.1.1.1 loss of, damage to or unauthorised destruction of Personal Information; and
 - 15.1.1.2 unlawful access to or processing of Personal Information.
 - 15.1.1.3 Starfish has done and will from time to time ensure that it takes reasonable steps to:
 - 15.1.1.4 identify all reasonably foreseeable internal and external risks to Personal Information in its possession or under its control;
 - 15.1.1.5 establish and maintain appropriate safeguards against the risks identified;
 - 15.1.1.6 regularly verify that the safeguards are effectively implemented; and
 - 15.1.1.7 ensure that the safeguards are continually updated in response to new risks or deficiencies in previously implemented safeguards.
 - 15.1.2 In implementing the above measures, Starfish will have due regard to generally accepted information security practices and procedures which may apply to it generally or be required in terms of specific industry or professional rules and regulations.

15.2 Information Security

- 15.2.1 Starfish is committed to ensuring information security and in particular ensure that the incidence of unauthorised access to or transmission of Personal Information is minimised.
- 15.2.2 The following measures have or will be introduced by Starfish and must, where relevant be adhered to:
- 15.2.2.1 All documents containing Personal Information must be securely stored and access thereto controlled in an appropriate manner. No documentation containing Personal Information must be left unattended or unsecured or otherwise in plain sight or otherwise in an environment with ease of access.
 - 15.2.2.2 All computers and other electronic devices including particularly mobile devices which are capable of storing or accessing data must be secured with passwords.
 - 15.2.2.3 As far as possible and unless there is good reason not to do so, all information and particularly Personal Information must be loaded onto and accessed from Starfish central information systems and not be housed or stored on local devices including computers and other electronic devices.
 - 15.2.2.4 Data transmission, such as sending and receiving messages like emails must be conducted by the relevant Employee provided if this involves the transmission of Personal Information as these systems and transmission are encrypted. No non Starfish assigned email addresses may be used to transmit any Personal Information.

15.3 Information processed by Operators

- 15.3.1 An Operator or anyone processing Personal Information on behalf of Starfish must:

- 15.3.1.1 process such information only with the knowledge or authorisation of Starfish; and
- 15.3.1.2 treat Personal Information which comes to their knowledge as confidential and must not disclose it,
- unless required by law or in the course of the proper performance of their duties.
- 15.3.2 Starfish shall always ensure that, in terms of a written contract between Starfish and the Operator, the Operator which processes Personal Information for the Starfish establishes and maintains the security measures referred to in paragraph 15.1.
- 15.3.3 The Operator must notify Starfish immediately where there are reasonable grounds to believe that the Personal Information of a Data Subject has been accessed or acquired by any unauthorised person.
- 15.3.4 Notwithstanding anything to the contrary herein contained, under no circumstances must any Operator be allowed to process any Personal Information unless there is a written contract signed by both parties which deals comprehensively with the matters contemplated in this Policy.
- 15.4 **Security Compromises**
- 15.4.1 In the event of there being reasonable grounds to believe that the Personal Information of a Data Subject has been accessed or acquired by an unauthorised person and accordingly, resulting in a compromise of the security safeguards of Starfish, the Information Officer upon, notification of such compromise as contemplated in paragraph 15.4, shall immediately upon receipt of such notification report same to the Owner.
- 15.4.2 The Information Officer shall be required to notify both the Regulator and the Data Subject concerned within 5 (five) business days of the Owner being informed of the compromise as contemplated in paragraph 15.4.1.
- 15.4.3 The notification to the Data Subject must be in writing and must either:
- 15.4.3.1 be mailed to the Data Subject's last known physical or postal address; or
- 15.4.3.2 be sent by email to the Data Subject's last known email address; or
- 15.4.3.3 be placed in a prominent position on the website of Starfish; or
- 15.4.3.4 be published in the news media; or
- 15.4.3.5 as directed by the Regulator.
- 15.4.4 The notification contemplated in paragraph 15.4.2 must provide sufficient information to allow the Data Subject to take protective measures against the potential consequences of the compromise, including:
- 15.4.4.1 a description of the possible consequences of the security compromise;
- 15.4.4.2 a description of the measures that Starfish intends to take or has taken to address the security compromise;
- 15.4.4.3 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
- 15.4.4.4 if known to Starfish, the identity of the unauthorised third party who may have accessed or acquired the Personal Information.

16 REGULATOR

- 16.1 The Regulator is a juristic person established in terms of section 39 of the Act. The power, duties and functions of the Regulator are:
- 16.1.1 to provide education by:
 - 16.1.1.1 promoting an understanding and acceptance of the conditions for the lawful processing of Personal Information and of the objects of those conditions;
 - 16.1.1.2 undertaking education programmes, for the purpose of promoting the protection of Personal Information, on the Regulator's own behalf or in co-operation with other persons or authorities acting on behalf of the Regulator;
 - 16.1.1.3 making public statements in relation to any matter affecting the protection of the Personal Information of a Data Subject or of any class of Data Subjects;
 - 16.1.1.4 giving advice to Data Subjects in the exercise of their rights; and
 - 16.1.1.5 providing advice, upon request or on its own initiative, to a Minister or a public or private body on their obligations under the provisions, and generally on any matter relevant to the operation, of this Act;
 - 16.1.2 to monitor and enforce compliance by:
 - 16.1.2.1 public and private bodies with the provisions of the Act;
 - 16.1.2.2 undertaking research into, and monitoring developments in, information processing and computer technology to ensure that any adverse effects of such developments on the protection of the Personal Information of Data Subjects are minimised, and reporting to the Minister the results of such research and monitoring;
 - 16.1.2.3 examining any proposed legislation, including subordinate legislation, or proposed policy of the Government that the Regulator considers may affect the protection of the Personal Information of Data Subjects, and reporting to the Minister the results of that examination;
 - 16.1.2.4 reporting upon request or on its own accord, to Parliament from time to time on any policy matter affecting the protection of the Personal Information of a Data Subject, including the need for, or desirability of, taking legislative, administrative, or other action to give protection or better protection to the Personal Information of a Data Subject;
 - 16.1.2.5 submitting a report to Parliament, within 5 (five) months of the end of its financial year, on all its activities in terms of this Act during that financial year;
 - 16.1.2.6 conducting an assessment, on its own initiative or when requested to do so, of a public or private body, in respect of the processing of Personal Information by that body for the purpose of ascertaining whether or not the information is processed according to the conditions for the lawful processing of Personal Information;
 - 16.1.2.7 monitoring the use of unique identifiers of data subjects, and reporting to Parliament from time to time on the results of that monitoring, including any recommendation relating to the need of, or desirability of taking, legislative, administrative, or other action to give protection, or better protection, to the Personal Information of a data subject;
 - 16.1.2.8 maintaining, publishing and making available and providing copies of such registers as are prescribed in this Act; and

- 16.1.2.9 examining any proposed legislation that makes provision for the:
- 16.1.2.9.1 collection of Personal Information by any public or private body; or
- 16.1.2.9.2 disclosure of Personal Information by one public or private body to any other public or private body, or both, to have particular regard, in the course of that examination, to the matters set out in section 44(2), in any case where the Regulator considers that the information might be used for the purposes of an information matching programme,
and reporting to the Minister and Parliament the results of that examination;
- 16.1.3 to consider with interested parties by:
 - 16.1.3.1 receiving and inviting representations from members of the public on any matter affecting the Personal Information of a data subject;
 - 16.1.3.2 co-operating on a national and international basis with other persons and bodies concerned with the protection of Personal Information; and
 - 16.1.3.3 acting as mediator between opposing parties on any matter that concerns the need for, or the desirability of, action by a responsible party in the interests of the protection of the Personal Information of a data subject;
- 16.1.4 to handle complaints by:
 - 16.1.4.1 receiving and investigating complaints about alleged violations of the protection of Personal Information of data subjects and reporting to complainants in respect of such complaints;
 - 16.1.4.2 gathering such information as in the Regulator's opinion will assist the Regulator in discharging the duties and carrying out the Regulator's functions under this Act;
 - 16.1.4.3 attempting to resolve complaints by means of dispute resolution mechanisms such as mediation and conciliation; and
 - 16.1.4.4 serving any notices in terms of this Act and further promoting the resolution of disputes in accordance with the prescripts of this Act;
- 16.1.5 to conduct research and to report to Parliament:
 - 16.1.5.1 from time to time on the desirability of the acceptance, by South Africa, of any international instrument relating to the protection of the Personal Information of a data subject; and
 - 16.1.5.2 on any other matter, including necessary legislative amendments, relating to protection of Personal Information that, in the Regulator's opinion, should be drawn to Parliament's attention;
- 16.1.6 in respect of codes of conduct to:
 - 16.1.6.1 issue, from time to time, codes of conduct, amend codes and to revoke codes of conduct;
 - 16.1.6.2 make guidelines to assist bodies to develop codes of conduct or to apply codes of conduct; and
 - 16.1.6.3 consider afresh, upon application, determinations by adjudicators under approved codes of conduct;
- 16.1.7 to facilitate cross-border co-operation in the enforcement of privacy laws by participating in any initiative that is aimed as such co-operation; and
- 16.1.8 in general to:

- 16.1.8.1 do anything incidental or conducive to the performance of any of the preceding functions;
 - 16.1.8.2 exercise and perform such other functions, powers and duties as are conferred or imposed on the Regulator by or under this Act or any other legislation;
 - 16.1.8.3 require the responsible party to disclose to any person affected by a compromise to the integrity or confidentiality of Personal Information, such compromise in accordance with section 22; and
 - 16.1.8.4 exercise the powers conferred upon the Regulator by this Act in matters relating to the access of information as provided by PAIA.
- 16.2 The contact details of the Regulator may be obtained from the Information Officer during normal working hours.

PART 6: IMPLEMENTATION AND AMENDMENTS

17 DELEGATIONS

No decision making contemplated in this Policy may be delegated to an advisor or consultant of Starfish.

18 AMENDMENTS TO POLICY

- 18.1 No additions, amendments or deviations from this Policy shall be valid unless approved by the Owner.
- 18.2 Changes or suggestions to amend the Policy shall be done in writing stating the rationale and, where possible, proposed recommendations to amend the Policy. Such recommendations shall be submitted to the Information Officer.
- 18.3 When deemed necessary in the opinion of the Information Officer and after giving due consideration to the merits and de-merits of the proposals to amend this Policy, the Information Officer shall, where appropriate, submit such recommendations to the Owner for her decision.

19 COMMUNICATION WITH STARFISH

- 19.1 All correspondence with regard to this Policy or any matter arising from or related to the implementation of this Policy, shall be addressed to the Information Officer.
- 19.2 The Information Officer shall be obliged to inform the Owner of any matters of significance in relation to the implementation or otherwise of this Policy.

20 COMBATING ABUSE OF THE POLICY

- 20.1 The Information Officer shall take all reasonable steps to prevent the abuse of the provisions of this Policy and when justified shall:
 - 20.1.1 take appropriate steps against such official or other role player, provided that such steps shall at all times comply with the relevant laws and processes of Starfish; or
 - 20.1.2 in consultation with the Owner may issue a complaint to the Regulator in the manner prescribed by the Act.
- 20.2 The Information Officer shall inform the Owner of any actions taken in terms of this clause 20.