

DATA PROTECTION POLICY

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1. DEFINITIONS

- 1.1 “**Data**” shall mean personal information relating to an identifiable, living, natural person, and where it is applicable, an identifiable, existing juristic person in terms of the Data Protection Laws.
- 1.2 “**Personal information**” means information relating to an identifiable, living, natural person, and where it is applicable, an identifiable, existing juristic person, including, but not limited to:
- 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;
 - information relating to the education or the medical, financial, criminal or employment history of the person;
 - any identifying number, symbol, e-mail address, physical address, telephone number, location information, online identifier or other particular assignment to the person;
 - the biometric information of the person;
 - the personal opinions, views or preferences of the person;
 - 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/ or
 - 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.
- 1.3 “**POPIA**” shall mean the Protection of Personal Information Act 4 of 2013 and the Regulations and Code of Conduct in accordance therewith as published and amended from time to time.
- 1.4 “**GDPR**” means Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal Data and on the free movement of such data, and repealing Directive 95/46/EC, along with other applicable personal Data protection laws as amended from time to time.
- 1.5 “**Data Protection Laws**” means any and all applicable laws relating to or regulating the protection of Data/ personal information, and which may be applicable from time to time depending upon jurisdiction, however when in South African jurisdiction POPIA shall apply, and said applicable laws, case dependant, include POPIA, GDPR, the Consumer Protection Act 68 of 2008, and the Electronic Communications and Transactions Act 25 of 2002. For purposes of the Policy, POPIA and South African law take preference in a South African jurisdiction or where POPIA offers greater Data protection to a Data Subject than the GDPR or other laws and POPIA applies to the exclusion of any provision of any other legislation that regulates the processing of Data and that is materially inconsistent with an object, or a specific provision, of POPIA.

If any other legislation provides for conditions for the lawful processing of Data that are more extensive than those set out in POPIA then, the extensive conditions prevail.

- 1.6 “**Data subject**” means the person to whom personal information/ Data relates.
- 1.7 “**Khwezi**” means Khwezi Financial Services (Pty) Ltd (Registration number 2013/129459/07), FSP 44816 and any reference to ‘Khwezi’ refers to all Khwezi Financial Services (Pty) Ltd.’s Operators, stakeholders and Employee/s and includes each therein as Khwezi Financial Services (Pty) Ltd.’s obligations in terms of the Policy and Data Protection Laws apply to its Operators, stakeholders and Employee/s which are all bound to comply with the same obligations as Khwezi Financial Services (Pty) Ltd in terms of the Policy and Data Protection Laws. Where ‘Khwezi’ is used in Chapters 9 and 10 of the Policy in relation to Khwezi Financial Services (Pty) Ltd’s contractual relationship with an Operator, stakeholder or Employee then ‘Khwezi’ shall only mean Khwezi Financial Services (Pty) Ltd unless the context indicates otherwise.
- 1.8 “**Client**” means the party that enters into a Trade Agreement, including addendums thereto, with Khwezi Financial Services (Pty) Ltd whereby Khwezi Financial Services (Pty) Ltd provides its business services to the party in exchange for remuneration by the party in accordance with the Trade Agreement, including addendums thereto.
- 1.9 “**Operator**” refers to a Third Party who provides services to Khwezi Financial Services (Pty) Ltd in terms of a Service Agreement, including any addendums thereto. The Third Party (including its representatives, employees, agents, contractor, sub-contractor or person acting in accordance with its instructions) is an Operator for the purposes of this Policy as it processes personal information for Khwezi Financial Services (Pty) Ltd in terms of a Service Agreement, including any addendums thereto, without coming under the direct authority of Khwezi Financial Services (Pty) Ltd.
- 1.10 “**Employee**” refers to a person who is employed by Khwezi Financial Services (Pty) Ltd in accordance with an Employment Agreement, including any addendums thereto.
- 1.11 “**Responsible Party**” means a public or private body or any other person which, alone or in conjunction with others, determines the purpose of and means for processing personal information/ data and in this regard Khwezi Financial Services (Pty) Ltd, its Operators, stakeholders and employees are each a Responsible Party for purposes of the Policy and obligations of Khwezi shall be obligations of its Operators, stakeholders and employees.
- 1.12 “**Processing**” means any operation or activity or any set of operations, whether by automatic means or otherwise, concerning personal information in terms of the Data Protection Laws, including the collection, receipt, recording, organisation, collation, storage, updating or modification, retrieval, alteration, consultation or use, dissemination by means of transmission, distribution or making available in any other form, or merging, linking, as well as restriction, degradation, de-identification, re-identification, erasure or destruction of information.

- 1.13 “**Policy**” shall mean the Data Protection Policy herein as amended from time to time by Khwezi Financial Services (Pty) Ltd at its sole unilateral discretion.
- 1.14 “**Agreement**” unless the context indicates otherwise shall mean the principal Agreement, or addendums thereto, between Khwezi Financial Services (Pty) Ltd and its employee, Client, Operator or any other party, as the case may be, whereby Khwezi Financial Services (Pty) Ltd exchanges Data as part of its business operations and this Policy is directly incorporated into said Agreements as set out further below in the Policy.
- 1.15 “**Biometrics**” means a technique of personal identification that is based on physical, physiological or behavioural characterisation including blood typing, fingerprinting, DNA analysis, retinal scanning and voice recognition.
- 1.16 “**Child**” means a natural person under the age of 18 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.
- 1.17 “**Consent**” means any voluntary, specific and informed expression of will in terms of which permission is given.
- 1.18 “**De-identify**”, in relation to personal information of a data subject, means to delete any information that:
- identifies the data subject;
 - can be used or manipulated by a reasonably foreseeable method to identify the data subject; or
 - can be linked by a reasonably foreseeable method to other information that identifies the data subject, and
 - “de-identified” has a corresponding meaning.
- 1.19 “**Direct marketing**” means to approach a data subject, either in person or by mail or electronic communication, for the direct or indirect purpose of:
- promoting or offering to supply, in the ordinary course of business, any goods or services to the data subject; or
 - requesting the data subject to make a donation of any kind for any reason.
- 1.20 “**Electronic communication**” means any text, voice, sound, or image message sent over an electronic communications network which is stored in the network or in the recipient’s terminal equipment until it is collected by the recipient.

- 1.21 **“Filing system”** means any structured set of personal information, whether centralised, decentralised or dispersed on a functional or geographical basis, which is accessible according to specific criteria.
- 1.22 **“Information matching programme”** means the comparison, whether manually or by means of any electronic or other device, of any document that contains personal information about ten or more data subjects with one or more documents that contain personal information of ten or more data subjects, for the purpose of producing or verifying information that may be used for the purpose of taking any action in regard to an identifiable data subject.
- 1.23 **“Information officer”** of, or in relation to Khwezi Financial Services (Pty) Ltd means the head of Khwezi Financial Services (Pty) Ltd as contemplated in Section 1 of the Promotion of Access to Information Act No. 2 of 2000 or as appointed by Khwezi Financial Services (Pty) Ltd from time to time.
- 1.24 **“Public record”** means a record that is accessible in the public domain and which is in the possession of or under the control of a public body, whether or not it was created by that public body.
- 1.25 **“Record”** means any recorded information regardless of form or medium, including any of the following:
- writing on any material;
 - 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;
 - label, marking or other writing that identifies or describes any thing of which it forms part, or to which it is attached by any means;
 - book, map, plan, graph or drawing;
 - 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;
 - in the possession or under the control of a responsible party;
 - whether or not it was created by a responsible party; and
 - regardless of when it came into existence.
- 1.26 **“Re-identify”**, in relation to personal information of a data subject, means to resurrect any information that has been de-identified, that:
- identifies the data subject;
 - can be used or manipulated by a reasonably foreseeable method to identify the data subject; or
 - can be linked by a reasonably foreseeable method to other information that identifies the data subject, and “re-identified” has a corresponding meaning.

- 1.27 **“Restriction”** means to withhold from circulation, use or publication any personal information that forms part of a filing system, but not to delete or destroy such information.
- 1.28 **“Unique identifier”** means any identifier that is assigned to a data subject and is used by a responsible party for the purposes of the operations of that responsible party and that uniquely identifies that data subject in relation to that responsible party.

2. INTRODUCTION, POLICY PURPOSE AND FRAMEWORK:

- 2.1 Khwezi is an authorised financial services provider. FSP 44816 and is a South African domiciled company, founded in 2013. Khwezi has aligned itself with the industry leaders to provide a regulated, reliable and stable trading environment, informative education, segregated bank accounts and managed account facilities. As a result of Khwezi’s vast financial market experience and our licence categories, we offer a complete and full range of broking services.
- 2.2 POPIA and the Data Protection Laws set out how and when individuals and juristic entities such as Khwezi collect, use, store, delete and otherwise handle personal information.
- 2.3 Khwezi through the provision of quality services, collects, discloses and uses Data (such as personal information of clients, customers, employees and other stakeholders) while simultaneously the Data Protection Laws require a person’s right to privacy and control over his or her Data.
- 2.4 POPIA is South Africa’s equivalent of the GDPR. It sets some conditions for responsible parties (called controllers in other jurisdictions), such as Khwezi, to lawfully process the Data of data subjects (both natural and juristic persons). Khwezi decides why and how to process Data and is responsible along with the Operators for complying with the Policy and data Protection Laws.
- 2.5 Data Protection Laws aim to protect data subjects from harm, like theft of Data and discrimination. Khwezi as a financial services provider shares this goal and furthermore the risks of Khwezi’s non-compliance include reputational damage, fines, imprisonment, and potentially paying out damages claims to data subjects.
- 2.6 Khwezi through this Policy has tasked itself to determine the purpose of and means for processing Data¹ to ensure Data is handled in accordance with the Data Protection Laws and this Policy with the goal of avoiding the potential damages of non-compliance while rather preparing for compliance with the Data Protection Laws.
- 2.7 Khwezi, through its Policy herein not only wishes to comply with the Data Protection Laws but also promote transparency to its Clients, and compliance by its Operators and employees with regard the Data which is

¹ Subject to certain exclusions as per section 3(1) of POPIA.

collected and how it is to be processed while compliance by Khwezi, the Operator and Khwezi employees demands identifying Data and taking reasonable measures to protect the Data.

- 2.8 Compliance with this Policy and the Data Protection Laws requires Khwezi to capture the minimum required Data, ensuring accuracy of Data, and removing Data that is no longer required. These measures should also improve the overall efficiency and reliability of Khwezi's existing databases.
- 2.9 The Policy is aimed at ensuring that Khwezi, its Information Technology and Security service provider/s are aware of and establish measures that ensure that Khwezi only collect, use, store, delete and otherwise handle Data in permitted ways and that Data is appropriately guarded from unauthorised loss or access and to inculcate a culture of Data protection at Khwezi and ensure that Data is only gathered and/ or processed where there is a lawful justification to do so while providing Clients with better control over Data and make informed decisions.
- 2.10 This Policy, in line with POPIA, promotes transparency to Khwezi's customers with regard the Data which is collected and how it is to be processed with the further aim of ensuring of increased trust of Khwezi by Clients.

3 APPLICATION AND SCOPE OF THE POLICY:

- 3.1 The Policy and more specifically POPIA, as per section 6 and section 7 of POPIA, does not apply in instances amongst other things but no limited to where the Data is:
 - 3.1.1 purely household or personal activity;
 - 3.1.2 sufficiently de-identified information;
 - 3.1.3 some state functions including criminal prosecutions, national security;
 - 3.1.4 journalism under a code of ethics;
 - 3.1.5 judiciary functions; and/ or
 - 3.1.6 processing of Data solely for the purpose of journalistic, literary or artistic expression to the extent that such an exclusion is necessary to reconcile, as a matter of public interest, the right to privacy with the right to freedom of expression;
 - 3.1.7 if Khwezi processes Data for exclusively journalistic purposes is, by virtue of office, employment or profession, subject to a code of ethics that provides adequate safeguards for the protection of Data, such code will apply to the processing concerned to the exclusion of this Act and any alleged interference with the protection of the Data of a data subject that may arise as a result of such processing must be adjudicated as provided for in terms of that code.
- 3.2 Khwezi in terms of POPIA is to only process information lawfully and in following manner:
 - 3.2.1 collect information that Khwezi needs for a specific purpose;

- 3.2.2 apply reasonable security measures to protect the information;
 - 3.2.3 ensure the information is relevant and up to date;
 - 3.2.4 only maintain as much as information as Khwezi requires and only for the time Khwezi requires it;
and
 - 3.2.5 allow the data subject to see the Data on request.
- 3.3 This Policy² applies to the processing of Data entered in a record by or for Khwezi by making use of automated³ or non-automated means provided that when the recorded Data is processed by non-automated means, it forms part of a filing system or is intended to form part thereof.
- 3.4 This Policy must be interpreted in a manner that gives effect to the purpose of the Policy and does not prevent any public or private body from exercising or performing its powers, duties and functions in terms of the law as far as such powers, duties and functions relate to the processing of Data and such processing is in accordance with the Policy and Data Protection Laws that regulate the processing of Data.
- 3.5 Operators, clients, employees, stakeholders and Khwezi's Information Technology and Security service provider/s acknowledge that as part of Khwezi's business and each's contractual obligations with Khwezi that this Policy and the Data Protection Laws are incorporated therein and each are bound by this Policy and the Data Protection Laws and that as a natural occurrence of their involvement with Khwezi there will be an exchange of Data between them and Khwezi and furthermore the parties acknowledge that in terms of the Policy and Data Protection Laws, including amendments thereto, the parties warrant that each has read and each is acquainted with this Policy and the Data Protection Laws including that Data may only be processed with the data subject's consent or when it is both necessary for pursuing legitimate interests and reasonable as well as justifiable to do so.
- 3.6 Operators, Employees, stakeholders and Khwezi's Information Technology and Security service provider/s must ensure that Data submitted to each by Khwezi or by each to Khwezi, as the case may be, is processed by each in accordance with this Policy and the applicable Data Protection Laws. Due to the legal obligations placed on Khwezi by the Data Protection Laws, the Operators, Employees, stakeholders and Khwezi's Information Technology and Security service provider/s must act under Khwezi's mandate herein to ensure that each have and maintain appropriate security safeguards regarding Data at all times.
- 3.7 Khwezi's Operators, Employees, stakeholders and Khwezi's Information Technology and Security service provider/s further acknowledge that the Policy and Data Protection Laws described herein and each's compliance therewith is required as part of the legal obligations imposed upon Khwezi and in so far as this Policy and Data Protection Laws contradict an Agreement Khwezi has with any of these parties, then the Policy and Data Protection Laws supersede the Agreement.

² As per section 3 of POPIA.

³ For the purposes section 3 of POPIA, means any equipment capable of operating automatically in response to instructions given for the purpose of processing information

- 3.8 All Khwezi's Operators, Employees, stakeholders and Khwezi's Information Technology and Security service provider/s further acknowledge this Policy which may be amended from time to time at Khwezi's sole unilateral discretion and shall be published on Khwezi's website, and each bind themselves to the Policy, as amended from time to time and each further acknowledge and warrants that each has and shall familiarise itself with this Policy, as amended from time to time, and shall comply with the stated processes and procedure of the Policy.
- 3.9 All Khwezi's Operators, Employees, stakeholders and Khwezi's Information Technology and Security service provider/s further acknowledge that this Policy is required as part of Khwezi's internal business processes and procedures. Any reference to Khwezi's Operators, Clients, Employees, stakeholders and Khwezi's Information Technology and Security service provider/s further acknowledge includes each's governing body, employees, volunteers, contractors, sub-contractors, suppliers and any other persons acting on behalf of them.
- 3.10 Khwezi's Operators, Employees, stakeholders and Khwezi's Information Technology and Security service provider/s must secure the integrity and confidentiality of Data in each's possession or under each's control by taking appropriate, reasonable technical and organisational measures to prevent loss of, damage to or unauthorised destruction of Data and unlawful access to or processing of Data in terms of the Policy and Data Protection Laws.
- 3.11 Khwezi's Operators, Employees, stakeholders and Khwezi's Information Technology and Security service provider/s acknowledge that each is acquainted with all the applicable Data Protection Laws and this Policy and each undertake to act at all times in accordance therewith and furthermore each must take reasonable steps and establish and maintain reasonable technical and organisational measures to safeguard the Data that is processed by it as furnished to each by Khwezi and on Khwezi's behalf, respectively, including:
- 3.11.1 identifying all reasonably foreseeable internal and external risks to Data in each's possession or under each's control;
 - 3.11.2 establish and maintain appropriate safeguards against the risks identified;
 - 3.11.3 regularly verify that the safeguards are effectively implemented;
 - 3.11.4 ensuring the adequacy and security of the operating environment, both physical and electronic;
 - 3.11.5 maintain appropriate security measures to prevent unauthorised access to, use of or damage to the Data and any accessible information systems;
 - 3.11.6 shall comply with all reasonable operational and security procedures required by this Policy, Data Protection Laws and/ or Khwezi from time to time and to inform Khwezi immediately of any breach of security; and
 - 3.11.7 ensure that the safeguards are continually updated in response to new risks or deficiencies in previously implemented safeguards.
- 3.12 Khwezi, its Operators, Clients, Employees, stakeholders and Khwezi's Information Technology and Security service provider/s must have due regard to generally accepted information security practices and

procedures and these shall apply to each and are furthermore required in terms of specific industry or professional rules and regulations and at a very minimum those recognised in South Africa or Europe whichever may provide the best information security practices from time to time shall be observed by each.

3.13 Khwezi's Operators, Employees, stakeholders and Khwezi's Information Technology and Security service provider/s acknowledges that, having been given 2 (two) business days written notice by Khwezi, that Khwezi may carry out physical and/ or electronic inspections and/ or audits to verify that the parties have each implemented the agreed security safeguards to comply with this Policy and the Data Protection Laws and each shall take all reasonable steps to assist Khwezi in this regard.

3.14 Furthermore, Khwezi's Operators, Client/s, Employees, stakeholders and Khwezi's Information Technology and Security service provider/s acknowledge that any data processed by each or person acting under each's authority or anyone processing Data on each's behalf must:

3.14.1 process such Data only with the knowledge or authorisation of Khwezi; and

3.14.2 treat Data which comes to his/ her/ it/ their knowledge as confidential and must not disclose it,

unless required by law or in the course of the proper performance of each's lawful duties.

3.15 When processing Data Khwezi's Operators, Employees, stakeholders and Khwezi's Information Technology and Security service provider/s are required to ensure that each as well as the individuals processing the data on each's behalf are subject to a duty of confidence and responsible to perform in terms of this Policy and the Data Protection Laws and are furthermore held accountable and trained, respectively, by each in that regard. In order to minimise the risk of Data breaches and ensure compliance with this Policy and the Data Protection Laws Khwezi and Operators, Employees, stakeholders and Khwezi's Information Technology and Security service provider/s shall limit access to Data to those individuals who have entered into appropriate confidentiality and Data protection agreements with the Operators, Clients, Employees, stakeholders and Khwezi's Information Technology and Security service provider/s, as the case may be, incorporating the provisions of this Policy or who are subject to each's obligations herein by virtue of their office.

3.16 The Operators, Employees, stakeholders and Khwezi's Information Technology and Security service provider/s must obtain Khwezi's prior written consent before engaging contractors/ subcontractors and each is prohibited from transferring any Data cross-border without Khwezi's written consent if the transfer is to a country that is not subject to the Data Protection Laws or data protection laws commensurate to the Policy and Data Protection Laws.

3.17 The Operators, Employees, stakeholders and Khwezi's Information Technology and Security service provider/s acknowledge that each is prohibited from retaining the Data after the purpose (for which it was

initially collected or subsequently processed) has been achieved, and therefore undertakes to return, delete, destroy the Data immediately or at the request of Khwezi.

- 3.18 The Operators, Employees, stakeholders and Khwezi's Information Technology and Security service provider/s must keep a record of processing of Data activities and assist Khwezi with Data protection assessments where required by Khwezi at Khwezi's sole unilateral discretion.
- 3.19 In so far as Khwezi may be held liable by virtue of the Operators, Employees, stakeholders and Khwezi's Information Technology and Security service provider/s non-compliance with the terms of this Policy and/or the Data Protection Laws, each, as the case may be, hereby indemnifies Khwezi from any risk, harm or loss suffered whatsoever- including reimbursing Khwezi for any penalty that is imposed on Khwezi or any damages claims that may be brought against Khwezi, all loss, damage, any demand, claims, cost/s and expense, including legal fees on an attorney-own client scale, including consequential loss- as a result of a Data breach due to each's, as the case may be, non-compliance with the terms of this Policy and the Data Protection Laws.

4. THE LAWFUL PROCESSING AND TRANSFER OF DATA:

- 4.1 The purpose of the Policy is to regulate, in harmony with South African and international standards, the processing of Data by Khwezi, its Operators and stakeholders as well as employees in a manner that gives effect to the right to privacy subject to justifiable limitations that are aimed at protecting other rights and important interests.
- 4.2 In terms of the Policy as a guideline section 4 of POPIA states that the lawful processing of Data by or for Khwezi and its appointed Information Officer include the following:
- 4.2.1 'Accountability', as referred to in section 8 of POPIA;
 - 4.2.2 "Processing limitation", as referred to in sections 9, 10, 11 & 12 of POPIA;
 - 4.2.3 "Purpose specification", as referred to in sections 13 and 14 of POPIA;
 - 4.2.4 "Further processing limitation", as referred to in section 15 of POPIA;
 - 4.2.5 "Information quality", as referred to in section 16 of POPIA;
 - 4.2.6 "Openness", as referred to in sections 17 and 18 of POPIA;
 - 4.2.7 "Security safeguards", as referred to in sections 19 to 22 of POPIA; and
 - 4.2.8 "Data subject participation", as referred to in sections 23 to 25 of POPIA.
- 4.3 'Accountability', as referred to in section 8 of POPIA:
- 4.3.1 Section 8 states that Khwezi is to ensure conditions for lawful processing of Data as set out in POPIA and all the measures that give effect to such conditions, are complied with at the time of the determination of the purpose and means of the processing and during the processing itself.

4.4 “Processing limitation”, as referred to in sections 9, 10, 11 & 12 of POPIA:

4.4.1 Section 9 states that Data must be processed by Khwezi lawfully and in a reasonable manner that does not infringe the privacy of the data subject.

4.4.2 Section 10 states that Data may only be processed by Khwezi if, given the purpose for which it is processed, it is adequate, relevant, and not excessive.

4.4.3 Section 11 deals with consent, justification and objection and states amongst other things that Data may only be processed by Khwezi if:

4.4.3.1 the data subject or a competent person where the data subject is a child consents to the processing, Khwezi must prove consent and the data subject may withdraw consent provided lawfulness is not affected;

4.4.3.2 processing is necessary to carry out actions for the conclusion or performance of an Agreement to which the data subject is party;

4.4.3.3 processing complies with an obligation imposed by law on Khwezi;

4.4.3.4 processing protects a legitimate interest of the data subject; or

4.4.3.5 processing is necessary for pursuing the legitimate interests of Khwezi or of an Operator to whom the information is supplied.

4.4.4 Section 12 states that Data must be collected by Khwezi directly from the data subject, except if:

4.4.4.1 the Data is contained in or derived from a public record or has deliberately been made public by the data subject;

4.4.4.2 the data subject or a competent person where the data subject is a child has consented to the collection of the information from another source;

4.4.4.3 collection of the Data from another source would not prejudice a legitimate interest of the data subject;

4.4.4.4 collection of the Data from another source is necessary to avoid prejudice to the maintenance of the law by any public body, including the prevention, detection, investigation, prosecution and punishment of offences;

4.4.4.5 to comply with an obligation imposed by law or to enforce legislation concerning the collection of revenue as defined in section 1 of the South African Revenue Service Act, 1997 (Act No. 34 of 1997);

4.4.4.6 for the conduct of proceedings in any court or tribunal that have commenced or are reasonably contemplated;

4.4.4.7 in the interests of national security; or

- 4.4.4.8 to maintain the legitimate interests of Khwezi or of a Third Party to whom the Data is supplied;
- 4.4.4.9 compliance would prejudice a lawful purpose of the collection; or
- 4.4.4.10 compliance is not reasonably practicable in the circumstances of the particular case.

4.5 “Purpose specification”, as referred to in sections 13 and 14 of POPIA:

4.5.1 Section 13 states that Data must be collected for a specific, explicitly defined and lawful purpose related to a function or activity of Khwezi. Steps must be taken in accordance with section 18 of POPIA to ensure that the data subject is aware of the purpose of the collection of the Data unless the exclusions of section 18 are applicable. Section 18 is set out in paragraphs 4.8.2 and 4.8.3 of the Policy and the sub-paragraphs contained therein.

4.5.2 Section 14 states that, records of Data must not be retained by Khwezi any longer than is necessary for achieving the purpose for which the Data was collected or subsequently processed, unless:

- 4.5.2.1 retention of the record is required or authorised by law;
- 4.5.2.2 Khwezi reasonably requires the record for lawful purposes related to its functions or activities;
- 4.5.2.3 retention of the record is required by a contract/ Agreement between the parties thereto; or
- 4.5.2.4 the data subject or a competent person where the data subject is a child has consented to the retention of the record.

4.5.3 Section 14 of POPIA states further that:

- 4.5.3.1 If Khwezi has used a record of Data of a data subject to make a decision about the data subject, then Khwezi must retain the record for such period as may be required or prescribed by law or a code of conduct; or
- 4.5.3.2 if there is no law or code of conduct prescribing a retention period, Khwezi must retain the record for a period which will afford the data subject a reasonable opportunity, taking all considerations relating to the use of the Data into account, to request access to the record.
- 4.5.3.3 Khwezi must destroy or delete a record of Data or de-identify it as soon as reasonably practicable after Khwezi is no longer authorised to retain the record;
- 4.5.3.4 The destruction or deletion of a record of Data must be done by Khwezi in a manner that prevents its reconstruction in an intelligible form;
- 4.5.3.5 Khwezi must restrict processing of Data if its accuracy is contested by the data subject, for a period enabling Khwezi to verify the accuracy of the Data; or
- 4.5.3.6 Khwezi no longer needs the Data for achieving the purpose for which the Data was collected or subsequently processed, but it has to be maintained for purposes of proof;

4.5.3.7 Data, with the exception of storage, may only be processed by Khwezi for purposes of proof, or with the data subject's consent, or with the consent of a competent person in respect of a child, or for the protection of the rights of another natural or legal person or if such processing is in the public interest.

4.5.3.8 Where processing of Data is restricted Khwezi must inform the data subject before lifting the restriction on processing.

4.6 "Further processing limitation", as referred to in section 15 of POPIA:

4.6.1 Section 15 states that further processing of Data by Khwezi must be compatible with the purpose of collection taking into account:

4.6.1.1 the relationship between the purpose of the intended further processing and the purpose for which the Data has been collected;

4.6.1.2 the nature of the Data concerned;

4.6.1.3 the consequences of the intended further processing for the data subject;

4.6.1.4 the manner in which the Data has been collected; and

4.6.1.5 any contractual rights and obligations between the parties.

4.6.2 Furthermore section 15 states that the further processing of Data by Khwezi is not incompatible with the purpose of collection as per section 12 of POPIA if the further processing of the Data is:

4.6.2.1 necessary to prevent or mitigate a serious and imminent threat to public health or public safety; or

4.6.2.2 necessary to prevent or mitigate a serious and imminent threat to the life or health of the data subject or another individual; or

4.6.2.3 the further processing of the Data is in accordance with an exemption granted under section 37 of POPIA by the Regulator (if the public interest in the processing outweighs, to a substantial degree, any interference with the privacy of the data subject that could result from such processing; or the processing involves a clear benefit to the data subject or a Third Party that outweighs, to a substantial degree, any interference with the privacy of the data subject or Third Party that could result from such processing).

4.7 "Information quality", as referred to in section 16 of POPIA:

4.7.1 Section 16 states that Khwezi must take reasonably practicable steps to ensure that the Data is complete, accurate, not misleading and updated where necessary and must have regard to the purpose for which Data is collected or further processed.

4.8 "Openness", as referred to in sections 17 and 18 of POPIA;

4.8.1 Section 17 states that Khwezi must maintain the documentation of all processing operations under its responsibility as referred to in section 51⁴ of the Promotion of Access to Information Act.

4.8.2 Section 18 states that If Data is collected, Khwezi must take reasonably practicable steps to ensure that the data subject is aware of:

4.8.2.1 the Data being collected and where the Data is not collected from the data subject, the source from which it is collected;

4.8.2.2 the name and address of Khwezi;

4.8.2.3 the purpose for which the Data is being collected;

4.8.2.4 whether or not the supply of the Data by that data subject is voluntary or mandatory;

4.8.2.5 the consequences of failure to provide the Data;

4.8.2.6 any particular law authorising or requiring the collection of the Data;

4.8.2.7 the fact that, where applicable, Khwezi intends to transfer the Data to a third country or international organisation and the level of protection afforded to the Data by that third country or international organisation;

4.8.2.8 any further Data such as the recipient or category of recipients of the Data, nature or category of the Data, existence of the right of access to and the right to rectify the Data collected, existence of the right to object to the processing of Data as referred to in section 11(3) of POPIA, and the right to lodge a complaint to the Information Regulator and the contact details of the Information Regulator, which is necessary, having regard to the specific circumstances in which the Data is or is not to be processed, to enable processing in respect of the data subject to be reasonable.

4.8.3 The steps referred to in paragraph 4.8.2 of the Policy and sub-paragraphs therein must be taken by Khwezi if the Data is collected directly from the data subject, then before the Data is collected- unless the data subject is already aware of the Data referred to or in any other case, then before the Data is collected or as soon as reasonably practicable after it has been collected.

⁴ (1) Within six months after the commencement of this section or the coming into existence of the private body concerned, the head of a private body must compile a manual containing-

(a) the postal and street address, phone and fax number and, if available, electronic mail address of the head of the body;

(b) a description of the guide referred to in section 10, if available, and how to obtain access to it;

(c) the latest notice in terms of section 52(2), if any, regarding the categories of record of the body which are available without a person having to request access in terms of this Act;

(d) a description of the records of the body which are available in accordance with any other legislation;

(e) sufficient detail to facilitate a request for access to a record of the body, a description of the subjects on which the body holds records and the categories of records held on each subject; and

(f) such other information as may be prescribed.

(2) The head of a private body must on a regular basis update the manual referred to in subsection (1).

(3) Each manual must be made available as prescribed.

4.8.4 If Khwezi has previously taken the steps referred to in paragraph 4.8.2 then it complies with paragraph 4.8.2 if the subsequent collection from the data subject of the same Data or Data of the same kind provided the purpose of collection of the Data remains the same.

4.8.5 It is not necessary for Khwezi to comply with section 18 of POPIA:

- 4.8.5.1 the data subject is a child and a competent person has provided consent for the non-compliance;
- 4.8.5.2 non-compliance would not prejudice the legitimate interests of the data subject as set out in terms of POPIA this Act;
- 4.8.5.3 non-compliance is necessary to avoid prejudice to the maintenance of the law by any public body, including the prevention, detection, investigation, prosecution and punishment of offences;
- 4.8.5.4 to comply with an obligation imposed by law or to enforce legislation concerning the collection of revenue as defined in section 1 of the South African Revenue Service Act, 1997 (Act No. 34 of 1997);
- 4.8.5.5 for the conduct of proceedings in any court or tribunal that have been commenced or are reasonably contemplated; or in the interests of national security;
- 4.8.5.6 compliance would prejudice a lawful purpose of the collection;
- 4.8.5.7 compliance is not reasonably practicable in the circumstances of the particular case; or
- 4.8.5.8 the Data will not be used in a form in which the data subject may be identified; or be used for historical, statistical or research purposes.

4.9 “Security safeguards”, as referred to in sections 19 to 22 of POPIA;

4.9.1 Section 19 of POPIA and hence this Policy requires that Khwezi and its Information Technology and Security service provider/s must secure the integrity and confidentiality of Data in Khwezi’s possession or under Khwezi’s control by taking appropriate, reasonable technical and organisational measures to:

- 4.9.1.1 prevent loss of, damage to or unauthorised destruction of Data; and
- 4.9.1.2 unlawful access to or processing of Data;
- 4.9.1.3 Khwezi must identify all reasonably foreseeable internal and external risks to Data in its possession or under its control;
- 4.9.1.4 Khwezi and its Information Technology and Security service provider/s must establish and maintain appropriate safeguards against the risks identified;
- 4.9.1.5 Khwezi and its Information Technology and Security service provider/s must regularly verify that the safeguards are effectively implemented; and

- 4.9.1.6 Khwezi and its Information Technology and Security service provider/s must ensure that the safeguards are continually updated in response to new risks or deficiencies in previously implemented safeguards.
- 4.9.2 Section 19 further states that Khwezi and its Information Technology and Security service provider/s must have due regard to generally accepted Data security practices and procedures which may apply to it generally or be required in terms of specific industry or professional rules and regulations.
- 4.9.3 Section 20 of POPIA states that an Operator or anyone processing Data on behalf of Khwezi or an Operator, must process such Data only with the knowledge or authorisation of Khwezi and treat Data which comes to his, her or its knowledge as confidential and must not disclose it, unless required by law or in the course of the proper performance of his, her or its duties.
- 4.9.4 Section 21 of POPIA pertains to security measures and states that Khwezi must, in terms of a written contract/ Agreement between Khwezi and the Operator, ensure that the Operator which processes Data for Khwezi establishes and maintains the security measures referred to in section 19 of POPIA and furthermore the Operator acknowledges that it is bound to this Policy and the Data Protection Laws by virtue of its business dealings with Khwezi. The Operator must notify Khwezi immediately where there are reasonable grounds to believe that the Data of a data subject has been accessed or acquired by any unauthorised person.
- 4.9.5 Section 72 of POPIA deals with transfers of Data outside the Republic of South Africa and states that Khwezi may not transfer Data about a data subject to an Operator who is in a foreign country unless:
- 4.9.5.1 the Operator who is the recipient of the Data is subject to a law, binding corporate rules⁵ or binding Agreement which provide an adequate level of protection that effectively uphold principles for reasonable processing of the Data that are substantially similar to the conditions for the lawful processing of Data relating to a data subject who is a natural person and, where applicable, a juristic person; and
 - 4.9.5.2 includes provisions, that are substantially similar to this section, relating to the further transfer of Data from the recipient to third parties who are in a foreign country;
 - 4.9.5.3 the data subject consents to the transfer;
 - 4.9.5.4 the transfer is necessary for the performance of a contract/ Agreement between the data subject and Khwezi, or for the implementation of pre-contractual measures taken in response to the data subject's request;

⁵ means personal information processing policies, within a group of undertakings, which are adhered to by a responsible party or operator within that group of undertakings when transferring personal information to a responsible party or operator within that same group of undertakings in a foreign country and in this regard 'group of undertakings' means a controlling undertaking and its controlled undertakings.

4.9.5.5 the transfer is necessary for the conclusion or performance of a contract concluded in the interest of the data subject between Khwezi and an Operator; or

4.9.5.6 the transfer is for the benefit of the data subject, and

4.9.5.7 it is not reasonably practicable to obtain the consent of the data subject to that transfer; and

4.9.5.8 if it were reasonably practicable to obtain such consent, the data subject would be likely to give it;

and the Operator or Third Party in a foreign country warrants that for the purposes of this Policy and particularly paragraph 4.9.5 of the Policy and the sub-paragraphs that Khwezi has fulfilled its obligations in terms of section 72 of POPIA.

4.9.6 Section 22 of POPIA states that where there are reasonable grounds to believe that the Data of a data subject has been accessed or acquired by any unauthorised person, Khwezi must notify the Information Regulator; and the data subject, unless the identity of such data subject cannot be established:

4.9.6.1 The notification referred to must be made as soon as reasonably possible after the discovery of the compromise by Khwezi, taking into account the legitimate needs of law enforcement or any measures reasonably necessary to determine the scope of the compromise and to restore the integrity of Khwezi's Data system.

4.10 In terms of the Policy section 5 of POPIA states that a data subject has the right to have his, her or its Data processed by Khwezi in accordance with the conditions for the lawful processing of Data, including the right:

4.10.1 to be notified by Khwezi that Data about him, her or it is being collected as provided for in terms of section 18 of POPIA; or

4.10.2 to be notified by Khwezi that his, her or its Data has been accessed or acquired by an unauthorised person as provided for in terms of section 22 of POPIA;

4.10.3 to establish whether Khwezi holds Data of that data subject and to request access to his, her or its Data as provided for in terms of section 23⁶ of POPIA;

4.10.4 to request Khwezi, where necessary, to correct, destroy or delete his, her or its Data as provided for in terms of section 24 of POPIA;

4.10.5 to object to Khwezi, on reasonable grounds relating to his, her or its particular situation to the processing of his, her or its Data as provided for in terms of section 11(3)(a) of POPIA;

4.10.6 to object to Khwezi processing of his, her or its Data:

4.10.6.1 at any time for purposes of direct marketing by Khwezi in terms of section 11(3)(b); or

⁶ See paragraph 4.12 below.

- 4.10.6.2 at any time for purposes of direct marketing by Khwezi in terms of section 69(3)(c)⁷ of POPIA;
- 4.10.6.3 not to have his, her or its Data processed by Khwezi for purposes of direct marketing by means of unsolicited electronic communications except as allowed in terms of section 69 of POPIA;
- 4.10.6.4 not to be subject, under certain circumstances, to a decision by Khwezi which is based solely on the automated processing of his, her or its Data intended to provide a profile of such person as provided for in terms of section 71⁸ of POPIA;
- 4.10.6.5 to submit a complaint to the Information Regulator regarding the alleged interference with the protection of the Data of any data subject; and
- 4.10.6.6 to institute civil proceedings regarding the alleged interference with the protection of his, her or its Data as provided for in section 99 of POPIA.

4.11 Section 71 of POPIA deals with automated decision making whereby a data subject may not be subject to a decision by Khwezi which results in legal consequences for him, her or it, or which affects him, her or it to a substantial degree, which is based solely on the basis of the automated processing of Data intended by Khwezi to provide a profile of such person including his or her performance at work, or his, her or its credit worthiness, reliability, location, health, personal preferences or conduct but not if the decision:

- 4.11.1 has been taken by Khwezi in connection with the conclusion or execution of a contract/ Agreement, and
- 4.11.2 the request of the data subject in terms of the contract/ Agreement has been met by Khwezi; or
- 4.11.3 appropriate measures⁹ have been taken by Khwezi to protect the data subject's legitimate interests; or
- 4.11.4 is governed by a law or code of conduct in which appropriate measures are specified for protecting the legitimate interests of data subjects.

4.12 "Data subject participation", as referred to in sections 23 to 25 of POPIA:

- 4.12.1 Section 23¹⁰ of POPIA states that a data subject, having provided adequate proof of identity, has the right to:

⁷ When direct marketing a responsible party may only process the personal information of a data subject who is a customer of the responsible party if the data subject has been given a reasonable opportunity to object, free of charge and in a manner free of unnecessary formality, to such use of his, her or its electronic details at the time when the information was collected; and on the occasion of each communication with the data subject for the purpose of marketing if the data subject has not initially refused such use.

⁸ See paragraph 4.11 below.

⁹ The appropriate measures, must provide an opportunity for a data subject to make representations about a decision and require a responsible party to provide a data subject with sufficient information about the underlying logic of the automated processing of the information relating to him or her to enable him or her to make representations.

¹⁰ Khwezi may or must refuse, as the case may be, to disclose any information requested in terms of subsection 23(1) to which the grounds for refusal of access to records are set out in the applicable sections of Chapter 4 of Part 2 and Chapter 4 of Part 3 of the Promotion of Access to Information Act apply. The provisions of sections 30 and 61 of the Promotion of Access to Information Act are applicable in respect of access to health or other records.

- 4.12.1.1 request (in terms of section 25 of POPIA) Khwezi to confirm, free of charge, whether Khwezi holds Data about the data subject; and
 - 4.12.1.2 request from Khwezi the record or a description of the Data about the data subject held by Khwezi, including Data about the identity of all third parties, or categories of third parties, who have, or have had, access to the Data within a reasonable time; at a prescribed fee (estimated beforehand with or without a deposit), if any; in a reasonable manner and format; and in a form that is generally understandable.
- 4.12.2 If, in response to a request Data is communicated to a data subject, the data subject must be advised of the right in terms of section 24 of POPIA that it may:
- 4.12.2.1 request Khwezi to confirm, free of charge, whether Khwezi holds Data about the data subject; and
 - 4.12.2.2 request from Khwezi the record or a description of the Data about the data subject held by Khwezi, including Data about the identity of all third parties including Operators, or categories of third parties, who have, or have had, access to the Data within a reasonable time; at a prescribed fee (estimated beforehand with or without a deposit), if any, in a reasonable manner and format and in a form that is generally understandable.
 - 4.12.2.3 If, in response to a request, Data is communicated by Khwezi to a data subject, the data subject must be advised of the right in terms of section 24 of POPIA to request the correction of Data. A data subject may, in the prescribed manner, request Khwezi to:
 - 4.12.2.3.1 correct or delete Data about the data subject in its possession or under its control that is inaccurate, irrelevant, excessive, out of date, incomplete, misleading, or obtained unlawfully; or
 - 4.12.2.3.2 destroy or delete a record of Data about the data subject that Khwezi is no longer authorised to retain in terms of section 14 of POPIA.
 - 4.12.2.4 On receipt of a request in terms of sub-paragraphs 4.12.2.2 and 4.12.2.3 Khwezi must, as soon as reasonably practicable:
 - 4.12.2.4.1 correct the Data;
 - 4.12.2.4.2 destroy or delete the Data;
 - 4.12.2.4.3 provide the data subject, to his or her satisfaction, with credible evidence in support of the Data; or
 - 4.12.2.4.4 where agreement cannot be reached between Khwezi and the data subject, and if the data subject so requests, take such steps as are reasonable in the circumstances, to attach to the Data in such a manner that it will always be read with the Data, an indication that a correction of the Data has been requested but has not been made.

- 4.12.2.5 If Khwezi has taken steps that result in a change to the Data and the changed Data has an impact on decisions that have been or will be taken in respect of the data subject in question, Khwezi must, if reasonably practicable, inform each person or body or other parties to whom the Data has been disclosed of those steps.
- 4.12.2.6 Khwezi must notify a data subject, who has made a request in terms of subsection sub-paragraphs 4.12.2.2 and 4.12.2.3, of the action taken as a result of the request.
- 4.12.3 Section 25 of POPIA states that the provisions of section 53¹¹ of the Promotion of Access to Information Act apply to requests made in terms of section 23 of this Act.
- 4.12.4 Section 26 (special information/ Data¹²) states that subject to section 27 Khwezi may not process Data concerning:
- 4.12.4.1 the religious or philosophical beliefs, race or ethnic origin, trade union membership, political persuasion, health or sex life or biometric Data of a data subject; or
- 4.12.4.2 the criminal behaviour of a data subject to the extent that such Data relates to the alleged commission by a data subject of any offence; or
- 4.12.4.3 any proceedings in respect of any offence allegedly committed by a data subject or the disposal of such proceedings.
- 4.12.5 Section 27 states that the prohibition on processing Data, as referred to in section 26, does not apply if the:
- 4.12.5.1 processing is carried out with the consent of a data subject; referred to in section 26;
- 4.12.5.2 processing is necessary for the establishment, exercise or defence of a right or obligation in law;
- 4.12.5.3 processing is necessary to comply with an obligation of international public law;
- 4.12.5.4 processing is for historical, statistical or research purposes to the extent that:
- 4.12.5.5 the purpose serves a public interest and the processing is necessary for the purpose concerned; or

¹¹ (1) A request for access to a record of a private body must be made in the prescribed form to the private body concerned at its address, fax number or electronic mail address.

(2) The form for a request for access prescribed for the purposes of subsection (1) must at least require the requester concerned-

(a) to provide sufficient particulars to enable the head of the private body concerned to identify-

(i) the record or records requested; and

(ii) the requester;

(b) to indicate which form of access is required;

(c) to specify a postal address or fax number of the requester in the Republic;

(d) to identify the right the requester is seeking to exercise or protect and provide an explanation of why the requested record is required for the exercise or protection of that right;

(e) if, in addition to a written reply, the requester wishes to be informed of the decision on the request in any other manner, to state that manner and the necessary particulars to be so informed; and

(f) if the request is made on behalf of a person, to submit proof of the capacity in which the requester is making the request, to the reasonable satisfaction of the head.

¹² "special personal information" means personal information as referred to in section 26 of POPIA.

- 4.12.5.6 it appears to be impossible or would involve a disproportionate effort to ask for consent;
and
- 4.12.5.7 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;
- 4.12.5.8 Data has deliberately been made public by the data subject; or
- 4.12.5.9 provisions of sections 28 to 33 of POPIA are, as the case may be, are complied with.

5. DIRECT MARKETING:

5.1 Section 69 of POPIA deals with direct marketing by Khwezi by means of unsolicited electronic communications and whereas the processing of Data of a data subject for the purpose of direct marketing by means of any form of electronic communication, including automatic calling machines¹³, facsimile machines, SMSs or e-mail is prohibited unless the data subject:

- 5.1.1 has given his, her or its consent to the processing; or
- 5.1.2 is, subject to subsection 69 (3) of POPIA, a customer of Khwezi.

5.2 Furthermore, Khwezi may approach a data subject:

- 5.2.1 whose consent is required in terms of sub-section 69(1)(a); and
- 5.2.2 who has not previously withheld such consent, only once in order to request the consent of that data subject.

5.3 The data subject's consent must be requested by Khwezi in the prescribed manner and form.

5.4 In terms of subsection 69(1)(b) of POPIA, Khwezi may only process the Data of a data subject who is a Client:

- 5.4.1 if Khwezi has obtained the contact details of the data subject in the context of the sale of a product or service;
- 5.4.2 for the purpose of direct marketing of Khwezi's own similar products or services; and
- 5.4.3 if the data subject has been given a reasonable opportunity by Khwezi to object, free of charge and in a manner free of unnecessary formality, to such use of his, her or its electronic details:
 - 5.4.3.1 at the time when the Data was collected; and
 - 5.4.3.2 on the occasion of each communication by Khwezi with the data subject for the purpose of marketing if the data subject has not initially refused such use.

5.5 Any communication for the purpose of direct marketing by Khwezi must contain:

¹³ "Automatic calling machine", means a machine that is able to do automated calls without human intervention.

- 5.5.1 details of the identity of the sender or the person on whose behalf the communication has been sent; and
- 5.5.2 an address or other contact details to which the recipient may send a request that such communications cease.

6. OBLIGATIONS AND RECORD KEEPING:

- 6.1 Khwezi in terms of section 57 of POPIA must obtain prior authorisation from the Information Regulator, in terms of section 58 of POPIA, prior to any processing if Khwezi plans to process any unique identifiers of data subjects:
 - 6.1.1 for a purpose other than the one for which the identifier was specifically intended by Khwezi at collection by Khwezi; and
 - 6.1.2 with the aim of linking the Data together with Data processed by other responsible parties;
 - 6.1.3 process Data on criminal behaviour or on unlawful or objectionable conduct on behalf of third parties;
 - 6.1.4 process Data for the purposes of credit reporting; or
 - 6.1.5 transfer special Data, as referred to in section 26, or the Data of children as referred to in section 34 of POPIA, to a Third Party in a foreign country that does not provide an adequate level of protection for the processing of Data as referred to in section 72 of POPIA.
- 6.2 Khwezi must obtain prior authorisation as referred to in paragraph 6.1 of the Policy and the sub-paragraphs therein only once and not each time that Data is received or processed, except where Khwezi's processing departs from that which has been authorised in accordance with the provisions of paragraph 6.1 of the Policy and the sub-paragraphs therein.
- 6.3 Khwezi in terms of section 58 of POPIA must notify Information Regulator if processing is subject to prior authorisation as contemplated in section 57 of POPIA:
 - 6.3.1 Khwezi may not carry out Data processing of which the Information Regulator has been notified in terms of paragraph 6.3 until the Information Regulator has completed its investigation or until Khwezi have received notice that a more detailed investigation will not be conducted.
 - 6.3.2 In the case of the notification of Data processing to which section paragraph 6.3 is applicable, the Information Regulator must inform Khwezi in writing within four weeks of the notification as to whether or not it will conduct a more detailed investigation.
- 6.4 Khwezi in terms of section 29 of POPIA is prohibited from processing Data concerning a data subject's race or ethnic origin, as referred to in section 26 of POPIA, but this prohibition is inapplicable if the processing by Khwezi is carried out to:

- 6.4.1 identify data subjects and only when this is essential for that purpose; and
- 6.4.2 comply with laws and other measures designed to protect or advance persons, or categories of persons, disadvantaged by unfair discrimination.

6.5 Khwezi in terms of section 32 of POPIA is prohibited from processing Data concerning a data subject's health or sex life, as referred to in section 26 of POPIA, but this prohibition is inapplicable if the processing by Khwezi is amongst other things:

6.5.1 By administrative bodies, pension funds, employers or institutions working for them, if such processing is necessary for:

6.5.1.1 the implementation of the provisions of laws, pension regulations or collective agreements which create rights dependent on the health or sex life of the data subject;
or

6.5.1.2 the reintegration of or support for workers or persons entitled to benefit in connection with sickness or work incapacity.

6.5.2 In the cases referred to under paragraph 6.5.1 of the Policy and the sub-paragraphs therein if said instances were applicable to Khwezi, the Data may only be processed by Khwezi subject to Khwezi's obligation of confidentiality by virtue of office, profession or legal provision, or established by a written Agreement between Khwezi and the data subject.

6.5.3 Data concerning inherited characteristics may not be processed by Khwezi in respect of a data subject from whom the Data concerned has been obtained, unless:

6.5.3.1 a serious medical interest prevails; or

6.5.3.2 the processing is necessary for historical, statistical or research activity.

6.5.4 Khwezi by virtue of its business does not collect, process or possess Data concerning children and hence this Policy does not set out the provisions of POPIA in terms thereof and particularly sections 34 and 35 of POPIA which would apply in such an instance.

7. COMPLIANCE, PENALTIES, OFFENCES AND ENFORCEMENT:

7.1 The Data Protection Laws incorporated into this Policy set out non-negotiable strict-liability obligations and duties for Khwezi regarding Data privacy practices and these are amongst other things but not limited to set out below.

7.2 POPIA states that Khwezi must have an Information Officer and section 55 of POPIA sets out the duties and responsibilities of an Information Officer (and Deputy Information Officers to section 56¹⁴) and an Information Officer's (Khwezi's Information and / or Deputy Information Officer's details and contact details shall be published on Khwezi's website and may be amended from time to time) responsibilities include:

- 7.2.1 the encouragement of compliance, by Khwezi, with the conditions for the lawful processing of Data;
- 7.2.2 dealing with requests made to Khwezi pursuant to the Policy and the Data Protection Laws;
- 7.2.3 working with the Information Regulator in relation to investigations conducted pursuant to Chapter 6 of POPIA in relation to Khwezi;
- 7.2.4 otherwise ensuring compliance by Khwezi with the provisions of the Policy and the Data Protection Laws; and
- 7.2.5 as may be prescribed;

Information Officers must take up their duties in terms of this Policy and the Data Protection Laws only after Khwezi has registered them with the Information Regulator.

7.3 Section 105 of POPIA deals with unlawful acts by Khwezi in connection with account number/s¹⁵ and states that if Khwezi contravenes the provisions of section 8 of POPIA (compliance with POPIA) insofar as those provisions relate to the processing of an account number of a data subject Khwezi is, guilty of an offence.

7.3.1 The contravention must:

7.3.1.1 be of a serious or persistent nature; and

¹⁴ **Section 56** states that each private body must make provision, in the manner prescribed in section 17 of the Promotion of Access to Information Act, with the necessary changes, for the designation of such a number of persons, if any, as deputy information officers as is necessary to perform the duties and responsibilities as set out in section 55(1) of this Act; and any power or duty conferred or imposed on an information officer by this Act to a deputy information officer of that public or private body.

Section 17 of the Promotion of Access to Information Act states that:

"(1) For the purposes of this Act, each public body must, subject to legislation governing the employment of personnel of the public body concerned, designate such number of persons as deputy information officers as are necessary to render the public body as accessible as reasonably possible for requesters of its records.

(2) The information officer of a public body has direction and control over every deputy information officer of that body.

(3) The information officer of a public body may delegate a power or duty conferred or imposed on that information officer by this Act to a deputy information officer of that public body.

(4) In deciding whether to delegate a power or duty in terms of subsection (3), the information officer must give due consideration to the need to render the public body as accessible as reasonably possible for requesters of its records.

(5) Any power or duty delegated in terms of subsection (3) must be exercised or performed subject to such conditions as the person who made the delegation considers necessary.

(6) Any delegation in terms of subsection (3)-

(a) must be in writing;

(b) does not prohibit the person who made the delegation from exercising the power concerned or performing the duty concerned himself or herself; and

(c) may at any time be withdrawn or amended in writing by that person.

(7) Any right or privilege acquired, or any obligation or liability incurred, as a result of a decision in terms of a delegation in terms of subsection (3) is not affected by any subsequent withdrawal or amendment of that decision."

¹⁵ **"account number"** for purposes of this section and section 106, means any unique identifier that has been assigned:

- to one data subject only; or
- jointly to more than one data subject,
- by a financial or other institution which enables the data subject to access his, her or its own funds or to access credit facilities or which enables a data subject to access joint funds or to access joint credit facilities.

7.3.1.2 likely cause substantial damage or distress to the data subject.

7.3.2 Khwezi must have known or ought to have known that:

7.3.2.1 there was a risk that the contravention would occur; or

7.3.2.2 such contravention would likely cause substantial damage or distress to the data subject;
and

7.3.2.3 have failed to take reasonable steps to prevent the contravention.

7.3.3 If Khwezi is charged with the aforementioned offence it is a valid defence to such a charge to contend that Khwezi has taken all reasonable steps to comply with the provisions of section 8 of POPIA (compliance with POPIA).

7.4 Section 106 of POPIA pertains to unlawful acts by Operators and/ or Third Parties in connection with account number/s and states that:

7.4.1 A person who knowingly or recklessly, without the consent of Khwezi:

7.4.4.1 obtains or discloses an account number of a data subject; or

7.4.4.2 procures the disclosure of an account number of a data subject to another person, is guilty of an offence.

7.4.2 If an Operator and/ or Third Party is charged with an aforementioned offence, it is a valid defence to such a charge to contend that the obtaining, disclosure or procuring of the account number was:

7.4.2.1 necessary for the purpose of the prevention, detection, investigation or proof of an offence; or

7.4.2.2 required or authorised in terms of the law or in terms of a court order;

7.4.2.3 he or she or it acted in the reasonable belief that he or she or it was legally entitled to obtain or disclose the account number or, as the case may be, to procure the disclosure of the account number to the other person;

7.4.2.4 he or she or it acted in the reasonable belief that he or she or it would have had the consent of Khwezi if Khwezi had known of the obtaining, disclosing or procuring and the circumstances of it; or

7.4.2.5 in the particular circumstances the obtaining, disclosing or procuring was in the public interest.

7.4.3 A person who sells an account number which he or she has obtained in contravention of the aforementioned paragraph 7.4.1 of the Policy and the sub-paragraphs therein, is guilty of an offence.

7.4.4 A person who offers to sell the account number of a data subject which that person:

7.4.4.1 has obtained; or

7.4.4.2 subsequently obtained, in contravention of the paragraph 7.4.1 of the Policy and the sub-paragraphs therein, is guilty of an offence.

7.5 Section 38 of POPIA deals with Khwezi's exemption in respect of certain Khwezi functions:

7.5.1 Data processed by Khwezi for the purpose of discharging a relevant function¹⁶ is exempt from sections 11(3) and (4), 12, 15 and 18 of POPIA to the extent to which the application of those provisions to the Data would be likely to prejudice the proper discharge of that relevant function.

7.6 Khwezi or person if convicted of an offence is liable to a fine or imprisonment for a period not exceeding 12 months or fine or a combination of both for a less serious offence, like hindering an official trying to execute a search and seizure warrant, and in the worst-case infringements is liable to a fine of R 10 million or imprisonment for a period not exceeding 10 years or a combination of both¹⁷.

7.7 Furthermore section 99 of POPIA deals with civil remedies and states that:

7.7.1 A data subject or, at the request of the data subject, the Information Regulator, may institute a civil action for damages in a court having jurisdiction against Khwezi for breach of any provision of this Act whether or not there is intent or negligence on the part of Khwezi.

7.7.2 In the event of a breach Khwezi may raise any of the following defences against an action for damages:

7.7.2.1 *vis major*;

7.7.2.2 consent of the data subject/ plaintiff;

7.7.2.3 fault on the part of the data subject/ plaintiff;

7.7.2.4 compliance was not reasonably practicable in the circumstances of the particular case;

or

¹⁶ "relevant function" means any function of a public body; or conferred on any person in terms of the law, which is performed with the view to protecting members of the public against financial loss due to dishonesty, malpractice or other seriously improper conduct by, or the unfitness or incompetence of, persons concerned in the provision of banking, insurance, investment or other financial services or in the management of bodies corporate; or dishonesty, malpractice or other seriously improper conduct by, or the unfitness or incompetence of, persons authorised to carry on any profession or other activity.

¹⁷ Section 107 penalties:

- any person convicted of an offence in terms of this Act, is liable, in the case of a contravention of section 100, 103(1), 104(2), 105(1), 106(1), (3) or (4) to a fine or to imprisonment for a period not exceeding 10 years, or to both a fine and such imprisonment; or
- section 59, 101, 102, 103(2) or 104(1), to a fine or to imprisonment for a period not exceeding 12 months, or to both a fine and such imprisonment.

7.7.2.5 the Information Regulator has granted an exemption to Khwezi in terms of section 37 of POPIA.

7.8 At Court proceedings the Court may award an amount that is just and equitable, including:

- 7.8.1 payment of damages as compensation for patrimonial and/ or non-patrimonial loss suffered by a data subject as a result of breach of the provisions of POPIA;
- 7.8.2 aggravated damages, in a sum determined in the discretion of the Court;
- 7.8.3 interest; and
- 7.8.4 costs of suit on such scale as may be determined by the Court.

8. KHWEZI TRADE AGREEMENT/S WITH ITS CLIENT/S:

8.1 Khwezi has a Service Agreement, including any addendums thereto or documents incorporated therein from time to time, with each of its clients (*“the Trade Agreement”*) and this Policy is directly incorporated into the Trade Agreement and any future Trade Agreement and is further binding on Khwezi and the Client/s. Paragraph 8 of this Policy and the sub-paragraphs contained therein shall use the nomenclature of the Trade Agreement in respect of defined words, save where a different definition has been listed in this Policy then the Policy definition applies.

8.2 For purposes of the Trade Agreement the provisions of the Policy shall take preference to terms of the Trade Agreement where the Policy offers greater Data protection and/ or protection of Khwezi and this Policy and the application of the Data Protection Laws herein apply to the exclusion of any provision of the Trade Agreement that are materially inconsistent with an object, or a specific provision, of the Policy.

8.3 Data Protection Laws

8.3.1 When processing the Client’s Data, Khwezi shall:

8.3.1.1 ensure that it complies with the Policy; and

8.3.1.2 use and hold the Client’s Data for the purposes of performing its obligations and exercising its authority and rights in terms of the Policy and Trade Agreement.

8.4 Confidentiality

8.4.1 Khwezi and the Client each acknowledges and agrees that any Data supplied in connection with the Trade Agreement or in connection with the technical, industrial or business affairs of the other party (*“the Disclosing Party”*) or its subsidiaries or associated companies which has or may in any way whatsoever be transferred or come into the possession or knowledge of any other of

them (*“the Receiving Party”*) may consist of confidential or proprietary data, disclosure of which to or use by third parties might be damaging to the Disclosing Party.

8.4.2 The Receiving Party therefore agrees to hold such material and Data in the strictest confidence, including in accordance with the requirements of the Policy and Data Protection Laws, to prevent any copying or unlawful processing thereof by whatever means and not to make use thereof other than for the purposes of the Trade Agreement and in terms of the Policy and to release it only to such properly authorised directors, employees or Operator/s/ third parties requiring such Data for the purposes of the Trade Agreement and/ or the Policy and agree not to release or disclose the Data to any other party who has not signed a binding Agreement incorporating the Policy and expressly declaring not to unlawfully process, use or disclose the Data other than for the purposes of the Policy and Trade Agreement.

8.4.3 The undertaking and obligations contained in Paragraph 8 of this Policy and the sub-paragraphs contained therein do not apply to Data excluded by this Policy amongst other things but not limited to which:

8.4.3.1 is publicly available at the date of disclosure or thereafter becomes publicly available from sources other than Khwezi;

8.4.3.2 is required by law, any order of court, or any regulatory authority to be disclosed; and/ or

8.4.3.3 is necessary for Khwezi’s performance of the Trade Agreement or required by it in terms of the Policy.

8.4.4 Khwezi shall take such precautions as may be necessary to maintain the lawful processing, secrecy and confidentiality of such material and Data in respect of Client/s, its directors, employees, agents, and/or directors, employees or agents of any assignee, sub-contractor or distributor or any other person to whom any such confidential or proprietary Data may have been or will be disclosed.

8.4.5 Save as may be required by law or any regulatory authority, no announcement or publicity of the existence of the Trade Agreement or its content or the transaction embodied in the Trade Agreement shall be made or issued by Khwezi without the prior written agreement of Khwezi and the Client.

8.5 **Security**

8.5.1 The Client shall comply with all reasonable operational and security procedures he, she or it is notified of by Khwezi from time to time and to inform Khwezi immediately of any breach of security.

- 8.5.2 If Khwezi determines that the security surrounding any Trading Platform, or the security or confidentiality of any Security Credentials is or has been breached, Khwezi may terminate, revoke, suspend, modify or change any or all of the Security Credentials at any time, without prior notice to the Client.
- 8.5.3 The Client is responsible for ensuring the adequacy and security of the operating environment, both physical and electronic, in which the Client accesses and uses the Trading Platform/s.
- 8.5.4 The Client shall maintain appropriate security measures to prevent unauthorised access to, use of or damage to the Trading Platform/s and any information systems accessible through the Trading Platform. Furthermore where the Client accesses and uses the Trading Platform/s from any laptop computer or other portable device, the Client shall take all measures necessary to ensure the security, integrity and reliability of such computer or other portable device, including the security of the internet connection, and the Client is solely liable for any failure in such computer or other portable device's security, integrity or reliability.

8.6 Indemnity

- 8.6.1 The Client indemnifies and agrees to hold Khwezi harmless against any and all loss, damage, demand, claims, cost and expense, including legal fees on an attorney-own client scale, including consequential loss ("*Indemnified Loss*") suffered, sustained or incurred by Khwezi arising out of or in connection with:
- 8.6.1.1 any breach of representation or warranty made by the Client under or in connection with the Policy;
 - 8.6.1.2 any failure by the Client to comply with or perform any of its obligations under or in connection with the Policy;
 - 8.6.1.3 any insufficiency whatsoever with respect to the environment from which the Client accesses or uses a Trading Platform and/or with respect to the Client's security measures to prevent unauthorised access to or use of a Trading Platform and any security breach in relation to a Trading Platform (including any access to or use of any of Khwezi's other systems not covered by the Trade Agreement and any software viruses or other activities that comprise the security arrangements of Khwezi's infrastructure or network) caused directly or indirectly by the Client;
 - 8.6.1.4 acting on any Instruction which is, or appears to be communicated using any Security Credentials;
 - 8.6.1.5 the termination by Khwezi of any Trade under the Trade Agreement or the Trade Agreement itself due to violations by the Client of the Policy; and/ or

8.6.1.6 The indemnity set out in clause 8.6 of the Policy and its sub-paragraphs shall not extend to any Indemnified Loss sustained or incurred by Khwezi as a result of its gross negligence or wilful default;

each indemnity in paragraph 8.6, including the sub-paragraphs therein, of the Policy constitutes a separate and independent obligation of the Client.

8.7 Exclusion of liability

8.7.1 Khwezi is not liable to the Client for any loss, damage, demand, claims, cost and expense suffered or incurred by the Client ("*Client Loss*") arising out of or in connection with the Policy, whether in contract, delict, or otherwise, including but not limited to any Client Loss arising from:

8.7.1.1 Client's failure to report any error in his, her or its statements within 24 (twenty-four) hours of delivery of the statement to the Client;

8.7.1.2 the occurrence and continuance of any *vis major, Force Majeure*;

8.7.1.3 any failure or inability of the Client to access or use The Trading Platform for its intended purposes, whether as a result of failure by Khwezi or otherwise;

8.7.1.4 any deficiency whatsoever of the Trading Platform, including failure of, or inability to, access or use the Trading Platform

8.7.1.5 any failure of a telecommunications link or network by which the Client may seek access to or use of the Trading Platform.

8.8 Breach of the Policy and termination of Trade Agreement

8.8.1 The Trade Agreement incorporating the Policy may be terminated by Khwezi:

8.8.1.1 if the Client breaches a material provision of this Policy and, if the breach is capable of being remedied, the Client fails to remedy such breach after having received 20 (twenty) Business Days' written notice from Khwezi;

8.8.1.2 immediately the Client commits a material breach of any Applicable Law; or

8.8.1.3 in terms of any court order, arbitration award or directive from any competent authority.

8.8.2 The Trade Agreement incorporating the Policy shall be terminated immediately and without the requirement for notice if:

8.8.2.1 Khwezi ceases to be licensed to operate as a financial services provider in terms of the FAIS Act; or

8.8.2.2 Khwezi is sequestrated, liquidated or placed under business rescue proceedings, whether provisionally or finally in which event Khwezi shall account to the Client immediately and process the Data in accordance with the Policy.

8.8.3 Should the Trade Agreement, Trades, Service and/ or the Trading Platform terminate in accordance with the provisions of the Trade Agreement and/ or the Policy, Khwezi shall process the Data in accordance with the Policy.

8.9 Client Consent/s

8.9.1 The Client warrants that he or she has read and is acquainted with the Policy and the Data Protection Laws including that Data may only be processed with the Client's Consent and the Client hereby provides the Client's Consent to Khwezi for any and all required matters concerning the Client's Data or the Policy or the Data Protection Laws including but not limited to the following provisions of the Policy and the Data Protection Laws:

8.9.1.1 The Client Consents to Khwezi its Operator/s, Employee/s, stakeholder/s, and/ or Third Party Service Provider/s processing the Client's Data;

8.9.1.2 The Client Consents to Khwezi, its Operator/s, Employee/s, stakeholder/s, and/ or Third Party Service Provider/s transferring any Client Data cross-border to a third country, Operator or international organisation and further to the Consent acknowledges that it shall be beneficial to the Client for purposes of section 72 of POPIA and/ or paragraphs 4.9.5, 4.9.5.3 and/ or 4.9.5.4 of the Policy;

8.9.1.3 The Client Consents to Khwezi transferring any Operator Data to an Operator, stakeholder, Employee and/ or Third-Party Service Provider for purposes of complying and performing in terms of the Trade Agreement, Policy and/ or Data Protection Laws;

8.9.1.4 The Client Consents to Khwezi, its Operator/s, Employee/s, stakeholder/s, and/ or Third-Party Service Provider/s processing Client Data for purposes of section 11 of POPIA and/ or paragraphs 4.4.3 and/ or 4.4.3.1 of the Policy;

8.9.1.5 The Client Consents to Khwezi, its Operator/s, Employee/s, stakeholder/s, and/ or Third Party Service Provider/s collecting Client Data from another source other than the Client for purposes of section 12 of POPIA and/ or paragraphs 4.4.4 and/ or 4.4.4.2 of the Policy;

8.9.1.6 The Client Consents to Khwezi, its Operator/s, Employee/s, stakeholder/s, and/ or Third-Party Service Provider/s retaining Client Data or record/s for purposes of section 14 of POPIA and/ or paragraphs 4.5.2, 4.5.2.4, 4.5.3, 4.5.3.5, 4.5.3.6 and/ or 4.5.3.7 of the Policy;

8.9.1.7 The Client Consents to Khwezi, its Operator/s, Employee/s, stakeholder/s, and/ or Third Party Service Provider/s non-compliance in so far as each does not comply with section 18 of POPIA and/ or paragraph 4.8.2 of the Policy and sub-paragraphs therein;

- 8.9.1.8 The Client Consents in terms of section 27 of POPIA and/ or paragraphs 4.12.5 and/ or 4.12.5.1 of the Policy to Khwezi, its Operator/s, Employee/s, stakeholder/s, and/ or Third Party Service Provider/s processing Client Data or record/s falling into the category as per section 26 of POPIA and/ or paragraph 4.12.4 of the Policy and the sub-paragraphs therein;
- 8.9.1.9 The Client Consents to Khwezi, its Operator/s, Employee/s, stakeholder/s, and/ or Third Party Service Provider/s Direct Marketing as defined by POPIA and set out in section 69 of POPIA and/ or paragraph 5 of the Policy and the sub-paragraphs therein the Client further Consents to any non-compliance in so far as each does not comply with section 69 of POPIA and/ or paragraph 5 of the Policy and the sub-paragraphs therein; and/ or
- 8.9.1.10 The Client hereby Consents to Khwezi, its Operator/s, Employee/s, stakeholder/s, and/ or Third Party Service Provider/s processing of Client Data in any manner whatsoever so as to ensure that for purposes of section 99 of POPIA and/ or paragraph 7.7.2.2 or the Data Protection Laws, Khwezi may raise the Client's Consent as a defence in any matter whatsoever.

9. KHWEZI AGREEMENT/S WITH ITS OPERATOR/S:

- 9.1 Khwezi has a Service Agreement, and any further addendums thereto or documents incorporated therein including the Interim Data Protection Mandate, with each of its Operator/s (*"the Service Agreement"*) and this Policy is directly incorporated into the Service Agreement and any future Service Agreement or amendments thereto and the Policy is binding on Khwezi and its Operator/s. Paragraph 9 of this Policy and the sub-paragraphs contained therein shall use the nomenclature of the Service Agreement in respect of defined words, save where a different definition has been listed in this Policy then the Policy definition applies.
- 9.2 For purposes of the Service Agreement the provisions of the Policy shall take preference to terms of the Service Agreement where the Policy offers greater Data protection and protection of Khwezi and this Policy and the application of the Data Protection Laws herein applies to the exclusion of any provision of the Service Agreement that are materially inconsistent with an object, or a specific provision, of the Policy.

9.3 Data Protection Laws

- 9.3.1 When processing a Client's Data, the Operator/s shall:
 - 9.3.1.1 ensure that it complies with the Policy and Data Protection Laws; and
 - 9.3.1.2 use and hold the Client's Data for the purposes of performing the Operator's obligations and exercising its authority and rights in terms of the Policy and Service Agreement.

9.4 Confidentiality

- 9.4.1 Khwezi and the Operator each acknowledge and agree that any Data supplied in connection with the Service Agreement including Client Data or in connection with the technical, industrial or business affairs of either party (“*the Disclosing Party*”) or its subsidiaries or associated companies which has or may in any way whatsoever be transferred or come into the possession or knowledge of any of them (“*the Receiving Party*”) may consist of confidential or proprietary Data, disclosure of which to or use by third parties might be damaging to the Disclosing Party or Client.
- 9.4.2 The Receiving Party therefore agrees to hold such material and Data in the strictest confidence, including in accordance with the requirements of this Policy and Data Protection Laws, to prevent any copying or unlawful processing thereof by whatever means and not to make use thereof other than for the purposes of the Service Agreement and in terms of the Policy and to release it only to it only to such properly authorised directors, employees or Operator/s/ third parties requiring such Data for the purposes of the Service Agreement and/ or the Policy and agree not to release or disclose the Data to any other party who has not signed a binding Agreement incorporating the Policy and expressly declaring not to unlawfully process, use or disclose or the Data other than for the purposes of the Policy and Service Agreement.
- 9.4.3 The undertaking and obligations contained in paragraph 9 and the sub-paragraphs therein do not apply to Data excluded by this Policy amongst other things but not limited to which:
- 9.4.3.1 is publicly available at the date of disclosure or thereafter becomes publicly available from sources other than Khwezi;
- 9.4.3.2 is required by law, any order of court, or any regulatory authority to be disclosed; and/ or
- 9.4.3.3 is necessary for Khwezi’s and/ or the Operator/s performance of the Service Agreement or required by either in terms of the Policy.
- 9.4.4 The Operator/s shall take such precautions as may be necessary in terms of the Policy and Service Agreement, to maintain the secrecy, lawful processing and confidentiality of such material and Data transferred to it by Khwezi or the Client *in lieu* of the Service Agreement in respect of the Operator’s/s’ directors, employees, agents, and/or directors, employees or agents of any assignee, sub-contractor or distributor or any other person to whom any such confidential or proprietary Data may have been or will be disclosed in performance of the Operator/s obligations in terms of the Service Agreement.
- 9.4.5 Save as may be required by law or any regulatory authority, no announcement or publicity of the existence of the Service Agreement or its content or the transaction embodied in the Service Agreement shall be made or issued by or on behalf of the Operator without the prior written agreement of the Operator and Khwezi.

9.5 Security

- 9.5.1 The Operator shall comply with all reasonable operational and security procedures required by the Policy and Service Agreement or as notified by Khwezi from time to time and shall inform Khwezi immediately of any Data breach or breach of this Policy as set out in the Policy and data Protection Laws and the Service Agreement including breach of security, unlawful processing or unauthorised access to Data supplied by Khwezi or the Client to the Operator *in lieu* of the Service Agreement.
- 9.5.2 If Khwezi in its sole unilateral discretion determines that or in accordance with the Policy and the Service Agreement the Operator's security systems are insufficient, there has been a Data breach, or the security or confidentiality of any Data has been breached, Khwezi may terminate, revoke, suspend, modify or change any or all of the Service Agreement provisions without prior notice to the Operator.
- 9.5.3 The Operator is responsible for ensuring the adequacy and security in terms of this Policy are met and sustained in its operating environment, both physical and electronic, in which the Operator accesses, processes and uses Data.
- 9.5.4 The Operator shall maintain appropriate security measures as required by the Policy and Service Agreement to prevent unlawful processing of, unauthorised access to, use of or damage to Data and any information systems involved in the processing of Data. Furthermore where the Operator accesses, processes and uses the Data from any computer server, electronic storage space whether database, physical or electronic, laptop computer or other portable device, the Operator shall take all measures necessary to ensure the security, integrity and reliability thereof, including the security of the internet connection, and the Operator is solely liable for any failure thereof (in terms of the Policy and Service Agreement) regarding security, integrity or reliability.

9.6 Indemnity

- 9.6.1 The Operator indemnifies and agrees to hold Khwezi harmless against any and all loss, damage, demand, claims, cost and expense, including legal fees on an attorney-own client scale, including consequential loss ("*Indemnified Loss*") suffered, sustained or incurred by Khwezi arising out of or in connection with:
- 9.6.1.1 any breach of representation or warranty made by the Operator under or in connection with the Policy;
- 9.6.1.2 any failure by the Operator to ensure compliance with or performance any of its obligations under or in connection with the Policy and Service Agreement;

- 9.6.1.3 any insufficiency whatsoever with respect to the environment from which the Operator accesses, processes or uses the Data and/or with respect to the Operator's security measures to prevent unauthorised access, processing or use of the Data and any security breach in relation to the Data (including any access, processing to or use of any of the Operator's other systems not covered by the Service Agreement and any software viruses or other activities that comprise the security arrangements of the Operator's infrastructure or network) caused directly or indirectly by the Operator; and/or
- 9.6.1.4 the termination by Khwezi of the Service Agreement or services rendered in terms thereof due to violations by the Operator of the Policy;

each indemnity in paragraph 9.6 of the Policy including the sub-paragraphs therein, constitutes a separate and independent obligation of the Operator.

9.7 Exclusion of liability

- 9.7.1 Khwezi is not liable to the Operator for any loss, damage, demand, claims, cost and expense suffered or incurred by the Operator arising out of or in connection with the Policy, whether in contract, delict, or otherwise.

9.8 Breach of the Policy and termination of the Service Agreement

- 9.8.1 The Service Agreement incorporating the Policy may be terminated by Khwezi:
 - 9.8.1.1 if the Operator breaches a material provision of this Policy and, if the breach is capable of being remedied, the Operator fails to remedy such breach after having received 2 (two) business days' written notice from Khwezi;
 - 9.8.1.2 the Operator commits a material breach of any Data Protection Law; or
 - 9.8.1.3 in terms of any court order, arbitration award or directive from any competent authority.
- 9.8.2 The Service Agreement incorporating the Policy shall be terminated immediately and without the requirement for notice if:
 - 9.8.2.1 Khwezi ceases to be licensed to operate as a financial services provider in terms of the applicable South African legislation; or
 - 9.8.2.2 Khwezi is sequestered, liquidated, or placed under business rescue proceedings, whether provisionally or finally in which event the Operator shall immediately process the Data in accordance with the Policy.

- 9.8.3 Should the Service Agreement incorporating this Policy terminate in accordance with the provisions of the Service Agreement and/ or the Policy, the Operator shall process the Data in accordance with the Policy.

9.9 Operator Consent/s

- 9.9.1 The Operator warrants that he or she or it has read and is acquainted with the Policy and the Data Protection Laws including that Operator Data may only be processed with the Operator's Consent and the Operator hereby provides the Operator's Consent to Khwezi for any and all required matters concerning the Operator's Data, the Policy or the Data Protection Laws including but not limited to the following provisions of the Policy and/ or the Data Protection Laws:

- 9.9.1.1 The Operator Consents to Khwezi its Operator/s, Employee/s, stakeholder/s, and/ or Third-Party Service Provider/s processing the Operator's Data;
- 9.9.1.2 The Operator Consents to Khwezi, its Operator/s, Employee/s, stakeholder/s, and/ or Third Party Service Provider/s transferring any Operator Data cross-border to a third country, Operator or international organisation and further to said Consent acknowledges that it Consents and that it shall be beneficial to the Operator for purposes of section 72 of POPIA and/ or paragraphs 4.9.5, 4.9.5.3 and/ or 4.9.5.4 of the Policy;
- 9.9.1.3 The Operator Consents to Khwezi transferring any Operator Data to an Operator, stakeholder, Employee and/ or Third-Party Service Provider for purposes of complying and performing in terms of the Service Agreement, Policy and/ or Data Protection Laws;
- 9.9.1.4 The Operator Consents to Khwezi, its Operator/s, Employee/s, stakeholder/s, and/ or Third-Party Service Provider/s processing Operator Data for purposes of section 11 of POPIA and/ or paragraphs 4.4.3 and/ or 4.4.3.1 of the Policy;
- 9.9.1.5 The Operator Consents to Khwezi, its Operator/s, Employee/s, stakeholder/s, and/ or Third Party Service Provider/s collecting Operator Data from another source other than the Operator for purposes of section 12 of POPIA and/ or paragraphs 4.4.4 and/ or 4.4.4.2 of the Policy;
- 9.9.1.6 The Operator Consents to Khwezi, its Operator/s, Employee/s, stakeholder/s, and/ or Third-Party Service Provider/s retaining Operator Data or record/s for purposes of section 14 of POPIA and/ or paragraphs 4.5.2, 4.5.2.4, 4.5.3, 4.5.3.5, 4.5.3.6 and/ or 4.5.3.7 of the Policy;
- 9.9.1.7 The Operator Consents to Khwezi, its Operator/s, Employee/s, stakeholder/s, and/ or Third Party Service Provider/s non-compliance in so far as each does not comply with section 18 of POPIA and/ or paragraph 4.8.2 of the Policy and sub-paragraphs therein;
- 9.9.1.8 The Operator Consents in terms of section 27 of POPIA and/ or paragraphs 4.12.5 and/ or 4.12.5.1 of the Policy to Khwezi, its Operator/s, Employee/s, stakeholder/s, and/ or Third Party Service Provider/s processing Operator Data or record/s falling into the

category as per section 26 of POPIA and/ or paragraph 4.12.4 of the Policy and the sub-paragraphs therein;

- 9.9.1.9 The Operator Consents to Khwezi, its Operator/s, Employee/s, stakeholder/s, and/ or Third Party Service Provider/s Direct Marketing as defined by POPIA and set out in section 69 of POPIA and/ or paragraph 5 of the Policy and the sub-paragraphs therein, the Operator further Consents to any non-compliance in so far as each does not comply with section 69 of POPIA and/ or paragraph 5 of the Policy and the sub-paragraphs therein; and/ or
- 9.9.1.10 The Operator hereby Consents to Khwezi, its Operator/s, Employee/s, stakeholder/s, and/ or Third Party Service Provider/s processing the Operator's Data in any manner whatsoever so as to ensure that for purposes of section 99 of POPIA and/ or paragraph 7.7.2.2 of the Policy or the Data Protection Laws, Khwezi may raise the Operator's Consent as a defence in any matter whatsoever.

10. KHWEZI'S EMPLOYMENT AGREEMENT/S WITH ITS EMPLOYEE/S:

- 10.1 Khwezi has an Employment Agreement, including the Addendum thereto or documents incorporated therein, with each of its Employees (*"the Employment Agreement"*) and this Policy is directly incorporated into the Employment Agreement and any future Employment Agreement and is binding on Khwezi and the Employee. Paragraph 10 of this Policy and the sub-paragraphs contained therein shall use the nomenclature of the Employment Agreement in respect of defined words, save where a different definition has been listed in this Policy then the Policy definition applies.
- 10.2 For purposes of the Employment Agreement the provisions of the Policy shall take preference to terms of the Employment Agreement where the Policy offers greater Data protection and protection to Khwezi and this Policy and the application of the Data Protection Laws herein apply to the exclusion of any provision of the Employment Agreement which is materially inconsistent with an object, or a specific provision, of the Policy.

10.3 Data Protection Laws

- 10.3.1 When processing the Employee's Data or the Client's Data, Khwezi and the Employee respectively shall:
 - 10.3.1.1 ensure that each complies with the Policy; and
 - 10.3.1.2 use and hold the Employee's or Client's Data, as the case may be, for the purposes of performing each's obligations and exercising its authority and rights in terms of the Policy and Employment Agreement.

10.4 Confidentiality

- 10.4.1 Khwezi and the Employee acknowledge and agree that any Data supplied by the Employee or a Client in connection with Employment Agreement or Trade Agreement, respectively (*“the Disclosing Party”*) which has or may in any way whatsoever be transferred or come into the possession or knowledge of either of them (*“the Receiving Party”*) may consist of confidential or proprietary Employee or Client Data, unlawful processing, disclosure to, unauthorised access or use by third parties might be damaging to the Disclosing Party in terms of the Policy.
- 10.4.2 The Receiving Party, whether Khwezi or the Employee, therefore agrees to hold such material and Employee/ Client Data in the strictest confidence, including in accordance with the requirements of the Policy, to prevent any copying thereof by whatever means and not to unlawfully process or make use thereof, allow access to, disclose, or process other than for the purposes of an Employment Agreement, Trade Agreement and Service Agreement as governed and set out in the Policy and Data Protection Laws including to release it only to such properly authorised directors, Employees or Operator requiring such material and Data for the purposes of the Employment Agreement, Trade Agreement and Service Agreement, as the case may be, as governed and set out in the Policy and agree not to release or disclose Data to any other party who has not signed a binding Agreement incorporating the Policy and expressly declaring not to use, process or disclose the Data other than as required by the Policy.
- 10.4.3 The undertaking and obligations contained in paragraph 10 of the Policy and its sub-paragraphs do not apply to Data excluded by this Policy amongst other things but not limited to which:
- 10.4.3.1 is publicly available at the date of disclosure or thereafter becomes publicly available from sources other than Khwezi;
 - 10.4.3.2 is required by law, any order of court, or any regulatory authority to be disclosed; and/
or
 - 10.4.3.3 is necessary for Khwezi and the Employee/s performance of the Employment Agreement, Trade Agreement or Service Agreement, as the case may be, as required by the Policy.
- 10.4.4 Khwezi and the Employee shall take such precautions as may be necessary to maintain the lawful processing, secrecy and confidentiality of such Employee/ Client material and Data in respect of Client/s, Khwezi’s directors, Employees, agents, and/or directors, Employees or agents of any assignee, sub-contractor or distributor or any person to whom Data may have been or will be disclosed.

10.5 Security

- 10.5.1 The Employee shall in addition to the requirements of the Policy comply with all reasonable operational and security procedures he or she is notified of by Khwezi and to inform Khwezi immediately of any breach of security/ unauthorised access to Client or the Employee's Data.
- 10.5.2 Khwezi and the Employee shall maintain and implement the appropriate security measures to prevent unauthorised access to, use of or damage to Employee and Client, respectively, Data whether or not contained in the information systems used in Khwezi's business operations.
- 10.5.3 Khwezi shall ensure in so far as recognised reasonable security protocols dictate that the security, integrity and reliability of the following:
- 10.5.3.1 all computer software and hardware located at Khwezi's physical office and owned by Khwezi;
 - 10.5.3.2 Khwezi internet connection at the Khwezi office;
 - 10.5.3.3 Khwezi server, network and databases containing Data; and
 - 10.5.3.4 Khwezi office security relating to physical theft from Khwezi's office unless stolen by an Employee.
- 10.5.4 The Employee acknowledges that each is acquainted with all the applicable Data Protection Laws and this Policy and undertakes to take reasonable steps and establish and maintain reasonable technical and organisational measures to safeguard the Data that is processed by the Employee whether on Khwezi's Office premises or elsewhere, including:
- 10.5.4.1 identifying all reasonably foreseeable internal and external risks to Data;
 - 10.5.4.2 establish and maintain appropriate safeguards against the risks identified as stated in paragraph 10.5.4.1;
 - 10.5.4.3 regularly verify that the safeguards are effectively implemented;
 - 10.5.4.4 ensuring the adequacy and security of the operating environment, both physical and electronic;
 - 10.5.4.5 maintain appropriate security measures to prevent unauthorised access to, use of or damage to the Data and any accessible information systems;
 - 10.5.4.6 shall comply with all reasonable operational and security procedures required by this Policy and Data Protection Laws and/ or Khwezi from time to time and to inform Khwezi immediately of any breach of security; and
 - 10.5.4.7 ensure that the safeguards are continually updated in response to new risks or deficiencies in previously implemented safeguards.
- 10.5.5 The Employee shall ensure in so far as recognised reasonable security protocols dictate that the security, integrity and reliability where the Employee accesses, processes and uses Client Data from any laptop computer or other portable device which is not owned by Khwezi or is owned by

Khwezi but is used outside of Khwezi's office, the Employee is solely responsible and liable to take all measures necessary to ensure the security, integrity and reliability of the following:

- 10.5.5.1 the security of the internet connection, computer/ portable device and home network, if any, although the employee may only use his or her internet connection at home when not at Khwezi offices;
- 10.5.5.2 prevent any failure in such computer or other portable device's security (whether physical theft or otherwise), integrity or reliability; and/ or
- 10.5.5.3 that any portable device which may be used to access the Data is not physically stolen or goes missing due to the employee's negligence.

10.5.6 The Employee shall immediately inform Khwezi of any Data breach, unlawful processing or stolen/ missing portable device, laptop or computer which may be used to access Data so that Khwezi may take the appropriate steps.

10.5.7 If Khwezi, in its sole unilateral discretion, determines that the Employee has breached the Data processing, security, notification, confidentiality or any other terms of the Policy whatsoever, including failing to notify Khwezi of a Data breach or of a stolen/ missing portable device, laptop or computer which may be used to access Data, Khwezi may immediately terminate, revoke, suspend, modify or amend the Employee's Employment Agreement in accordance with the relevant labour laws and legislation of South Africa.

10.6 Indemnity

10.6.1 The Employee indemnifies and agrees to hold Khwezi harmless against any and all loss, damage, demand, claims, cost and expense, including legal fees on an attorney-own client scale, including consequential loss ("*Indemnified Loss*") suffered, sustained or incurred by Khwezi arising out of or in connection with:

- 10.6.1.1 any breach of representation or warranty made by the Employee under or in connection with the Policy;
- 10.6.1.2 any failure by the Employee to comply with or perform any of its obligations under or in connection with the Policy and/ or Data Protection Laws;
- 10.6.1.3 any insufficiency whatsoever with respect to the environment from which the Employee accesses, processes or uses Data and/or with respect to the Employee's conduct or security measures to prevent unauthorised access to, processing or use of Data and any security breach in relation to Data (including any software viruses or other activities that comprise the security arrangements, access, processing or use of Data in a manner contrary to the Policy, Khwezi's infrastructure or network) caused directly or indirectly by the Employee;

- 10.6.1.4 failing to act in accordance with any Khwezi instruction in accordance with the Policy or failing to adhere to the Policy; and/ or
- 10.6.1.5 the termination by Khwezi the Employment Agreement due to violations by the Employee of the Policy;

each indemnity in paragraph 10.6 of the Policy including the sub-paragraphs therein, constitutes a separate and independent obligation of the Employee.

10.7 Exclusion of liability

- 10.7.1 Khwezi is not liable to the Employee for any loss, damage, demand, claims, cost and expense suffered or incurred by the Employee ("*Employee Loss*") arising out of or in connection with the Policy, whether in contract, delict, or otherwise, including but not limited to any Employee Loss arising from:
 - 10.7.1.1 the Employee's failure to report any error in an Employee's Data provided within 24 (twenty-four) hours from delivery of the aforesaid Data to the Employee;
 - 10.7.1.2 the occurrence and continuance of any *vis major*, *Force Majeure*;
 - 10.7.1.3 any failure or inability of the Employee to access, process or use the Employee's Data for its intended purposes, as a result of failure by Khwezi or otherwise; and/ or
 - 10.7.1.4 any failure of a telecommunications link or network by which the Employee may seek to access, process or use that specific Employee's Data in terms of the Policy.

10.8 Breach of the Policy and termination of Employment Agreement

- 10.8.1 The Employment Agreement incorporating the Policy may be terminated by Khwezi in accordance with the labour laws and legislation of South Africa:
 - 10.8.1.1 summarily if the Employee breaches a material provision of this Policy and, if the breach is not material and is capable of being remedied by the Employee, the Employee fails to remedy such breach after having received 2 (two) business days' written notice from Khwezi;
 - 10.8.1.2 summarily if the Employee commits a material breach of any applicable Data Protection Law; or
 - 10.8.1.3 in terms of any court order, arbitration award or directive from any competent authority.
- 10.8.2 Should the Employment Agreement terminate in accordance with the provisions of the Employment Agreement and/ or the Policy Khwezi shall process the Employee's Data in accordance with the Policy.

10.9 Employee Consent/s

- 10.9.1 The Employee warrants that he or she has read and is acquainted with the Policy and the Data Protection Laws including that Employee Data may only be processed with the Employee's Consent and the Employee hereby provides the Employee's Consent to Khwezi for any and all required matters concerning the Employee's Data, the Policy or the Data Protection Laws including but not limited to the following provisions of the Policy and/ or the Data Protection Laws:
- 10.9.1.1 The Employee Consents to Khwezi its Employee/s, Operator/s, stakeholder/s, and/ or Third-Party Service Provider/s processing the Employee's Data;
 - 10.9.1.2 The Employee Consents to Khwezi, its Employee/s, Operator/s, stakeholder/s, and/ or Third Party Service Provider/s transferring any Employee Data cross-border to a third country, Operator or international organisation and further to said Consent acknowledges that the Employee Consents and that it shall be beneficial to the Employee for purposes of section 72 of POPIA and/ or paragraphs 4.9.5, 4.9.5.3 and/ or 4.9.5.4 of the Policy;
 - 10.9.1.3 The Employee Consents to Khwezi transferring any Employee Data to an Operator, stakeholder, Employee and/ or Third-Party Service Provider for purposes of complying and performing in terms of the Employment Agreement, Policy and/ or Data Protection Laws;
 - 10.9.1.4 The Employee Consents to Khwezi, its Employee/s, Operator/s, stakeholder/s, and/ or Third-Party Service Provider/s processing Employee Data for purposes of section 11 of POPIA and/ or paragraphs 4.4.3 and/ or 4.4.3.1 of the Policy;
 - 10.9.1.5 The Employee Consents to Khwezi, its Employee/s, Operator/s, stakeholder/s, and/ or Third Party Service Provider/s collecting Employee Data from another source other than the Employee for purposes of section 12 of POPIA and/ or paragraphs 4.4.4 and/ or 4.4.4.2 of the Policy;
 - 10.9.1.6 The Employee Consents to Khwezi, its Employee/s, Operator/s, stakeholder/s, and/ or Third-Party Service Provider/s retaining Employee Data or record/s for purposes of section 14 of POPIA and/ or paragraphs 4.5.2, 4.5.2.4, 4.5.3, 4.5.3.5, 4.5.3.6 and/ or 4.5.3.7 of the Policy;
 - 10.9.1.7 The Employee Consents to Khwezi, its Employee/s, Operator/s, stakeholder/s, and/ or Third Party Service Provider/s non-compliance in so far as each does not comply with section 18 of POPIA and/ or paragraph 4.8.2 of the Policy and sub-paragraphs therein;
 - 10.9.1.8 The Employee Consents in terms of section 27 of POPIA and/ or paragraphs 4.12.5 and/ or 4.12.5.1 of the Policy to Khwezi, its Employee/s, Operator/s, stakeholder/s, and/ or Third Party Service Provider/s processing Employee Data or record/s falling

into the category as per section 26 of POPIA and/ or paragraph 4.12.4 of the Policy and the sub-paragraphs therein;

10.9.1.9 The Employee Consents to Khwezi, its Employee/s, Operator/s, stakeholder/s, and/ or Third Party Service Provider/s Direct Marketing as defined by POPIA and set out in section 69 of POPIA and/ or paragraph 5 of the Policy and the sub-paragraphs therein, the Employee further Consents to any non-compliance in so far as each does not comply with section 69 of POPIA and/ or paragraph 5 of the Policy and the sub-paragraphs therein; and/ or

10.9.1.10 The Employee hereby Consents to Khwezi, its Employee/s, Operator/s, stakeholder/s, and/ or Third Party Service Provider/s processing the Employee's Data in any manner whatsoever so as to ensure that for purposes of section 99 of POPIA and/ or paragraph 7.7.2.2 of the Policy or the Data Protection Laws, Khwezi may raise the Employee's Consent as a defence in any matter whatsoever.

11. GENERAL TERMS AND CONDITIONS OF THE POLICY:

11.1 The Policy constitutes the entire agreement between Khwezi Financial Services (Pty) Ltd and its Client, Operator or Employee, as the case may be, in terms of Data protection and save as may be expressly set out herein, no agreements, representations or warranties between the parties regarding the subject matter hereof other than those set out herein are binding on the parties.

11.2 No indulgence, leniency or extension of time which any party may give or allow to the other party in respect of the performance of any obligation herein, shall in any way prejudice the party giving or allowing the indulgence, leniency or extension or preclude such party from exercising any of its rights an enforcing the obligations of the other party in terms of the Policy.

11.3 Unless amended by Khwezi Financial Services (Pty) Ltd at its sole unilateral discretion, to improve compliance with the Data Protection Laws, no other addition to, alteration, cancellation, variation or novation of the Policy and no waiver of any right arising from the Policy shall be of any force or effect unless reduced to writing and signed by Khwezi Financial Services (Pty) Ltd or their duly authorised representatives.

11.4 The Parties hereby consent to the jurisdiction of the High Court of South Africa situated in the Western Cape Province in respect any legal the proceedings relating to any dispute regarding this Policy or its implementation.

11.5 Any Party may demand that a dispute regarding this Policy be determined by arbitration in terms of written notice given to the other relevant Party/ies in accordance with the expedited Rules of the Arbitration

Foundation of Southern Africa (“AFSA”) *alternatively* the applicable South African arbitration legislation which supersedes AFSA due to the nature of the dispute (“*the arbitration*”).

- 11.6 Paragraph 11.5 shall not prevent any Party from obtaining interim relief on an urgent basis from the High Court as mentioned in 11.4, pending the decision of an arbitrator.
- 11.7 The Parties hereby consent to the arbitration being dealt with on an urgent basis in terms of the Rules of AFSA *alternatively* the applicable South African arbitration legislation which supersedes AFSA due to the nature of the dispute, and a Party may by written notice, require the arbitration to be held on an urgent basis. In such event either Party may apply to facilitate such urgent arbitration.
- 11.8 The arbitration shall be held:
- 11.8.1 In Cape Town, South Africa;
 - 11.8.2 with only the legal and other representatives of the Parties to the dispute present; and
 - 11.8.3 otherwise in terms of the Arbitration Act, No. 42 of 1965 (“*Arbitration Act*”), unless otherwise provided for herein.
- 11.9 The Parties agree to keep the arbitration including the subject matter of the arbitration and the evidence heard during the arbitration confidential.
- 11.10 The parties undertake to adhere to each’s obligations in terms of the Policy at all times and where this is not possible to immediately inform Khwezi Financial Services (Pty) Ltd so that it, at its sole unilateral discretion may take appropriate action.
- 11.11 Should a party hereto breach the Policy then Khwezi Financial Services (Pty) Ltd may, at its sole unilateral discretion, claim specific performance of the Policy; or immediately terminate any agreement with the party in question and without further notice claim all and any amount due and owing to Khwezi Financial Services (Pty) Ltd in terms of any Agreement with the other party, including damages.
- 11.12 It is specifically recorded that the terms of the Policy as well as the Agreement in which the Policy is incorporated are of the utmost importance to a fruitful working relationship between the Parties. As a result the Client, Employee and Operator, as the case may be, each undertake to read and familiarise his/ her/ itself with the terms and conditions of the Policy and the Data Protection Laws and as a result of said undertaking any penalties and/ or losses which Khwezi Financial Services (Pty) Ltd may be liable for as a result of the Client, Employee and Operator, as the case may be, breaching the Policy then Khwezi Financial Services (Pty) Ltd may claim any penalties and/ or losses from the Client, employee and Operator, as the case may be.

- 11.13 The Client, Employee and Operator, as the case may be, each undertake to co-operate with Khwezi Financial Services (Pty) Ltd in respect of any requirements in relation to the Policy and Data Protection Laws and each shall not interfere with or obstruct the proper performance of Khwezi Financial Services (Pty) Ltd's obligations herein.
- 11.14 The Client, Employee and Operator, as the case may be, hereby agree that should he/ she/ it breach the Policy then the defaulting party shall be liable for and pay on demand all legal costs on the scale as between attorney and client incurred by Khwezi Financial Services (Pty) Ltd enforcing this Policy, whether or not any legal proceedings or arbitration has been instituted or not, said legal costs incurred in respect of any legal steps taken in terms of the Policy by Khwezi Financial Services (Pty) Ltd whatsoever, including collection commission.
- 11.15 Any written notification sent by Khwezi Financial Services (Pty) Ltd to the Client, Employee and Operator, as the case may be, via email to the email address used by the Client, Employee and Operator, as the case may be, used when communicating with Khwezi Financial Services (Pty) Ltd shall deemed to have been duly received by the Client, Employee and Operator, as the case may be, on the same day as dispatch via email.
- 11.16 The Parties hereby record that should any paragraph or term of the Policy be declared or found to be invalid, unenforceable or unlawful, in any way then the remainder of the Policy shall not be affected thereby and furthermore the paragraph or term in question shall be severable from the Policy to the extent that it is invalid, unenforceable or unlawful and the remainder of the Policy shall remain in full force and effect.
- 11.17 Unless the context indicates otherwise for purposes of interpretation:
- 11.17.1 Any reference to the singular includes the plural and *vice versa*;
 - 11.17.2 Any reference to one gender includes the other gender;
 - 11.17.3 Any reference to a natural person includes an artificial or juristic person/ entity; and
 - 11.17.4 No section of this Policy is intended to contravene or limit any applicable Data Protection Laws and where this Policy contravenes said applicable Data Protection Laws the parties acknowledge that they are aware of and shall adhere to said applicable Data Protection Laws.
- 11.18 Each Party confirms that:
- 11.18.1 Each has read and understood the provision of this Policy;
 - 11.18.2 All paragraphs have been explained and understood by each;
 - 11.18.3 No misrepresentations were made by Khwezi Financial Services (Pty) Ltd to any of the parties;
 - 11.18.4 Each has sought legal advice, and each is therefore advised of all rights and obligations in terms of the Policy; and

11.18.5 Each agrees to the Policy freely and voluntarily.