

## DATA PROCESSING AGREEMENT

Entered into by and between

**SearchKings Africa (Pty) Ltd**

(Registration No: \_\_\_\_\_)

("SearchKings" / "the Operator")

and

\_\_\_\_\_  
(Registration No: \_\_\_\_\_)

("Customer" / "the Responsible Party")

(collectively, "the Parties")

## INTRODUCTION

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This Data Processing Agreement (“DPA”) outlines the various terms applicable to Processing activities conducted by and between the Responsible Party and the Operator.

## DEFINITIONS

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The following expressions shall bear the meanings assigned to them below and cognate expressions shall bear corresponding meanings.

- a) “**Agreement**” shall mean the applicable Terms and Conditions of Service which govern the provision of one or more SearchKing Services to the Customer;
- b) “**Additional SearchKings Terms**” shall mean the terms of any Proposals, Engagement Letters, contract renewals, or written amendments to this Agreement, as agreed between SearchKings and the Customer from time to time.
- c) “**Customer Data**” shall mean all Personal Information of Data Subjects, as well as any other information, content, resources or IP provided to SearchKings, by the Customer, for the provision of the Services, or otherwise collected by SearchKings, on the Customer’s behalf, in providing the Services;
- d) “**Customer Personal Information**” shall mean all Personal Information belonging to the Customer in his/her/its capacity either as a natural person, or as a juristic person;
- e) “**Applicable Data Protection Laws**” shall mean all laws and regulations applicable to the Processing of Personal Information under the Agreement and this DPA (by either Party), including but not limited to the South African Protection of Personal Information Act, 2013, and the General Data Protection Regulations (EU) 2016/679;
- f) “**Data Subject/s**” shall have the same meaning as if read in the context of Applicable Data Protection Laws;
- g) “**Personal Information**” shall have the same meaning as if read in the context of Applicable Data Protection Laws;
- h) “**Personal Information Breach**” shall mean a breach of security leading to the accidental or unlawful destruction, loss, alteration, unauthorised disclosure of, or access to, personal information transmitted, stored or otherwise processed. References to ‘Personal Information Breach’ in this DPA shall be interchangeable with the terms ‘Personal Data Breach’ and ‘Data Breach’ as defined under Applicable Data Protection Laws;
- i) “**Process/Processing**” shall have the same meaning as if read in the context of Applicable Data Protection Laws;
- j) “**Operator**” means a person who processes personal information for a Responsible Party in terms of a contract or mandate, without coming under the direct authority of that party. References to ‘Operator’ in this DPA shall be interchangeable with the terms ‘Processor’ and/or ‘Data Processor’ as defined under Applicable Data Protection Laws;
- k) “**Responsible Party**” shall mean 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. References to ‘Responsible Party’ in this DPA shall be interchangeable with the terms ‘Controller’ and/or ‘Data Controller’ as defined under Applicable Data Protection Laws;
- l) “**Services**” shall mean any digital marketing services and/or web-development and hosting services, which the Operator (SearchKings) provides to the Responsible Party (the Customer) pursuant to the Agreement; and
- m) “**Third-Party/Third-Parties**” shall mean any other natural person that is not the Responsible Party or the Operator. In the context of this DPA, Third-Parties may refer to Third-Party Operators, or Third-Parties who are not authorised to Process Personal Information.

## 1. TERM AND APPLICATION OF THIS DPA.

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- 1.1. The DPA is concluded for the entire period of the Agreement, until the end of the provision of any Services, which period shall include periods of suspension or other post-termination periods where the Operator continues to process Customer Data.
- 1.2. This DPA shall apply to all directors, employees, subcontractors, agents and other personnel members of the Responsible Party and the Operator.

## 2. ROLES AND RESPONSIBILITIES.

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- 2.1. Considering the Applicable Data Protection Laws and the relationship between the Parties, the Parties understand, acknowledge and agree that the Customer is the Responsible Party and SearchKings is the Operator insofar as the Processing of Customer Data under the Agreement is concerned.

## 3. SUBJECT MATTER AND CIRCUMSTANCES OF DATA PROCESSING.

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- 3.1. By entering this DPA, the Responsible Party instructs the Operator to Process Customer Data for the purpose of:
  - 3.1.1. providing the Services, including all functionalities of the Services and all related operational and technical support relating to the; or
  - 3.1.2. as further documented in this DPA, the Agreement or otherwise in any instructions the Responsible Party may give to the Operator in writing (via e-mail or other written electronic communication) and that the Operator acknowledges as constituting instructions for the Processing of Customer Data.
- 3.2. The Operator will Process Customer Data until the expiry of the Agreement or until the Responsible Party or a Data Subject objects to the Processing of Customer Data. The Operator will act in accordance with the instructions of the Responsible Party and will Process Customer Data in accordance with the Operator's Privacy Policy.
- 3.3. When the Responsible Party uses or receives the Services:
  - 3.3.1. The following **categories of Personal Information of Data Subjects** may be Processed: name; e-mail address; telephone number; profession; company name and address; city and country; voice and any other Personal Information which may be provided to the Operator, by the Responsible Party, and which may be relevant to the provision of its Services; and
  - 3.3.2. Personal Information pertaining to the following **categories of Data Subjects** may be Processed by the Operator: users or recipients of the Services (which may include the Responsible Party's employees and personnel); pre-existing customers, contacts or marketing leads in a database belonging to the Responsible Party; and/or any other Data Subjects whose Personal Information is provided to the Operator by the Responsible Party.

## 4. LAWFUL BASIS FOR PROCESSING OF PERSONAL DATA

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- 4.1. The Responsible Party's instructions to the Operator shall comply with Applicable Data Protection Laws. In this regard, the Responsible Party shall establish and ensure that it has all required legal bases in order to:
  - 4.1.1. collect, Process and transfer to the Operator any Personal Information in Customer Data and any Customer Personal Information; and to

- 4.1.2. authorise the Processing of Personal Information, by the Operator, on the Responsible Party's behalf.
- 4.2. Where the Responsible Party has obtained consent to collect and Process Personal Information in Customer Data, the Responsible Party represents and warrants to the Operator that:
  - 4.2.1. such consent was freely given by each of the Data Subjects and obtained in accordance with Applicable Data Protection Laws;
  - 4.2.2. such consent has not been withdrawn;
  - 4.2.3. the Data Subject(s) have not objected to the transfer of their Personal Information to Third-Parties; and
  - 4.2.4. such Data Subject(s) have not objected to the Processing of their Personal Information or requested the restriction of the Processing of their Personal Information.
- 4.3. Where the Responsible Party relies on an alternative legal basis to collect and Process Personal Information in Customer Data (including for the Responsible Party's legitimate interests), the Responsible Party represents and warrants to the Operator that it is satisfied that it can legally justify its reliance on such legal basis.
- 4.4. Where the Responsible Party is no longer lawfully entitled to Process any Personal Information in Customer Data, the Responsible Party must notify the Operator immediately and request that it ceases Processing such Personal Information. Furthermore, the Responsible Party indemnifies the Operator against all Data Subject(s) and Third-Party claims and actions related to the unlawful Processing of The Data in providing the Services to the Responsible Party.

## 5. DATA DELETION AND DE-IDENTIFICATION.

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- 5.1. Where the Operator is Processing Customer Data provided by the Responsible Party, the Operator shall be entitled, from time to time, to Process the data for archiving, data governance or information security related purposes.
- 5.2. Upon termination of the Agreement and subject thereto, or where instructed by the Responsible Party (for example, in the case that a Data Subject has requested the erasure of any Personal Information in Customer Data), the Operator shall, at the instruction of the Responsible Party, delete, de-identify, or return to the Responsible Party all Customer Data that it Processes on behalf of the Responsible Party. If the Operator deletes any Personal Information in Customer Data permanently, such Personal Information may not be recovered. Where the Operator has deleted such data, the Operator shall, as soon as reasonably practicable after the date of request, provide a written certification that it has complied with the Responsible Party's request.
- 5.3. Notwithstanding the above, and to the extent authorised or required by applicable law, the Operator may also retain one copy of the Personal Information for lawful business purposes or evidentiary purposes and/or for the establishment, exercise or defense of legal claims and/or for compliance with legal obligations.

## 6. THIRD-PARTIES AND SUB-OPERATORS

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- 6.1. **Authorisation.**
  - 6.1.1. Under this DPA the Responsible Party authorises the Operator to engage and utilise the services of other Third-Parties, within the scope and purposes of Processing Customer Data, to provide the Services and related technical / service support. The Responsible Party also authorises the Operator to transfer Customer Data to these

Third-Parties (as well as any other Third-Parties that it may require from time to time) in order to provide the Services.

6.1.2. A list of Third-Parties currently used by the Operator is set out in **Annexure A** to this Agreement.

**6.2. Roles of Third-Parties.**

6.2.1. The Responsible Party acknowledges and understands that Third-Parties engaged by the Operator act as independent Responsible Parties, and/or Operators, depending on the context and the Operator (SearchKings) is in no way responsible or liable for data Processing performed by those Third-Parties.

6.2.2. Where the Operator engages a Third-Party as an Operator (sub-Operator) for carrying out specific Processing activities on behalf of the Responsible Party, equivalent data protection obligations as set out in this DPA will, where possible and where not already provided for by such Third-Party Operator, be imposed on that Third-Party Operator, including in particular providing sufficient guarantees to implement appropriate technical and organisational measures in such a manner that the Processing will meet the requirements of the Applicable Data Protection Laws.

6.2.3. Where the Operator engages a Third-Party that acts as an independent Responsible Party (data controller) in relation to certain Processing activities—such as the provision of analytics, advertising, or marketing services—that Third-Party shall process Customer Data in accordance with its own purposes and means, independently of the Operator. In such instances, the Operator does not act on behalf of the Responsible Party with respect to such Processing and shall not be held responsible or liable for the Processing activities of that Third-Party. The Responsible Party acknowledges and agrees that such Third-Parties operate under their own terms and privacy policies, and are solely responsible for their compliance with Applicable Data Protection Laws in respect of their Processing of Customer Data.

## **7. CROSS-BORDER DATA TRANSFERS.**

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7.1. The Operator will, in delivering the Services, be required to transfer Customer Data outside of the Republic of South Africa and in such cases, the Responsible Party represents and warrants that it has obtained adequate consents from applicable Data Subjects of Customer Data for such transfers, or has another lawful basis to instruct the Operator to effect a cross-border transfer (for the performance or conclusion of a contract with the Data Subject, or where the transfer is for the benefit of the Data Subject). The Responsible Party hereby authorises such transfers.

7.2. Where Customer Data is required to be transferred as such, the Parties shall ensure that the Personal Information are adequately protected and shall ensure that the recipients of such Personal Information are subject to appropriate contractual undertakings to ensure the confidentiality, non-disclosure and security of any Personal Information transferred to any Third-Party Operators.

## **8. SECURITY MEASURES & PERSONAL DATA BREACHES**

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8.1. The Operator will take appropriate, reasonable, technical and organisational measures to ensure that the integrity of the Personal information in its possession or under its control is secure and that such Personal information is protected against unauthorised or unlawful processing, accidental loss, destruction or damage, alteration, disclosure or access by:

8.1.1. identifying all reasonably foreseeable internal and external risks to personal information in its possession or under its control;

- 8.1.2. establishing and maintaining appropriate safeguards against the risks identified;
- 8.1.3. regularly verifying that the safeguards are effectively implemented; and
- 8.1.4. ensuring that the safeguards are continually updated in response to new risks or deficiencies in previously implemented safeguards; and
- 8.1.5. having regard to generally accepted information security practices and procedures which may apply to it generally or be required in terms of specific industry or professional rules and regulations.
- 8.2. If the Operator becomes aware of a Personal Information Breach on any of the systems managed by or otherwise controlled by it (excluding unsuccessful attempts or activities that do not compromise the security of Customer Data, unsuccessful log-in attempts, pings, port scans, denial of service attacks, and other network attacks on firewalls or networked systems), the Operator will notify the Responsible Party immediately after becoming aware of a Personal Information Breach involving Customer Data. The Responsible Party will take all reasonable and appropriate steps to limit the compromise of Personal information and to restore the integrity of its affected information systems.
- 8.3. The Responsible Party shall bear the sole responsibility to report a Personal Information Breach concerning Customer Data to the South African Information Regulator or to another applicable Data Protection Supervisory Authority.

## 9. LIABILITY

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- 9.1. If the Responsible Party breaches any of its obligations under this DPA or Applicable Data Protection Laws, the Responsible Party shall be liable to the Operator, any Third-Parties, or Data Subjects for (a) damages, losses, costs, taxes and expenses (including legal and professional fees); and (b) fines or penalties payable to the South African Information Regulator or to another applicable Data Protection Supervisory Authority.
- 9.2. The Responsible Party shall be liable to the Operator for (a) damages, losses, costs, taxes and expenses (including legal and professional fees); and (b) fines or penalties payable to the South African Information Regulator or to another applicable Data Protection Supervisory Authority arising from the negligence, fault or gross misconduct of the Responsible Party associated with the Responsible Party's obligations under this Agreement.
- 9.3. The Operator will consider any breach of any provision of this DPA or Applicable Data Protection Laws by the Responsible Party as a breach of the Agreement, entitling it to terminate the Agreement with immediate effect.

## 10.COOPERATION ON DATA PROTECTION AND EXECUTION OF DATA SUBJECTS' RIGHTS

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- 10.1. During the term of the Agreement, the Operator will reasonably assist the Responsible Party (where possible) with its obligations to respond to Data Subject requests to access, rectify and/or restrict the Processing of Customer Data, including deletion of this data.
- 10.2. The Operator will promptly notify the Responsible Party if it receives a request from a Data Subject under any Data Protection Law in respect of Customer Data. The Responsible Party will be responsible for responding to such requests, including the obligation to respond to requests for exercising Data Subject rights set out in Chapter 2 of the POPIA.

## 11.GOVERNING LAW AND JURISDICTION

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11.1. This Agreement is governed by the laws of the Republic of South Africa.

11.2. Any dispute arising in connection with this Agreement, which the Parties will not be able to resolve amicably, will be submitted to the exclusive jurisdiction of the courts of South Africa.

IN WITNESS WHEREOF, this Agreement is entered into with effect from the date first set out below.

**SearchKings**  
(Duly authorised)

Signature \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date Signed: \_\_\_\_\_

**Customer**  
(Duly authorised)

Signature \_\_\_\_\_

Name \_\_\_\_\_

Title \_\_\_\_\_

Date Signed \_\_\_\_\_



**ANNEXURE A: LIST OF CURRENTLY AUTHORISED SUB-OPERATORS**

Operator Name	SearchKings Service
Google LLC	Google Ads Google Analytics Google Shopping
YouTube LLC	YouTube Advertising
Vox Telecoms	Call Tracking Telephony Partner
Pipedrive Inc.	Customer Relationship Management (CRM)
Zapier, Inc.	Workflow automation platform
Celonis, Inc. (Make)	Workflow automation platform