**THE AGRICULTURAL PRODUCE AGENTS’ COUNCIL**

**PRIVACY POLICY**

1. DEFINITIONS

In this Policy (as defined below), unless the context requires otherwise, the following capitalised terms shall have the meanings given to them —

* 1. **"APAC"** means the Agricultural Produce Agents Council, a Regulatory Authority established in terms of section 2 of the Agricultural Produce Agents Act (Act 12 of 1992), as amended by the Agricultural Produce Agents Amendment Act, No. 47 of 2003;
	2. **"APA Act"** means the Agricultural Produce Agents Act (Act 12 of 1992), as amended by the Agricultural Produce Agents Amendment Act, No. 47 of 2003;
	3. **"Agent(s)"** means any natural person, or where applicable juristic person, who is registered with APAC in terms of relevant provisions of the APA Act;
	4. **"Applicable Laws"** means any laws applicable to Personal Data and Personal Information and includes any statute, regulation, notice, policy, directive, ruling or subordinate legislation; the common law; any binding court order, judgement or ruling; any applicable industry code, policy or standard enforceable by law; or any applicable direction, policy or order that is given by any regulator, competent authority or organ of state or statutory industry body;
	5. "**Controller**" means APAC, in circumstances where it Processes Personal Data (as defined in Article 4 of the GDPR);
	6. "**Data Subject**" means APAC’s Agent(s) or any Third-Party in respect of whom the APAC Processes Personal Information/Personal Data;
	7. "**GDPR**" means the General Data Protection Regulation, which is a European law that governs all collection and processing of personal data from individuals inside the European Union;
	8. "**Operator**" means a person or entity who Processes Personal Information/Data for a Responsible Party;
	9. "**Personal Data**" (as defined in Article 4 of the GDPR) means any information relating to an identified or identifiable natural person ('data subject'); an identifiable natural person is one who can be identified, directly or indirectly;
	10. "**Personal Information**" shall have the same meaning as is given in section 1 of POPIA;
	11. "**Policy**" means this Data Protection and Privacy Policy;
	12. "**POPIA**" means the Protection of Personal Information Act, No 4 of 2013;
	13. "**Processing**" means any operation or activity or any set of operations, whether or not by automatic means, concerning Personal Information/Personal Data, including:
		1. the collection, receipt, recording, organisation, collation, storage, updating or modification, retrieval, alteration, consultation, or use;
		2. dissemination by means of transmission, distribution or making available in any other form by electronic communications or other means; or
		3. merging, linking, blocking, degradation, erasure, or destruction. For the purposes of this definition, "**Process**" has a corresponding meaning
	14. "**Regulator(s)**" means any applicable regulatory authority, including the Information Regulator established in terms of POPIA;
	15. "**Responsible Party**" means in the context of this Policy, APAC;
	16. "**Special Personal Information/Data**" means Personal Information/Personal Data concerning, amongst other aspects contemplated in terms of section 26 Part B of POPIA, a Data Subject's, religious beliefs, race or ethnic origin, trade union membership, political persuasion, health or sex life, biometric data, or criminal behaviour;
	17. "**Third-Party**" means any employees, independent contractor, agent, consultant, managed service provider, sub-contractor, user of the APAC’s website or any other representative of the APAC;
	18. "**Website**" means the website owned and operated by the APAC sourced at <https://www.apacweb.org.za/>
1. Introduction
	1. This Policy regulates the Processing of Personal Information/Personal Data by APAC and sets forth the requirements with which APAC undertakes to comply when Processing Personal Information/Personal Data pursuant to undertaking its operations, fulfilling its legislative mandate, and fulfilling its contractual obligations in respect of Data Subjects and Third Parties in general.
	2. APAC places a high premium on the privacy of every person or organisation with whom it interacts or engages with and therefore acknowledges the need to ensure that Personal Information/Personal Data is managed with a reasonable standard of care as may be expected from it. APAC is therefore committed to ensuring that it complies with the requirements of POPIA, and also with the terms of the GDPR to the extent that the GDPR applies.
	3. When a Data Subject or any Third Party engages with APAC, whether it be physically or via any digital, electronic interface such as APAC’s Website, the Data Subject or Third Party acknowledges that they trust APAC to Process their Personal Information/Personal Data, including the Personal Information/Personal Data of their dependents, beneficiaries or employees as the case may be and if applicable.
	4. All Data Subjects and Third Parties have the right to object to the processing of their Personal Information/Personal Data. It is voluntary to accept the Terms and Conditions to which this Policy relates. However, APAC does require the Data Subject or Third Party’s acceptance to enable the proper use of APAC’s Website.
2. Purpose and application
	1. The purpose of this Policy is not only to inform Data Subjects about how APAC Processes their Personal Information/Personal Data, but also to establish a standard by which APAC, its employees and representatives shall comply in as far as the Processing of Personal Information/Personal Data is concerned.
	2. APAC, in its capacity as a Responsible Party and/or Operator and/or Controller, as the case may be, shall strive to observe and comply with its obligations under POPIA and the GDPR (as may be applicable and to the extent necessary) when it Processes Personal Information/Personal Data from or in respect of any Data Subject.
3. COLLECTING & PROCESSING OF PERSONAL INFORMATION/PERSONAL DATA
	1. Whenever any Data Subject completes an application form to be registered with APAC, contacts APAC electronically, or engages with APAC physically or via telephone, APAC will in effect be Processing the Data Subject’s Personal Information/Personal Data.
	2. It may be from time to time that the APAC has collected a Data Subject’s Personal Information/Personal Data from other sources. If a Data Subject has shared their Personal Information/Personal Data with any third parties, APAC will not be responsible for any loss suffered by the Data Subject, their dependents, beneficiaries, spouse(s), or employees (as the case may be).
	3. When a Data Subject provides APAC with the Personal Information of their spouse and/or dependent(s) (in the case of the Data Subject being a juristic person, their employees and/or representatives) either through the Website, any other electronic interface, physically or on their Agent(s) application, APAC will process the Personal Information/Personal Data of such spouse(s), dependent(s), employees or representatives in line with this Policy, as well as the terms and conditions to which this Policy relates.
	4. APAC will Process Personal Information/Personal Data in order to facilitate and enhance the execution of its legislative mandate in terms of the APA Act, foster a legally compliant workplace environment, as well as safeguard the Personal Information/Personal Data relating any Data Subjects which it in fact holds. In such an instance, the Data Subject providing APAC with such Personal Information/Personal Data will confirm that they are a Competent Person and that they have authority to give the requisite consent to enable APAC to process such Personal Information/Personal Data.
	5. APAC undertakes to process any Personal Information/Personal Data in a manner which promotes the constitutional right to privacy, retains accountability and Data Subject participation. In supplementation of the above, APAC will process Personal Information/Personal Data for the following purposes:
		1. To fulfil its mandate in terms of the APAC Act;
		2. To process and evaluate applications made by Data Subjects pursuant to registering with APAC;
		3. To provide or manage any information requested by data subjects in general and our Agent(s)s;
		4. To help the APAC identify Data Subjects and Third Parties when they contact APAC;
		5. To administer claims and Agent(s) disciplinary proceedings;
		6. For securely storing, retaining, and recalling the Personal Information/Personal Data of Data Subjects and Third Parties from time to time;
		7. To maintain records of Data Subjects and specifically Agent(s) records;
		8. To maintain Third Party records;
		9. For recruitment purposes;
		10. For employment purposes;
		11. For apprenticeship purposes;
		12. For general administration purposes;
		13. For legal and/or contractual purposes;
		14. For health and safety purposes;
		15. To monitor access, secure and manage any facilities owned or operated by APAC regardless of location in South Africa;
		16. To transact with Third Parties;
		17. To detect and prevent conduct which is prohibited in terms of the APA Act;
		18. To analyse the Personal Information/Personal Data collected for research and statistical purposes;
		19. To help recovery of amounts due and owing to APAC from time to time;
		20. To transfer Personal Information/Personal Data across the borders of South Africa to another jurisdiction;
		21. To conduct analysis and Agent(s) profiling;
		22. To obtain and share information about a Data Subject’s credit worthiness with any credit bureau or credit provider’s industry association or industry body, which includes information pertaining to a Data Subject’s credit history, financial history, judgements, default history and sharing information for purposes of risk analysis, tracing, and related purposes;
	6. When collecting Personal Information/Personal Data from a Data Subject, the APAC shall comply with the notification requirements as set out in Section 18 of POPIA, and to the extent applicable, Articles 13 and 14 of the GDPR.
	7. APAC will collect and Process Personal Information/Personal Data in compliance with the conditions as set out in POPIA and/or the Processing principles in the GDPR (as the case may be), to ensure that it protects the Data Subject's privacy.
	8. APAC will not Process the Personal Information/Personal Data of a Data Subject for any purpose other than for the purposes set forth in this Policy unless APAC is permitted or required to do so in terms of Applicable Laws or otherwise by law.
	9. APAC may from time-to-time Process Personal Information/Personal Data by making use of automated means (without deploying any human intervention in the decision-making process) to make decisions about the Data Subject or their application. In this instance it is specifically recorded that the Data Subject may object to or query the outcomes of such a decision.
4. PERSONAL INFORMATION/PERSONAL DATA FOR DIRECT MARKETING PURPOSES
	1. APAC acknowledges that it may only use Personal Information/Personal Data to contact Data Subjects for purposes of direct marketing where APAC has complied with the provisions of POPIA and GDPR (where applicable) and when it is generally permissible to do so in terms of Applicable Laws.
	2. APAC will ensure that a reasonable opportunity is given to all Data Subjects to object (opt-out) to the use of their Personal Information/Personal Data for the APAC's marketing purposes when collecting the Personal Information/Personal Data and on the occasion of each communication to the Data Subject for purposes of direct marketing.
5. STORAGE AND RETENTION OF PERSONAL INFORMATION/PERSONAL DATA
	1. APAC will retain Personal Information/Data it has Processed, in an electronic or hardcopy file format, with a Third-Party service provider appointed for this purpose (the provisions of clause nine below will apply in this regard).
	2. Personal Information/Personal Data will only be retained by the APAC for as long as necessary to fulfil the purposes for which that Personal Information/Personal Data was collected and/or as permitted in terms of Applicable Law.
	3. It is specifically recorded that any Data Subject has the right to object to the Processing of their Personal Information and APAC shall retain and store the Data Subject’s Personal Information/Personal Data for the purposes of dealing with such an objection or enquiry as soon and as swiftly as possible.
6. FAILURE TO PROVIDE PERSONAL INFORMATION
	1. Where APAC is required to collect Personal Information/Personal Data from a Data Subject by law or in order to fulfil a legitimate business purpose of APAC and the Data Subject fails to provide such Personal Information/Personal Data, APAC may, on notice to the Data Subject, decline to render services without any liability to the Data Subject.
7. SECURING PERSONAL INFORMATION/PERSONAL DATA
	1. APAC has implemented appropriate, reasonable, physical, organisational, contractual, and technological security measures to secure the integrity and confidentiality of Personal Information/Personal Data, including measures to protect against the loss or theft, unauthorised access, disclosure, copying, use or modification of Personal Information/Personal Data in compliance with Applicable Laws.
	2. In further compliance with Applicable Law, APAC will take steps to notify the relevant Regulator(s) and/or any affected Data Subjects in the event of a security breach and will provide such notification as soon as reasonably possible after becoming aware of any such breach.
	3. Notwithstanding any other provisions of this Policy, it should be acknowledged that the transmission of Personal Information/Personal Data, whether it be physically in person, via the internet or any other digital data transferring technology, is not completely secure. Whilst APAC taken all appropriate, reasonable measures contemplated in clause 8.1 above to secure the integrity and confidentiality of the Personal Information/Personal Data its Processes, in order to guard against the loss of, damage to or unauthorized destruction of Personal Information/Personal Data and unlawful access to or processing of Personal Information/Personal Data, APAC in no way guarantees that its security system is 100% secure or error-free. Therefore, APAC does not guarantee the security or accuracy of the information (whether it be Personal Information/Personal Data or not) which it collects from any Data Subject.
	4. Any transmission of Personal Information/Personal Data will be solely at the own risk of the Data Subject. Once APAC has received the Personal Information/Personal Data, it will deploy and use strict procedures and security features to try to prevent unauthorised access to it. As indicated above, APAC reiterates that it restricts access to Personal Information/Personal Data to Third Parties who have a legitimate operational reason for having access to such Personal Information/Personal Data. APAC also maintains electronic and procedural safeguards that comply with the Applicable Laws to protect your Personal Information from any unauthorized access.
	5. APAC shall not be held responsible and by accepting the terms and conditions to which this Policy relates, any Data Subject agrees to indemnify and hold APAC harmless for any security breaches which may potentially expose the Personal Information/Personal Data in APAC’s possession to unauthorized access and or the unlawful processing of such Personal Information/Personal Data by any Third-Party.
8. PROVISION OF PERSONAL INFORMATION/PERSONAL DATA TO THIRD PARTIES
	1. APAC may disclose Personal Information/Personal Data to Third-Party service providers where necessary and to achieve the purpose(s) for which the Personal Information/Personal Data was originally collected and processed. APAC will enter into written agreements with such Third-Party service providers to ensure that they comply with Applicable Laws pursuant to the Processing of Personal Information/Personal Data provided to it by APAC from time to time.
9. TRANSFER OF PERSONAL INFORMATION/PERSONAL DATA OUTSIDE OF SOUTH AFRICA
	1. APAC may, under certain circumstances, transfer Personal Information/Personal Data to an area outside of the Republic of South Africa in order to achieve the purpose(s) for which the Personal Information/Data was collected and processed, including for Processing and storage by Third-Party service providers.
	2. APAC will obtain the Data Subject's consent to transfer the Personal Information/Personal Data to such foreign jurisdiction unless consent is not required by Applicable Law.
	3. The Data Subject should also take note that, where the Personal Information/Personal Data is transferred to a foreign jurisdiction, the Processing of Personal Information/Personal Data in the foreign jurisdiction may be subject to the laws of that foreign jurisdiction.
10. ACCESS TO PERSONAL INFORMATION/PERSONAL DATA
	1. A Data Subject has the right to a copy of the Personal Information/Personal Data which is held by APAC (subject to a few limited exemptions as provided for under Applicable Law).
	2. The Data Subject must make a written request (which can be by email) to the Information Officer designated by the APAC from time to time.
	3. APAC will provide the Data Subject with any such Personal Information/Personal Data to the extent required by Applicable Law and subject to and in accordance with the provisions of APAC’s PAIA Manual (published in terms of section 51 of the Promotion of Access to Information Act, 2000 (“PAIA”), which PAIA Manual can be sourced on APAC’s website at <https://www.apacweb.org.za/>
	4. The Data Subject can challenge the accuracy or completeness of his/her/its Personal Information/Personal Data in APAC's records at any time in accordance with the process set out in the APAC's PAIA Manual.
11. KEEPING PERSONAL INFORMATION/PERSONAL DATA ACCURATE
	1. APAC will take reasonable steps to ensure that Personal Information/Personal Data that it Processes is kept updated were reasonably possible. For this purpose, APAC can be contacted by Data Subjects to update their Personal Information/Personal Data.
	2. APAC may not always expressly request the Data Subject to verify and update his/her/its Personal Information/Personal Data and expects that the Data Subject will notify the APAC from time to time in writing:
		1. of any updates or amendments required in respect of his/her/its Personal Information/Personal Data;
		2. where the Data Subject requires APAC to delete his/her/its Personal Information/Personal Data; or
		3. where the Data Subject wishes to restrict the Processing of his/her/its Personal Information/Personal Data.
12. COSTS TO ACCESS PERSONAL INFORMATION/PERSONAL DATA
	1. The prescribed fees to be paid for copies of the Data Subject's Personal Information/Personal Data are listed in APAC's PAIA Manual referred to at clause 11.3 above.
	2. APAC reserves the right to make amendments to this Policy from time to time.
13. COMPLAINTS TO THE INFORMATION REGULATOR
	1. In the event that any Data Subject or Third Party is of the view or belief that APAC has Processed their Personal Information/Personal Data in a manner or for a purpose which is contrary to the provisions of this Policy, the Data Subject is required to first attempt to resolve the matter directly with APAC, failing which the Data Subject or Third Party shall have the right to lodge a complaint with the Information Regulator, under the provisions of POPIA.
	2. The contact particulars of the Information Regulator are:

The Information Regulator (South Africa)

JD House 27 Stiemens Street Braamfontein Johannesburg, 2001

PO Box 31533

Braamfontein, Johannesburg, 2107

E-mail: inforeg@justice.gov.za

1. CONTACTING US
	1. All comments, questions, concerns or complaints regarding Personal Information/Personal Data or this Policy, should be forwarded to APAC's Information Officer at the following email address compliance@apacouncil.co.za.