EVERYDAY LEGAL
SOLUTIONS

FREE GUIDE · POPIA & DATA

POPIA operator agreements: payment gateways, email tools and cloud providers

Under POPIA, an operator is anyone who processes personal information for your business under a contract or mandate, without coming under your direct authority. Your e-commerce platform, payment gateway, email marketing tool, cloud storage, payroll provider and IT support are typical examples. Section 21 requires a written contract that makes the operator keep the information secure and tell you immediately if it's compromised. Your business stays responsible for what happens to the data.

REVIEWED BY THE ELS TEAM

Build on solid legal ground

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AT A GLANCE

- An operator processes personal information **on your behalf**, under a contract or mandate.
- Section 21 requires a **written contract** covering security measures.
- Operators must **notify you immediately** of a suspected compromise.
- You remain **responsible** for the personal information your operators process.

Who counts as an operator?

POPIA separates the "responsible party", the business that decides why and how personal information is processed, from the "operator", which processes it on that business's behalf. Your employees aren't operators, because they work under your direct authority. Outside service providers usually are:

SERVICE	USUALLY AN OPERATOR?	WHY
E-commerce platform or website host	Yes	Stores orders, customer accounts and enquiries for you
Email marketing or CRM tool	Yes	Holds and sends to your mailing list
Cloud storage and accounting software	Yes	Stores records that contain personal information
Payroll provider or outsourced bookkeeper	Yes	Processes employee or client information on your instructions
Payment gateway	Often, for some processing	Processes buyer details for your checkout, but may also process data for its own legal and fraud purposes
Courier	Often	Receives names, addresses and phone numbers to deliver for you
Freelance web developer or IT support	If they access personal data	Database, inbox or admin access means they process it for you

One provider, two roles. A large provider can be your operator for some processing and a responsible party in its own right for other processing, such as its own fraud checks. A good contract says which is which.

What POPIA requires

- **Authorised processing only (section 20).** An operator may process personal information only with your knowledge or authorisation, and must treat it as confidential unless the law requires disclosure.
- **A written contract (section 21(1)).** You must ensure, through a written contract, that the operator establishes and maintains the security measures in section 19.
- **Breach notice (section 21(2)).** The operator must notify you immediately when there are reasonable grounds to believe personal information has been accessed or acquired by an unauthorised person.
- **The duty stays yours.** Using an operator doesn't move your section 19 security obligation. If your provider is breached, you are the one who must notify the Information Regulator and your customers.

What a good operator agreement covers

- What information the operator processes, for what purpose, and that it acts only on your instructions.
- Confidentiality, including for the operator's own staff.
- The security measures it must keep in place.
- Whether it may use sub-operators, and on what terms.
- How quickly and how it must notify you of a security compromise, and how it will help you respond.
- Where the data is stored, and the rules for sending it outside South Africa.
- Returning or deleting the data when the service ends.
- Your right to information or audits to check compliance, and liability if it fails.

Big platforms: their terms or your undertaking?

Global platforms rarely sign a small business's contract. Instead, they publish standard data processing terms that form part of your account agreement. For those providers, the practical step is to read their terms, check they cover what section 21 requires, and keep a record that you did.

For local and smaller providers, such as your bookkeeper, payroll bureau, developer or IT support, you're in a position to ask them to sign your own operator undertaking. These are often the relationships with the most access and the least paperwork.

Data stored outside South Africa

Many cloud and marketing tools store data overseas. Section 72 of POPIA allows personal information to be sent outside South Africa only in certain cases, for example where the recipient is bound by a law, binding corporate rules or an agreement that gives an adequate level of protection, where the person

consents, or where the transfer is necessary for a contract with them. Your privacy notice should also tell people that their information may leave the country.

Five common operator agreement mistakes

1. **Assuming the provider's terms are enough without reading them.** Some cover POPIA's requirements; some say very little.
2. **Forgetting small operators.** The freelancer with admin access to your store is an operator too.
3. **No breach timeline.** "Notify us in due course" doesn't match section 21(2)'s "immediately".
4. **Ignoring sub-operators.** Your provider may pass data to its own providers. The contract should control that.
5. **No exit plan.** Without a deletion or return clause, your customers' data can outlive the relationship.

Frequently asked questions

Is my web developer an operator?

If they host your site, can access your database or admin panel, or handle form submissions, yes. If they only build the design and never touch personal information, probably not.

What if an operator won't sign my undertaking?

Large providers usually won't. Review their published data processing terms instead, check them against section 21, and keep a record. If the terms fall short, that's a reason to consider another provider.

Is an operator agreement the same as an NDA?

No. An NDA protects confidential business information. An operator agreement deals specifically with personal information and the security and breach duties POPIA imposes. Read when you need an NDA.

Do I need one with every employee?

No. Employees work under your direct authority, so they aren't operators. Their duties come from their employment contract and your internal POPIA policy.

Put your operator agreements in place

The ELS POPIA Operator Undertaking (R1,250) is the written contract section 21 requires for service providers who process data on your behalf. The Web & Online Pack (R4,950) includes it, with your website terms, privacy notice, internal policy, consent form and PAIA manual. Not sure what you need? Take the free Legal Health Check.

VIEW THE OPERATOR UNDERTAKING

SEE THE WEB & ONLINE PACK

INFORMATION, NOT ADVICE

ELS provides legal information, not legal advice. Nothing in this guide creates an attorney-client relationship. For advice on your specific situation, consult a qualified attorney. The law is stated as at 19 November 2026.

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Attorney-drafted legal documents and plain-English legal information for South African businesses. Not sure what your business needs? Take the free Legal Health Check.

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