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SOLUTIONS

FREE GUIDE · BUSINESS LEGAL HEALTH

Legal documents for SaaS products and apps in South Africa

A South African SaaS product or app typically needs terms and conditions that meet the ECT Act and the Consumer Protection Act, a POPIA privacy notice covering everything the product collects, an internal POPIA policy, written operator contracts with its hosting and other providers, valid consent for marketing and optional data uses, and a PAIA manual. If customers upload their own clients' or staff's data into your product, you're usually their operator, and they'll expect you to commit to POPIA's operator duties too.

REVIEWED BY THE ELS TEAM

Build on solid legal ground

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AT A GLANCE

- Your terms are where **subscriptions, cancellations and liability** are set.
- If customers store **their data** in your product, you're usually their **operator**.
- Hosting abroad is a **cross-border transfer** under section 72 of POPIA.
- Consumer subscriptions bring in the **CPA's fixed-term rules**.

Your two POPIA roles

Most software businesses wear two hats under POPIA, often at the same time:

ROLE	WHEN IT APPLIES	WHAT IT MEANS
Responsible party	Your own users' account details, billing, support, analytics and marketing	You need a privacy notice, a lawful ground for each purpose, security safeguards and a registered Information Officer
Operator	Data your business customers upload about their own clients, staff or users	You process it only on their instructions, keep it secure, and notify them immediately of a compromise (section 21)

Business customers, especially larger ones, will ask how you meet your operator duties before they sign. Having an operator undertaking ready shortens that conversation. Read POPIA operator agreements explained.

The documents and what each one does

DOCUMENT	WHAT IT COVERS FOR A SAAS OR APP
Terms and conditions	Access and acceptable use, subscriptions and billing, cancellations, intellectual property, availability, liability and the section 43 disclosures
Privacy notice	What the website, app and any SDKs collect, why, who receives it and whether it leaves South Africa
Internal POPIA policy	How your team handles personal data, access controls, retention and breach response
Operator undertaking	Contracts with your hosting, email and support providers, and the commitment you give customers whose data you host
Consent form	Marketing to non-customers and optional uses, such as testimonials

DOCUMENT	WHAT IT COVERS FOR A SAAS OR APP
PAIA manual	The section 51 manual every private body must publish

Subscriptions, cancellations and the CPA

If you sell subscriptions to consumers, three sets of rules shape your terms:

- **Disclosure (ECT Act, section 43).** For services supplied on an ongoing or recurring basis, you must disclose the minimum duration of the agreement, along with the full price and payment terms.
- **Cooling-off (ECT Act, sections 42 and 44).** Consumers generally get seven days to cancel a services agreement. Services that begin, with the consumer's consent, before the seven days end are excluded, so tell users upfront if access starts immediately.
- **Fixed-term agreements (CPA, section 14).** A consumer on a fixed-term agreement can cancel on 20 business days' written notice, subject to a reasonable cancellation charge.

> **Renewals have rules.** Under section 14 of the CPA, you must remind a consumer between 40 and 80 business days before a fixed-term agreement expires. If they do nothing, it continues month to month rather than renewing for another full term.

Section 14 doesn't apply to transactions between juristic persons, whatever their size. If your business is a company and your customer is a company, close corporation or trust, these fixed-term rules fall away, although other CPA protections may still apply to small business customers.

Hosting outside South Africa

Most SaaS products run on cloud infrastructure hosted overseas. Section 72 of POPIA allows personal information to leave South Africa only in certain cases, for example where the recipient is bound by a law, binding corporate rules or an agreement giving adequate protection, or where the transfer is necessary for a contract with the person. Say in your privacy notice where data is hosted, and check your providers' data terms.

Apps used by children

If your app is aimed at, or likely to be used by, people under 18, sections 34 and 35 of POPIA apply. Processing a child's personal information generally needs the consent of a competent person, such as a parent or guardian, unless another ground in section 35 applies. Build age checks and parental consent into the sign-up flow rather than adding them later.

Five common SaaS and app mistakes

1. **Copying US terms.** Foreign governing law, class-action waivers and offshore arbitration can clash with the CPA and confuse South African customers.
2. **A privacy notice that covers the website but not the app.** In-app analytics, crash reporting and SDKs collect data too.
3. **No answer to "are you POPIA compliant?".** Business customers expect an operator commitment before they upload their data.
4. **Auto-renewals that ignore the CPA.** Consumer fixed-term agreements need the expiry notice and month-to-month continuation.
5. **Treating hosting as an afterthought.** Offshore hosting is a cross-border transfer that your documents need to deal with.

Frequently asked questions

Do I need separate terms for my website and my app?

Not necessarily. One set of terms can cover both if it clearly applies to the website, the app and the service, and users accept it before they use the product.

I only sell to businesses. Does the CPA apply?

Partly. The CPA protects juristic persons whose asset value or annual turnover is below R2 million, so small business customers may still be consumers. But section 14's fixed-term rules don't apply between juristic persons at all, and the ECT Act's Chapter VII protections apply only to natural persons.

Is the Web & Online Pack enough for a SaaS business?

It covers the core public-facing and POPIA documents most SaaS products and apps need. Products with enterprise contracts, service level agreements or software licensing may need further agreements on top.

Launch your product on solid legal ground

The ELS Web & Online Pack (R4,950) is made for digital platforms, SaaS products and apps: terms and conditions, a privacy notice, an internal POPIA policy, an operator undertaking, a consent form and a PAIA manual. Prefer not to fill them in yourself? Add the done-for-you option (R2,950) and receive completed documents within four business days. Not sure what you need? Take the free Legal Health Check.

SEE THE WEB & ONLINE PACK

TAKE THE FREE LEGAL HEALTH CHECK

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 24 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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