

DRAFT DATA PROTECTION POLICY

MHASIBU HOUSING COMPANY LIMITED

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## DRAFT DATA PROTECTION POLICY

### 1. INTRODUCTION

In light of the magnitude of data being processed in the day to day running of a business it was imperative that a law be enacted to ensure protection of the fundamental right to privacy. In Kenya, the right to privacy is provided under **Article 31 (c) and (d)** of the Constitution of Kenya. From the Constitution of Kenya 2010, The **Data Protection Act of 2019** (the Act) was birthed and thereafter the regulations were formulated to breathe life into the Act.

### 2. PURPOSE OF THE POLICY

This policy is formulated in accordance to the Data Protection Act 2019 which:

- provides for the right to privacy;
- establishes the Office of the Data Protection Commissioner;
- makes provision for the regulation of the processing of personal data; and
- provides for the rights of data subjects and obligations of data controllers and processors.

Therefore, this policy will serve as a guide to the Company to ensure compliance with the Constitution of Kenya, 2010 and the Data Protection Laws in regard to the data it processes. This will in turn ensure that the Company preserves the right to privacy of its clients, employees and stakeholders.

### 3. DEFINITIONS

**Consent** - means any manifestation of express, unequivocal, free, specific and informed indication of the data subject's wishes by a statement or by a clear affirmative action, signifying agreement to the processing of personal data relating to the data subject.

**Data** -means information which—

- (a) is processed by means of equipment operating automatically in response to instructions given for that purpose;
- (b) is recorded with intention that it should be processed by means of such equipment;
- (c) is recorded as part of a relevant filing system;
- (d) where it does not fall under paragraphs (a), (b) or (c), forms part of an accessible record; or
- (e) is recorded information which is held by a public entity and does not fall within any of paragraphs (a) to (d).

**Data Controller** - means a natural or legal person, public authority, agency or other body which, alone or jointly with others, determines the purpose and means of processing of personal data.

**Data Processor** - means a natural or legal person, public authority, agency or other body which processes personal data on behalf of the data controller.

**Data Protection Impact Assessment** - means an assessment of the impact of the envisaged processing operations on the protection of personal data.

**Data Subject** - means an identified or identifiable natural person who is the subject of personal data.

**Data Commissioner** - means a person appointed to oversee the implementation of the Data Protection Act.

**Personal Data** - means any information relating to an identified or identifiable natural person.

**Processing** - means any operation or sets of operations which is performed on personal data or on sets of personal data whether or not by automated means, such as

- (a) collection, recording, organisation, structuring;
- (b) storage, adaptation or alteration;
- (c) retrieval, consultation or use;
- (d) disclosure by transmission, dissemination, or otherwise making available; or
- (e) alignment or combination, restriction, erasure or destruction.

**Sensitive Personal Data** - means data revealing the natural person's race, health status, ethnic social origin, conscience, belief, genetic data, biometric data, property details, marital status, family details including names of the person's children, parents, spouse or spouses, sex or the sexual orientation of the data subject

#### 4. SCOPE

This policy is applicable to all directors, agents, employees and sub-contractors of the Company in relation to the daily operations of the Company and in regard to confidential and sensitive information acquired or collected in all formats that is printed, digital information, audio, recordings, texts and images.

#### 5. RIGHTS OF DATA SUBJECTS

The Company will inform the data subject of their rights before processing which include the right to:

- (a) be informed of the use to which their personal data is to be put;
- (b) access their personal data in custody of the data controller or data processor;
- (c) object or restrict to the processing of all or part of their personal data;
- (d) correction of false or misleading data;
- (e) withdraw consent;
- (f) object to processing of personal data;
- (g) data portability; and
- (h) deletion of false or misleading data about them.

#### 6. DATA PROTECTION OFFICER

The company may appoint a data protection officer who may be a staff member and who has relevant academic or professional qualifications which may include knowledge and technical skills in matters relating to data protection.

Once appointed, the Company will publish their contact details on the website and communicate them to the Data Commissioner who shall ensure that the same information is available on the official website.

The Company's data protection officer shall –

- (a) advise the Company and the relevant staff on data processing requirements provided under the data protection laws;
- (b) ensure the Company complies with the Data Protection Laws;
- (c) facilitate capacity building of staff involved in data processing operations;
- (d) provide advice on data protection impact assessment;
- (e) co-operate with the Data Commissioner and any other authority on matters relating to data protection; and
- (f) update internal data protection policies, forms and agreements;
- (g) respond to all notices from the Data Commissioner;
- (h) implement mechanisms to handle data subjects' requests and complaints; and
- (i) respond to the various requests and complaints from data subjects in a timely manner.

## 7. CONSENT

The burden of proof to establish whether consent was obtained lies with the Company. Therefore, the company will provide a detailed consent form (as per annexure 1) which will be signed by the data subjects before processing data and thereafter proper records of the consent forms will be maintained.

The Company will also provide a withdrawal of consent form consent form (as per annexure 2) upon request from a data subject.

## 8. OBLIGATIONS OF DATA CONTROLLERS AND DATA PROCESSORS

Before processing personal data based on consent, the Company shall inform the data subject of -

- (a) the identity of the data controller or data processor;
- (b) the purpose of each of the processing operations for which consent is sought;
- (c) the type of personal data that is collected and used;
- (d) the use of their personal data for automated decision-making, where relevant;
- (e) the possible risks of data transfers due to absence of an adequacy decision or appropriate safeguards;
- (f) whether the personal data processed shall be shared with third parties;
- (g) the right to withdraw consent;
- (h) retention of personal data for lawful purposes and as long as it is reasonably necessary;
- (i) the right to seek for anonymity or pseudonymity; and
- (j) the implications of providing, withholding or withdrawing consent.

## 9. PRINCIPLES OF DATA PROTECTION

While processing data the Company shall be guided by the following principles of data protection which ensure that personal data is –

- (a) processed in a manner that adheres to the right to privacy of the data subject;
- (b) processed in a lawful, fair and transparent manner;
- (c) collected for explicit, specified and legitimate purposes and not further processed in a manner incompatible with those purposes;

- (d) adequate, relevant, limited to what is necessary in relation to the purposes for which it is processed;
- (e) collected only where a valid explanation is provided whenever information relating to family or private affairs is required;
- (f) accurate and, where necessary, kept up to date, with every reasonable step being taken to ensure that any inaccurate personal data is erased or rectified without delay;
- (g) kept in a form which identifies the data subjects for no longer than is necessary for the purposes which it was collected; and
- (h) not transferred outside Kenya, unless there is proof of adequate data protection safeguards or consent from the data subject.

## 10. TRANSFER OF PERSONAL DATA OUTSIDE THE COUNTRY

The Company may only transfer personal data to another country only where there are appropriate safeguards with respect to the security and protection of the personal data including jurisdictions with commensurate data protection laws and where the transfer is necessary –

- (i) for the performance of a contract;
- (ii) for the conclusion or performance of a contract concluded in the interest of the data subject between the controller and another person;
- (iii) for any matter of public interest;
- (iv) for the establishment, exercise or defence of a legal claim;
- (v) in order to protect the vital interests of the data subject or of other persons, where the data subject is physically or legally incapable of giving consent; or
- (vi) for the purpose of compelling legitimate interests pursued by the data controller or data processor which are not overridden by the interests, rights and freedoms of the data subjects.

## 11. RETENTION PERIOD AND SCHEDULE

The Company will ensure that it retains the data only as long as may be reasonably necessary to satisfy the purpose for which it is processed. It will also endeavor to conduct regular audits to ensure compliance with the Data Protection Laws.

## 12. COMMERCIAL USE OF PERSONAL DATA

Processing of personal data for commercial purposes is where personal data of a data subject is used to advance commercial or economic interests, including inducing another person to buy, rent, lease, join, subscribe to, provide or exchange products, property, information or services, or enabling or effecting, directly or indirectly, a commercial transaction. This can be through:

- (a) sending a catalogue through any medium addressed to a data subject;
- (b) displaying an advertisement on an online media site where a data subject is logged on using their personal data; or
- (c) sending an electronic message to a data subject about a sale, or other advertising material relating to a sale, using personal data provided by a data subject.

Personal data, other than sensitive personal data, concerning a data subject will be used for the purpose of direct marketing where –

- (a) the company has collected the personal data from the data subject;
- (b) a data subject is notified that direct marketing is one of the purposes for which personal data is collected;
- (c) the data subject has consented to the use or disclosure of the personal data for the purpose of direct marketing;
- (d) the data controller or data processor provides a simplified opt out mechanism for the data subject to request not to receive direct marketing communications; or
- (e) the data subject has not made an opt out request.

### 13. DATA PROTECTION IMPACT ASSESSMENT

Where the processing of personal data will highly result in high risk to the rights and freedoms of data subjects, the company will conduct a data protection impact assessment (as per Annexure 5).

### 14. COLLECTION OF PERSONAL DATA FROM CHILDREN, AND PEOPLE WITH DISABILITY

Processing of data may be exercised –

- (a) where the data subject is a minor, by a person who has parental authority or by a guardian;
- (b) where the data subject has a mental or other disability, by a person duly authorised to act as their guardian or administrator; or
- (c) in any other case, by a person duly authorised by the data subject.

Further, the processing of data where the data subject is a child should be conducted in the best interest of the child and in accordance to the Children Act of 2022.

### 15. MONITORING AND EVALUATING SAFEGUARDS

Appropriate technical and organizational measures will be implemented to ensure the protection of the data subjects rights. The measures include:

- (a) identifying reasonably foreseeable internal and external risks to personal data under the person's possession or control;
- (b) establishing and maintaining appropriate safeguards against the identified risks;
- (c) pseudonymisation and encryption of personal data;
- (d) the ability to restore the availability and access to personal data in a timely manner in the event of a physical or technical incident;
- (e) verifying that the safeguards are effectively implemented; and
- (f) ensuring that the safeguards are continually updated in response to new risks or deficiencies.

While considering the appropriate technical and organizational measures, the Company will consider the following:

- (a) the state of technological development available;
- (b) the cost of implementing any of the security measures;
- (c) the special risks that exist in the processing of the data; and
- (d) the nature of the data being processed.

## 16. NOTIFICATION AND COMMUNICATION OF BREACH

In case of breach and there is a real risk of harm to data subjects, the Company will notify the Data Commissioner within **seventy-two hours** of becoming aware of such breach and communicate to the data subject in writing to allow the data subject to take protective measures against the potential consequences of the data breach. The communication will include-

- (a) description of the nature of the data breach;
- (b) description of the measures that the data controller or data processor intends to take or has taken to address the data breach;
- (c) recommendation on the measures to be taken by the data subject to mitigate the adverse effects of the security compromise;
- (d) where applicable, the identity of the unauthorised person who may have accessed or acquired the personal data; and
- (e) the name and contact details of the data protection officer where applicable or other contact point from whom more information could be obtained.

The following information should be properly recorded in relation to a personal data breach –

- (a) the facts relating to the breach;
- (b) its effects; and
- (c) the remedial action taken.

The employees should also report to the company within **forty-eight hours** incase of breach and also ensure that they comply with this policy.

## 17. COMPLAINTS HANDLING MECHANISMS

The Company will put in place mechanisms to receive and resolve complaints and requests from data subjects (as per annexure 6).

## 18. ROLES AND RESPONSIBILITIES

### 18.1 BOARD OF DIRECTORS

The Board of Directors will ensure that the Company:

- is registered as Data Handlers;
- appoints a data protection officer;
- is regularly trained to ensure continued compliance;
- reports any incident of breach to the Data Commissioner;
- incorporates a data protection clause in employment contracts;
- engage with third parties who have complied with the Data Protection Laws;
- enter into data protection agreements with clients; and
- has appropriate technical and organizational safeguards to preserve the integrity of the rights of data subjects.



## 18.2 DATA PROTECTION OFFICER

Once appointed, the Data Protection Officer shall undertake the roles and responsibilities outlined in Clause 6.

## 18.3 ALL STAFF

All staff must:

- abide by this data protection policy;
- inform the company in case of any breach;
- attend all training opportunities on Data Protection as availed by the company.

## 19. REVIEW

This policy shall be reviewed after every **three (3)** years or as may be necessary in order to be consistent with any amendments to the legal and regulatory framework.

APPROVED BY	NAME	SIGNATURE	DATE
CEO			
DIRECTOR			
DIRECTOR			

20. APPENDIX

FORMS

ANNEXURE 1: CONSENT FORM

**1. IDENTIFICATION OF THE DATA HANDLER**

Name:

Phone Number:

Email Address:

**2. PURPOSE OF DATA COLLECTION**

- **Purpose:** We intend to use your personal data for [specify purpose, e.g., provide you with services, process transactions, improve our products]

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- **TYPES OF DATA COLLECTED. (tick where appropriate)**

- a. Name
- b. email address
- c. phone number
- d. payment information.

(Any other)

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**3. DATA COLLECTION**

- **How We Collect Data.**

We will collect your personal data when you [specify methods].

- a. fill out the necessary forms
- b. interact with our website
- c. engage with our service providers

(Any other)

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**4. USE OF DATA**

- **Usage:** Your personal data will be used for [specify uses, e.g., processing your requests, sending updates, improving our services].

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- **Legal Basis:** Our legal basis for processing your personal data is [specify basis, e.g., your consent, contractual necessity, legal obligation].

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**5. DATA SHARING AND TRANSFERS**

- **Third Parties:** We may share your personal data with [specify third parties, e.g., service providers, partners]

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for [specify purposes, e.g., service delivery, data analysis].

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- **International Transfers:** [Specify if applicable, e.g., Your data may be transferred to and processed in countries outside your country of residence.]

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**6. DATA RETENTION**

- **Retention Period:** Your personal data will be retained for [specify duration, e.g., as long as necessary to fulfill the purpose for which it was collected, or as required by law].

(Specify duration if possible)

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**7. YOUR RIGHTS**

- You have the right to access and correct your personal data.
- You may withdraw your consent at any time by [specify method, e.g., contacting us].

(Any other applicable means)

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**8. RISKS**

The following are the steps we will take in case of breach of your personal data

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We shall do the following to ensure the safety of your personal data

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**9. CONTACT INFORMATION**

- **Contact Us:** If you have any questions or concerns about our data collection practices, please contact us at:
  - **Email:** .....
  - **Phone:** .....
  - **Address:** .....

**Consent:** By signing this form, you consent to the collection, use, and storage of your personal data as described above.

**Full Name of the Data Subject, Guardian, Duly Authorised Representative, Administrator, Parental Authority**

.....

**Signature:**

.....

**Date:**

.....

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**Note:** You may request a copy of this Consent Form for your records.

ANNEXURE 2: WITHDRAWAL OF CONSENT FORM

**A. DETAILS OF THE DATA SUBJECT**

**1. Full Name:**

.....

**2. National Identification Card Number/Passport Number:**

.....

**3. Contact Information (Phone number/email address):**

○ *Enter your phone number here.....*

○ *Enter your email address here.....*

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**B. DETAILS OF THE CONSENT BEING WITHDRAWN**

**1. Date of Original Consent:**

○ *Enter the date you originally gave consent*

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**2. Purpose of Original Consent:**

○ *Describe the purpose for which you originally gave consent*

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**3. Description of Data Processing Activity:**

○ *Describe the data processing activity you are withdrawing consent for*

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**C. DECLARATION**

- I hereby withdraw my consent for the processing of my personal data as described above.
- I understand that the withdrawal of my consent does not affect the lawfulness of processing based on consent before its withdrawal.

**Full Name:**

- *Enter your full name here*
- .....

**Signature:**

- *Sign here*
- .....

**Date:**

- *Enter the date here*
- .....

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**Note:**

- If the space provided in this form is inadequate, please provide additional information as an annexure.
- This form must be submitted to [specify contact information, e.g., email address, mailing address].

**Contact Information:**

- **Email:** .....
- **Phone:** .....
- **Address:** .....

**ANNEXURE 3: REQUEST FOR RESTRICTION OR OBJECTION TO THE PROCESSING OF PERSONAL DATA**

Note:

- (i) A documentary evidence in support of the objection may be required.
- (ii) Where the space provided for in this Form is inadequate, submit information as an Annexure

**A. NATURE OF REQUEST**

Mark the appropriate box with an "x". Request for:

RESTRICTION

OBJECTION

**B. DETAILS OF THE DATA SUBJECT**

Name: .....

Identity Number: .....

Phone number: .....

E-mail address: .....

(Your details below where initiating the request for a minor or a person who has no capacity)

Name .....

Relationship with the Data Subject.....

Contact Information: .....

**C. REASONS FOR THE REQUEST**

(Please provide detailed reasons for the restriction or objection)

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**D. DECLARATION**

I certify that the information given in this application is true



Signature: .....

Date:.....

**ANNEXURE 4: REQUEST FOR ACCESS TO PERSONAL DATA**

Note:

- I. Documentary evidence in support of this request may be required.
- II. Where the space provided for in this Form is inadequate, submit information as an annexure.
- III. All fields marked as \* are mandatory

**A. DETAILS OF DATA SUBJECT**

Fill as appropriate

Full Name:.....

National Identity Card:.....

Phone Number: .....

E-mail address: .....

*(Provide the following details where making a request on behalf of a minor or a person who has no capacity)*

**Name**

**Relationship with the Data Subject**

**Contact Information**

**B. DETAILS OF THE PERSONAL DATA REQUESTED**

*(Describe the personal data requested)*

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**MODE OF ACCESS**

I would like to: *(check all that apply)*

Inspect the record

Listen to the record

Have a copy of the record made available to me in the following format:

photocopy *(Please note that copying costs will apply)* number of copies required: .....

- electronic
- transcript (*Please note that transcription charges may apply*)
- Other (*specify*) .....

**C. Delivery Method**

- collection in person
- by mail (provide address where different / in addition to details provided above)

Town/City: .....

- by e-mail (provide email address where different / in addition to details provided above): .....

**DECLARATION**

Note any attempt to access personal data through misrepresentation may result in prosecution.

I certify that the information given in this application is true.

Signature:.....

Date:.....

ANNEXURE 5: DATA PROTECTION IMPACT ASSESSMENT

Name of Data Controller/ Data Processors: .....

Postal Address: .....

Email Address: .....

Telephone Number:.....

1. Project Name:.....

2. Assess the need for Data Impact Assessment(Assess whether there is need for DPIA by determining if project involves personal data that is likely to result in high risk, specify risk where appropriate)

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3. Project Outline:(*Explain broadly what the project aims to achieve and what type of processing it involves*)

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4. Personal data(*e.g type of personal data data being processed.*)

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5. Describe the Information Flow.*Describe the collection, use and deletion of personal data here, including; where you are getting the data from; how is the data being collected; where the data will be*

stored; how long will the data be stored; where data could be transferred to; and, how many individuals are likely to be affected by the project.....  
.....  
.....

6. Describe how the data processing flow complies with the data protection principles

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## Part 2 - Assessment of the Necessity and Proportionality of the Processing Operations in Relation to the Purpose

Require the assessment and provide the parameters of the assessment.

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Describe compliance and proportionality, measures, in particular:

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The lawful basis for processing

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Methods of obtaining of consent.

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Whether processing personal data is key to achieving your purpose?

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Is there another way to achieve the same outcome without processing personal data?

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Data quality and data minimization

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Notification of the data subjects on the processing activity

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Exercising of the rights of the data subjects

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The parties are involved in the processing and their specific roles

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Measures to ensure compliance by the parties involved, if any

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Processing safeguard of the personal data

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Safeguard prior to and Cross border transfers, if any

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Part 3: The measures envisaged for addressing the risks and the safeguards, security measures and mechanisms to ensure the protection of personal data and to demonstrate compliance with the Data Protection Act

Part 4: Sign Off and Record Outcomes

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ITEM DESCRIPTION

NOTES/INSTRUCTIONS

Consultation with Office of the Data Protection Commissioner (where applicable)

This DPIA will be kept under review by:





.....  
.....

1. State any other institution contacted over the complaint, if any:

o Enter the names of any institutions you have contacted

.....

\_\_\_\_\_  
Signature:

• Sign here.....

Date:

• Enter the date here.....

\_\_\_\_\_

Note:

- If the space provided for in this Form is inadequate, submit information as an annex.
- If you have supporting documents to substantiate your claim, please annex copies to this Form.
- The information submitted will be treated with the utmost confidentiality.

**ANNEXURE 7: REQUEST FOR DATA PORTABILITY**

Note:

- (i) Documentary evidence in support of this request may be required.
- (ii) Where the space provided for in this Form is inadequate, submit information as an annexure
- (iii) All fields marked as \* are mandatory

**A. DETAILS OF THE DATA SUBJECT**



(This section is to provide the details of the Data Subject).

- 1. Full Names:.....
- 2. Identity Number:.....
- 3. Phone Number:.....
- 4. Email address):.....

(Provide the following details where making a request on behalf of a minor or a person who has no capacity)

- 1. Full Names:.....
- 2. Relationship with the data subject:.....
- 3. Contact Information (Phone number/email address):
  - o Enter your phone number here.....
  - o Enter your email address here.....

**B. DETAILS OF THE REQUEST**

Please transfer a copy of my personal data to.....

By either

- a. Emailing a copy of them at.....
- b. Mailing to.....
- c. Others (specify).....

**DECLARATION**

Note, any attempt to port personal data through misrepresentation may result in prosecution.

I certify that the information given in this application is accurate to the best of my knowledge.

Signature.....

Date:.....

**ANNEXURE 8: REQUEST FOR RECTIFICATION**

Fill as appropriate

*Note:*

- (i) Documentary evidence in support of this request may be required.*
- (ii) Where the space provided for in this Form is inadequate, submit information as an annexure*
- (iii) All fields marked as \* are mandatory*

**A. DETAILS OF THE DATA SUBJECT**

(This section is to provide the details of the Data Subject).

Name\*:

Identity Number\*:

Phone number\*:

e-mail address:

*(Provide the following details where making a request on behalf of a minor or a person who has no capacity)*

Name\*

Relationship with the Data Subject\*

Contact Information\*

Signature.....

Date:.....

**PROPOSED CHANGE(S)**

	Personal data to be corrected e.g. name, residential status, and mobile number, email address.	Proposed change	Reason for the proposed change
<b>1</b>			
<b>2</b>			
<b>3</b>			

**B. DECLARATION**

Note any attempt to rectify personal data through misrepresentation may result in prosecution.

I confirm that I have read and understood the terms of this request form and certify that the information given in this application is true.

Signature.....

Date:.....

**ANNEXURE 9: REQUEST FOR ERASURE OF PERSONAL DATA**

Fill as appropriate

*Note:*

- (i) Documentary evidence in support of this request may be required.*
- (ii) Where the space provided for in this Form is inadequate, submit information as an annexure*
- (iii) All fields marked as \* are mandatory*

**I. DETAILS OF THE DATA SUBJECT**

(This section is to provide the details of the Data Subject).

Name: .....

Identity Number: .....

Phone number: .....

e-mail address: .....

*(Provide the following details where making a request on behalf of a minor or a person who has no capacity)*

Name.....

Relationship with the Data Subject .....

Contact Information.....

**II. REASON FOR ERASURE REQUEST**

(Tick the appropriate box)

(a) Your personal data is no longer necessary for the purpose for which it was originally collected;	<input type="checkbox"/>
(b) You have withdrawn consent that was the lawful basis for retaining the personal data;	<input type="checkbox"/>
(c) You object to the processing of your personal data and there is no overriding legitimate interest to continue the processing;	<input type="checkbox"/>
(d) the processing of your personal data has been unlawful	<input type="checkbox"/>
(e) Required to comply with a legal obligation.	<input type="checkbox"/>

**PERSONAL DATA TO BE ERASED**

Describe the personal data you wish to have erased.

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***iii. DECLARATION***

Note any attempt to erase personal data through misrepresentation may result in prosecution.

I confirm that I have read and understood the terms of this request form and certify that the information given in this application is true.

Signature.....

Date:.....