

NightJarr Privacy Policy

READ THIS POLICY CAREFULLY BEFORE BROWSING THIS WEBSITE OR USING ANY OF THE SERVICES. YOUR CONTINUED USE OF THIS WEBSITE INDICATES THAT YOU HAVE BOTH READ AND AGREE TO THE TERMS OF THIS PRIVACY POLICY. YOU CANNOT USE THIS WEBSITE IF YOU DO NOT ACCEPT THIS POLICY. ALL SECTIONS OF THIS POLICY ARE APPLICABLE TO USERS UNLESS THE SECTION EXPRESSLY STATES OTHERWISE.

Introduction

This Privacy Policy is to be read as if specifically incorporated into the Terms of Service, available at: <https://www.nightjarr.com/privacy-policy>.

1. Privacy Policy

- 1.1. For the purposes of this section, Personal Information will be understood in accordance with the definition provided in the Protection of Personal Information Act 4 of 2013 ("the Act"). We also subscribe to the principles for electronically collecting personal information outlined in the Act, and the further legislation referred to therein. We endeavour to ensure the quality, accuracy and confidentiality of Personal Information in our possession.
- 1.2. In adopting this Privacy Policy, we wish to balance our legitimate business interests and your reasonable expectation of privacy. Accordingly, we will take all reasonable steps to prevent unauthorised access to, or disclosure of your Personal Information. However, it is impossible to guarantee that your Personal Information shall be 100% secure.
- 1.3. Users will be prompted to register an account with us. In so doing, users may be asked to provide the following information (Personal Information):
 - First name
 - Surname
 - Email
 - Physical address
 - Phone number
 - Company / CC / business name
 - Company/CC/business registration number
- 1.4. We will attempt to limit the types of Personal Information we process to only that to which you consent to (for example, in the context of online registration, newsletters, message boards, surveys, polls, professional announcements, SMS, MMS and other mobile services), but, to the extent necessary, your agreement to these this Privacy Policy constitutes your consent as contemplated in section 69 of the Act.
- 1.5. All payment information will be captured through the Website. Further, we shall not retain payment information on behalf of our users.

- 1.6. We will not collect, use or disclose sensitive information (such as information about racial or ethnic origins or political or religious beliefs, where relevant) except with your specific consent or in the circumstances permitted by law.
- 1.7. By agreeing to the terms contained in this Privacy Policy, you consent to the use of your Personal Information in relation to:
 - 1.7.1. The provision and performance of the services;
 - 1.7.2. Informing you of changes made to our website;
 - 1.7.3. The provision of marketing related services to you by us;
 - 1.7.4. Responding to any queries or requests you may have;
 - 1.7.5. Developing a more direct and substantial relationship with users for the purposes described in this clause;
 - 1.7.6. Developing an online user profile;
 - 1.7.7. Understanding general user trends and patterns so that we can develop and support existing and ongoing marketing strategies;
 - 1.7.8. For security, administrative and legal purposes; and
 - 1.7.9. The creation and development of market data profiles which may provide insight into market norms, practices and trends to help us improve our offering to you. Such information will be compiled and retained in aggregated form, but shall not be used in any way which may comprise the identity of a user.
- 1.8. Although absolute security cannot be guaranteed on the internet, we have in place up-to-date, reasonable technical and organisational security measures to protect your Personal Information against accidental or intentional manipulation, loss, misuse, destruction or against unauthorised disclosure or access to the information we process online.
- 1.9. While we cannot ensure or warrant the security of any Personal Information you provide us, we will continue to maintain and improve these security measures over time in line with legal and technological developments.
- 1.10. We store your Personal Information directly, or alternatively, store your Personal Information on, and transfer your Personal Information to, a central database. If the location of the central database is located in a country that does not have substantially similar laws which provide for the protection of Personal Information, we will take the necessary steps to ensure that your Personal Information is adequately protected in that jurisdiction.
- 1.11. Your information will not be stored for longer than is necessary for the purposes described in these Terms or as required by applicable legislation.
- 1.12. The Personal Information we collect from users shall only be accessed by our employees, representatives and consultants on a need-to-know basis, and subject to reasonable confidentiality obligations binding such persons.
- 1.13. We shall have the right, but shall not be obliged, to monitor or examine any information and materials including any website link that you publish or submit to us for publishing on the Site. You shall be solely responsible for the contents of all material published by yourself.
- 1.14. We constantly review our systems and data to ensure the best possible service to our users. We do not accept any users, or representatives of users, under 18

- years of age or who otherwise do not have the relevant capacity to be bound by this Privacy Policy.
- 1.15. We will not sell, share, or rent your Personal Information to any third party or use your e-mail address for unsolicited mail. Any emails sent by us will only be in connection with the provision of our services and/or the marketing thereof.
 - 1.16. When you visit the website, even if you do not create an account, we may collect information, such as your IP address, the name of your ISP (Internet Service Provider), your browser, the website from which you visit us, the pages on our website that you visit and in what sequence, the date and length of your visit, and other information concerning your computer's operating system, language settings, and broad demographic information. This information is aggregated and anonymous data and does not identify you specifically. However, you acknowledge that this data may be able to be used to identify you if it is aggregated with other Personal Information that you supply to us. This information is not shared with third parties and is used only within the company on a need-to-know basis. Any individually identifiable information related to this data will never be used in any way different to that stated above, without your explicit permission.
 - 1.17. We use cookies. A cookie is a small piece of information stored on your computer or smartphone by the web browser. The two types of cookies used on the Website are described below:
 - 1.17.1. "Session cookies": These are used to maintain a so-called 'session state' and only lasts for the duration of your use of the Website. A session cookie expires when you close your browser, or if you have not visited the server for a certain period of time. Session cookies are required for the Platform to function optimally, but are not used in any way to identify you personally.
 - 1.17.2. "Permanent cookies": These cookies permanently store a unique code on your computer or smart device hard drive in order to identify you as an individual user. No Personal Information is stored in permanent cookies. You can view permanent cookies by looking in the cookies directory of your browser installation. These permanent cookies are not required for the website to work, but may enhance your browsing experience. The services available through the Website, may contain links to other third party websites, including (without limitation) social media platforms, payment gateways, appointment scheduling and/or live chat platforms ("Third Party Websites"). If you select a link to any Third Party Website, you may be subject to such Third Party Website's terms and conditions and/or other policies, which are not under our control, nor are we responsible therefore.
 - 1.18. Hyperlinks to Third Party Websites are provided "as is", and we do not necessarily agree with, edit or sponsor the content on Third Party Websites.
 - 1.19. We do not monitor or review the content of any Third Party Website. Opinions expressed or material appearing on such websites are not necessarily shared or endorsed by us and we should not be regarded as the publisher of such

opinions or material. Please be aware that we are not responsible for the privacy practices, or content, of other websites, either.

- 1.20. Users should evaluate the security and trustworthiness of any Third Party Website before disclosing any personal information to them. We do not accept any responsibility for any loss or damage in whatever manner, howsoever caused, resulting from your disclosure to third parties of personal information.
- 1.21. Data Messages (as defined in the ECT Act) will be deemed to have been received by us if and when we respond to the Data Messages.
- 1.22. Data Messages sent by us to a user will be deemed to have been received by such user in terms of the provisions specified in section 23(b) of the ECT Act.
- 1.23. Users acknowledge that electronic signatures, encryption and/or authentication are not required for valid electronic communications between us and users.
- 1.24. Information to be provided in terms of section 43(1) of the ECT Act:
 - 1.24.1. Users warrant that Data Messages sent to us from any electronic device, used by such user, from time to time or owned by such user, were sent and or authorised by such user, personally.
 - 1.24.2. This Website is owned and operated by NightJarr (Pty) Ltd.

Address for service of legal documents:

- NightJarr, WeWork 173 Oxford Road, Jhb
- Contact Number: +27 (0)11 083 9843
- Website – located at www.nightjarr.com
- Email address: [hello \(at\) nightjarr.com](mailto:hello@nightjarr.com)

POPI policy / privacy statement

You, as the Disclosing Party, hereby consent to and are bound by this POPI Policy / Privacy Statement (“Privacy Statement”) of NightJarr (Pty) Ltd Reg No. 2019/322716/07 (“Recipient”) in relation to the processing by the Recipient of the personal information of the Disclosing Party. This Privacy Statement is effective as of the date of consent hereto or the effective date of any main agreement incorporating the terms of this Privacy Statement by reference (“Agreement”), whichever is earlier.

2. Definitions

- 2.1. “Affiliate” means, with respect to any entity, any other entity Controlling, Controlled by or under common Control with such entity, for only so long as such Control exists;
- 2.2. “Associated Personnel” means any staff member, independent contractor, agent or the like of the Recipient;
- 2.3. “Control” means the direct or indirect ownership of more than 50% of the voting capital or similar right of ownership of an entity, or the legal power to direct or cause the direction of the general management and policies of that entity, whether through the ownership of voting capital, by contract or otherwise. Controlled and Controlling shall be construed accordingly;

- 2.4. "Data Protection Laws and Regulations" means all mandatory laws and regulations, including laws and regulations of RSA, applicable to the Processing of Personal Information, including but not limited to, the POPI Act and any amendment or replacement thereof;
- 2.5. "Data Subject" means the individual to whom Personal Information relates as defined in section 1 of the POPI Act;
- 2.6. "Disclosing Party" means the natural or juristic person who consents to the terms of this Privacy Statement or agrees to an Agreement incorporating the terms of this Privacy Statement by reference, and for the purposes of this Privacy Statement, is the Data Subject;
- 2.7. "Operator" means a person as defined in section 1 of the POPI Act;
- 2.8. "Personal Information" means information relating to an identifiable, living, natural person, and where it is applicable, an identifiable, existing juristic person, as defined in section 1 of the POPI Act;
- 2.9. "POPI Act" means the Protection of Personal Information Act 4 of 2013 as may be amended from time to time;
- 2.10. "Processing" means processing as defined in section 1 of the POPI Act;
- 2.11. "Recipient" means the person which Processes Personal Information of the Disclosing Party, as defined in the preamble above. For the purposes of this Privacy Statement, the Recipient and/or Affiliates are the Responsible Parties;
- 2.12. "RSA" means the Republic of South Africa;
- 2.13. "Responsible Party" means the person which determines the purpose and means for which Personal Information is Processed, as defined in section 1 of the POPI Act; and
- 2.14. "Supervisory Authority" means the Information Regulator as established in RSA, pursuant to the POPI Act.

3. Processing of Personal Information

- 3.1. The Disclosing Party hereby consents to the Processing of their Personal Information in accordance with this Privacy Statement.
- 3.2. The Recipient shall comply with Data Protection Laws and Regulations.
- 3.3. For the avoidance of doubt, Disclosing Party's instructions to the Recipient for the Processing of Personal Information must comply with Data Protection Laws and Regulations. In addition, Disclosing Party shall have sole responsibility for the accuracy, reliability, integrity, quality, and legality of Personal Information, and the means by which Disclosing Party acquired Personal Information, including providing any required notices to, and obtaining any necessary consent from, its employees, agents or third parties, if applicable.
- 3.4. The Recipient will not sell, share, or rent Disclosing Party's Personal Information to any third party or use Disclosing Party's phone number for unsolicited messages, without the express consent of the Disclosing Party. Any messages sent by the Recipient will only be pursuant to this Agreement.
- 3.5. It is expressly stated that the Recipient agrees and warrants:

- 3.5.1. that the Processing of Personal Information shall be carried out in accordance with the relevant provisions of the Data Protection Laws and Regulations and does not violate the relevant provisions of the POPI Act;
 - 3.5.2. that it shall throughout the duration of the Processing process the Personal Information only on the Disclosing Party's behalf and in accordance with the Data Protection Laws and Regulations; and
 - 3.5.3. that after assessment of the requirements of the Data Protection Laws and Regulations, the security measures are appropriate to protect Personal Information against accidental or unlawful destruction or accidental loss, alteration, unauthorised disclosure or access to the Personal Information, in particular where the Processing involves the transmission of data over a network, and against all other unlawful forms of processing, and that these measures ensure a level of security appropriate to the risks presented by the Processing and the nature of the Personal Information to be protected having regard to the state of the art and the cost of their implementation.
- 3.6. The Recipient shall keep the Personal Information of the Disclosing Party confidential and shall only Process Personal Information on behalf of and in accordance with Disclosing Party's documented and lawful instructions to:
- 3.6.1. fulfil the purpose set out in the table at the end of this Privacy Statement; and
 - 3.6.2. comply with other documented, reasonable instructions provided by Disclosing Party (for example, via email) where such instructions are consistent with the terms of the Privacy Statement. The Recipient will not process Personal Information outside of RSA without first having obtained Disclosing Party's consent. Provided the Recipient has sufficient legal framework under the Data Protection Laws and Regulations to process Personal Information outside of the RSA, the Disclosing Party's consent shall not be unreasonably withheld in respect of the Processing outside of the above two jurisdictions. Disclosing Party takes full responsibility to keep the amount of Personal Information provided to the Recipient to the minimum necessary for the fulfilment of the purpose or otherwise as required by the Recipient. The Recipient shall not be required to comply with or observe Disclosing Party's instructions if such instructions would violate Data Protection Laws and Regulations.

4. Scope of Processing

The nature and purpose of Processing of Personal Information by the Recipient is as set out in the table at the end of this Privacy Statement.

5. Rights of Data Subjects

- 5.1. The Disclosing Party shall have the right to:
 - 5.1.1. access and rectify their Personal Information collected by the Recipient. On the request of the Disclosing Party, the Recipient will provide such

- access as is reasonably practicable and either allow the Disclosing Party to rectify such information themselves or implement any rectifications on behalf of the Disclosing Party;
- 5.1.2. object to the Processing of their Personal Information if Processing is not:
 - 5.1.2.1. with the Disclosing Party's consent;
 - 5.1.2.2. protecting their legitimate interests;
 - 5.1.2.3. necessary for the proper performance of a public law duty by a public body; or
 - 5.1.2.4. necessary for pursuing the legitimate interests of the Recipient or its Affiliates,
unless Processing is otherwise permissible under the Data Protection Laws and Regulations or this Privacy Statement;
 - 5.1.2.5. object to the Processing of their Personal Information for the purposes of direct marketing other than as allowed by the Data Protection Laws and Regulations; and
 - 5.1.2.6. lodge a complaint with the Supervisory Authority at complaints.IR@justice.gov.za.

6. Associated Personnel

6.1. Confidentiality

The Recipient shall ensure that its Associated Personnel engaged in the Processing of Personal Information are informed of the confidential nature of the Personal Information, have received appropriate training on their responsibilities and have executed written confidentiality agreements or are under general obligations of confidentiality towards the Recipient.

6.2. Reliability

The Recipient shall take commercially reasonable steps to ensure the reliability of the Associated Personnel engaged in the Processing of Personal Information.

6.3. Limitation of Access

The Recipient shall ensure that access to Personal Information is limited to those Associated Personnel of the Recipient directly involved in the fulfilling of the purpose.

7. Operators

7.1. Appointment of Operators

Disclosing Party acknowledges and agrees that:

- 7.1.1. the Recipient is entitled to retain its Affiliates as Operators; and
- 7.1.2. subject to clause 6.2 below, the Recipient or any such Affiliate may engage any third parties from time to time to process Personal Information on their behalf and in connection with the fulfilment of the purpose envisaged in Attachment 1 to this Privacy Statement.

7.2. Approval of Operators

Except as otherwise provided in this Privacy Statement, the Recipient shall not provide any third party with access to Disclosing Party Personal Information

without the prior express approval of Disclosing Party. The Recipient shall provide advanced written notice to the Disclosing Party should it desire to provide a third-party access to Disclosing Party's Personal Information. Where approval has been granted by Disclosing Party in accordance this section, the Recipient shall:

- 7.2.1. undertake due diligence on the Operator; and
- 7.2.2. enter into a written agreement with the Operator that ensures that the Operator Processes the Personal Information in line with this Privacy Statement and Data Protection Laws and Regulations; and
- 7.2.3. provide the Disclosing Party with such information regarding the Operator as the Disclosing Party may reasonably require.

8. Security Measures, Notifications Regarding Personal Information, Certifications and Audits, Records

8.1. Security Measures

Taking into account the state of art, the costs of implementation and the nature, scope, context and purposes of Processing as well as the risk of varying likelihood and severity for the rights and freedoms of natural persons, the Recipient shall implement appropriate organizational and technical measures towards a level of security, appropriate to the risk (including risks that are presented by Processing, in particular from accidental or unlawful destruction, loss alteration, unauthorized disclosure of, or access to Personal Information transmitted, stored or otherwise Processed), including but not limited to:

- 8.1.1. the encryption of Personal Information in transit;
- 8.1.2. the ability to ensure the ongoing confidentiality, integrity, availability and resilience of processing systems and services;
- 8.1.3. the ability to restore the availability and access to Personal Information in a timely manner in the event of a physical and technical incident; and
- 8.1.4. a process for regularly testing, assessing and evaluating the effectiveness of technical and organizational measures for ensuring the security of the Processing.

8.2. Notifications Regarding Personal Information Breach

- 8.2.1. The Recipient will ensure that it and its Operators have in place reasonable and appropriate security incident management policies and procedures as required by the POPI Act, and shall notify Disclosing Party without undue delay (but in any event within 24 hours) where there are reasonable grounds to believe that there has been, or after becoming aware of, the unlawful or accidental destruction, alteration or damage or loss, unauthorized disclosure of, or access to Personal Information, transmitted, stored or otherwise Processed by the Recipient or Operators of which the Recipient becomes aware (hereinafter, a "Personal Information Breach"), as required to assist the Disclosing Party in ensuring compliance with its:

- 8.2.1.1. obligations to notify the Supervisory Authority;

- 8.2.1.2. obligations to communicate the Personal Information Breach to the Recipient involved; and
 - 8.2.1.3. documentation obligation regarding the facts relating to the Personal Information Breach, its effects, and the remedial action taken.
- 8.3. The Recipient shall make reasonable efforts to identify the cause of such Personal Information Breach and take those steps as it deems necessary and reasonable in order to remediate the cause of such a Personal Information Breach, to the extent that the remediation is within the Recipient's reasonable control.
- 8.4. Records
The Recipient shall maintain complete and accurate written records of the Processing it undertakes on behalf of the Disclosing Party in accordance with Data Protection Laws and Regulations.

9. Return of Personal Information, Communication

- 9.1. Return of Personal Information
Unless otherwise required by law, the Recipient and Operators, shall if required in terms of Data Protection Laws and Regulations, upon termination or expiry of the Agreement for whatever reason, either securely delete or return all the Disclosing Party Personal Information to Disclosing Party in accordance with the Agreement, or in the absence of a specific destruction provision, the Recipient will ensure it follows its standard Personal Information destruction practices. If the Recipient or its Affiliates are required to retain a copy of the Personal Information by law, it shall retain that which is required by applicable Data Protection Laws and Regulations for not longer than is reasonably necessary.

10. Cooperation with Supervisory Authority

The Disclosing Party and the Recipient as applicable, shall cooperate, on request, with the Supervisory Authority in the performance of its tasks.

11. Conflict

If this Privacy Statement is incorporated into and forms part of any other Agreement, for matters not addressed under this Privacy Statement, the terms of the Agreement apply to the extent of any inconsistency. With respect to the rights and obligation of the parties to each other insofar as it pertains to the Processing of Personal Information, in the event of a conflict between the terms of the Agreement and this Privacy Statement, the terms of this Privacy Statement will prevail to the extent of such inconsistency.

Nature and purpose of Processing

This table includes certain details of the Processing of Personal Information as required by section 18 of the POPI Act.

Nature and purpose of Processing

- The Recipient and Operators will/may Process Personal Information as necessary to provide services and market. Failure to provide the Personal Information may mean that the Recipient will be unable to fulfil this purpose, and as such, is mandatory

Categories of third parties

Personal Information may be shared with the following categories of third parties:

- marketing service providers

Types of Personal Information to be Processed in terms of this Privacy Statement

- First name
- Last name
- Email address
- Phone number
- Address
- Demographic data
- Text, audio, video or image files