



STANDARD TERMS & CONDITIONS

1. DEFINITIONS

Unless otherwise expressly stated or the context otherwise demands, the words and expressions listed below shall (where used in these Terms and Conditions *and* definitions clause bear the following meanings ascribed to them:

- **“Verification Agency”:** BEE Rating Solutions (Pty) Ltd, based at the Gables Office Estate, Block D Suite 9, C/O Tennis & J.G. Strijdom Road, Weltevredenpark, Ext. 25, Johannesburg.

- **“Rated Entity”:** The entity applying for the BEE Rating (your business)

_____ (Company Name)

_____ (Physical Address)

_____ (Physical Address)

- **“Parties”:** The *Verification Agency* and/or the *Rated Entity* as context requires;
- **“Services Contract”:** These Terms & Conditions and any documents/terms applicable to the *Services*;
- **“Services”:** The *Rating Services* provided by the *Verification Agency* to the *Rated Entity*;
- **“Terms and Conditions”:** These standard Terms & Conditions.

2. DELIVERY OF SERVICES

- The *Verification Agency* is committed to deliver the highest standard of *Services* with proper professional skill and care.

3. ENGAGEMENT

- This agreement confirms our understanding of the terms and objectives of our engagement and the nature and limitations of the services that we will provide. We have been engaged to verify the BEE Scorecard of the enterprise to be presented to customers, suppliers, government and other interested parties. Accordingly, we are required to carry out our rating free of any restrictions. Although we will be pleased to advise and assist, the preparation of the BEE Scorecard is the responsibility of management. Our responsibility is to verify the scorecard.
- Our engagement will be conducted in accordance with the guidelines developed by BEE Rating Solutions (Pty) Ltd to verify the implementation of the BBBEE Codes of Good Practice and/or Industry Charter applicable to your organisation which will be indicated in our report.
- We agree to perform the following procedures and report to you the findings resulting from our work:
 - Examining evidence supporting the ownership, voting rights and economic interest in the enterprise;
 - Assessing the Board participation and/or top management participation in the enterprise;
 - Examining evidence supporting Employment Equity and Skills Development of the enterprise;

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BEE Rating Solutions (Pty) Ltd policy statement and procedures:

BEE Rating Solutions (Pty) Ltd understands the importance of confidentiality and is committed to ensure and maintain the highest level of confidentiality in all operations; BEE Rating Solutions (Pty) Ltd understands the importance of and is committed to impartiality especially when managing conflicts of interest; BEE Rating Solutions (Pty) Ltd undertakes not to imply that BEE Verification would be simpler, faster, or less expensive where the services



- Assessing the extent of BEE procurement, enterprise development and social investment undertaken by the enterprise.
- The procedures to be performed will not constitute an audit or a review made in accordance with any auditing standards and, consequently, no assurance will be expressed. We look forward to full co-operation with your staff, and we trust that they will make available to us whatever records, documentation and other information requested in connection with our engagement.
- Our fees are based on a Rating Fee schedule as determined by the turnover and number of employees of the enterprise and the time required by the individuals assigned to the engagement.

4. CONFIDENTIALITY

- The *Rated Entity* agrees to treat as confidential all methodologies, technologies, processes, know-how's and other models or skills employed by the *Verification Agency* to carry out the *Services*.
- The *Verification Agency* may acquire sensitive information concerning the *Rated Entity's* business or affairs during the course of *Service* delivery. In relation to confidential information, the *Verification Agency* shall comply with the set confidentiality standards. Information about the *Rated Entity* shall not be disclosed to any third party (i.e. a complainant; the *Rated Entity's* supplier) without the *Rated Entity's* written consent. This clause shall not apply where confidential information enters the public domain or where the *Verification Agency* may be required to disclose such information to SANAS and the DTI, its insurers, legal advisers, or if put under legal obligation to disclose.

5. PRESENTATION OF FINDINGS

- Prior to completion of the *Services* the *Verification Agency* may supply oral, draft or interim reports or presentations. In such circumstances, its written advice or final written report shall take precedence.
- The *Verification Agency* shall not be under any obligation in any circumstances to update any report or any product of the *Services*, oral or written, for events occurring after the advice, report or product concerned has been issued in final form. The *Rated Entity* may reapply for rating should it wish to highlight changes to the application and underlying information.
- Any report, opinion, statement of expectation, forecast or recommendation supplied by the *Verification Agency* as part of the *Services* shall not amount to any form of guarantee that the *Verification Agency* has determined or predicted future events or circumstances.
- BEE RATING SOLUTIONS (PTY) LTD shall retain authority and shall be responsible for its decisions relating to the BEE verification result.
- The *Rated Entity* consents to the publication of its BEE Certificate on the ABVA and DTI websites.
- Should it be brought to the attention of the *Verification Agency* that any misuse of mark or false claim by the *Rated Entity* has occurred, the *Verification Agency* reserves the right to withdraw the certificate and publish notes on the misdemeanour on their website (www.beeratingsolutions.co.za). The *Verification Agency* will take legal action against the relevant party for any false claims or misuse of marks.

6. OWNERSHIP

- The *Verification Agency* shall retain ownership of its working papers as well as ownership of the copyright and all other intellectual property rights in the product (oral or tangible) of the *Services*. For the purposes of delivering *Services* to the *Rated Entity(s)*, the *Verification Agency* shall be entitled to use or develop knowledge, experience and skills of general application gained through performing the *Services*.

7. RATED ENTITY'S RESPONSIBILITIES

- The *Rated Entity* shall retain responsibility and accountability for:
 - the submission of a claimed BBBEE status;
 - any representations made by the *Rated Entity* to third parties including published information;
 - the maintenance of the accounting records and the preparation of the annual financial statements;
 - the record keeping of information substantiating the claimed BBBEE status;
 - all required valuation(s) of the measured entity(s) and their relevant associated enterprise(s).

8. INFORMATION

- To enable the *Verification Agency* to perform the *Services*, the *Rated Entity* shall use, procure and supply promptly all information and assistance and all access to documentation in the *Rated Entity's* possession, custody or under its control and/or personnel under its control, where reasonably required by the *Verification Agency*. The *Rated Entity* shall inform the *Verification Agency* of any information or developments which may come to its notice and which may



reasonably be expected to have a bearing on the Services.

- The Rated Entity shall ensure that all information, documents and evidence supplied to the Verification Agency to perform the Services is correct and up-to-date at the date of verification.
- The Verification Agency may communicate with the Rated Entity via electronic mail where an authorised person of the Rated Entity requests the Verification Agency to do so, on the basis that in consenting to this method of communication the Rated Entity accepts the inherent risks involved (including the security risks of interception of, or unauthorised access to such communication, the risks of corruption of such communications and the risks of viruses or other harmful devices).
- The Verification Agency may receive information from the Rated Entity or from other sources in the course of delivering the Services and shall:
 - be entitled to establish the reliability of information received by it;
 - not be liable for any loss or damage suffered by the Rated Entity arising from fraud, misrepresentation, withholding of information material to the Services or other default relating to such material information, whether on the Related Entity's part or that of the other information sources;
 - not be responsible for loss or damage arising as a result of information material to the review being withheld or concealed from BEE RATING SOLUTIONS (PTY) LTD, or wrongly represented to it.

9. KNOWLEDGE AND CONFLICTS

- The verification analyst/auditor shall not be required to have knowledge of any information known to colleagues, which is not known to them personally or be required to obtain such information from them.
- The engagement team shall not be required to make use of or to disclose to the Rated Entity any information, whether known to them personally or known to colleagues, which is confidential to another Rated Entity.

10. THE SERVICE CONTRACT

- The Services Contract constitutes the sole record of the agreement between the Parties with regard to the subject matter thereof. No party shall be bound by any express or implied term, representation, warranty, promise or the like not recorded herein.
- No addition to, variation of, or agreed cancellation of the Service Contract shall be of any force or effect unless in writing and signed by or on behalf of the Parties.

11. THIRD PARTY RIGHTS

- The Services Contract shall not create (or be intended to create) nor give rise to any third party rights.

12. CIRCUMSTANCES BEYOND EITHER PARTY'S CONTROL

- Neither party shall be in breach of their contractual obligations nor incur any liability to the other should either party be unable to comply with the *Services Contract* as a result of any cause beyond their reasonable control. In the event of any such occurrence the affected party shall be obliged, as soon as reasonably practicable, to notify the other party who shall have the option of suspending or terminating the operation of the *Services Contract* on notice with immediate effect on delivery.

13. WAIVER, ASSIGNMENT AND SUB-CONTRACTORS

- Failure by either party to exercise or enforce any rights available to them shall not amount to the abdication of any rights available to either party.
- Neither of the Parties shall have the right to assign the benefit or burden of the Services Contract without the written consent of the other party.
- The *Verification Agency* shall have the right to appoint sub-contractors to assist it in delivering the Services.

14. EXCLUSIONS AND LIMITATIONS - THE VERIFICATION AGENCY'S LIABILITY

- The maximum liability of the *Verification Agency* or any individual director/employee of the Company or of any body or entity controlled/owned by or associated with the *Verification Agency* in respect of direct economic loss or damage suffered by the *Rated Entity* or by other beneficiaries arising out of or in connection with the *Services*, shall be limited to the fees charged and paid for these *Services*. The maximum liability shall be an aggregate liability for all claims arising, whether by contract, delict, negligence or otherwise.
- The *Verification Agency's* liability to the *Rated Entity* in contract or delict or under statute or otherwise, for any indirect or consequential economic loss or damage (including loss of profits) suffered by the *Rated Entity* (or by any



such party) arising from or in connection with the *Services*, however the indirect or consequential economic loss or damage is caused, including its negligence, shall be excluded to the extent that such limitation is permitted by law.

- The *Rated Entity* agrees to indemnify and to hold harmless the *Verification Agency*, its affiliates, and their respective officers, directors, employees and agents against any and all losses, claims, damages and expenses, including reasonable and necessary attorney's fees, to the extent any such losses, claims, damages and expenses are due to the acts or omissions of the *Verification Agency*, its officers, directors, agents and employees.

15. THIRD PARTIES

- The *Rated Entity* hereby indemnifies the *Verification Agency* and holds it harmless against any loss, damage, expense or liability incurred by it or the *Verification Agency* as a result of, arising from or in connection with a combination of the following two circumstances:
 - any breach by the *Rated Entity* of its obligations under the *Services Contract*; and
 - any claim made or threatened by a third party or any other beneficiaries which results from or arises from or is connected with any such breach.

16. FRONTING

- The *Verification Agency* reserves the right to report any circumvention of the Codes or fronting practices to the DTI.

17. TERMINATION

- Either *Party* may terminate the *Service Contract* or suspend its operation by giving due notice in writing to the other at any time. Termination or suspension under this clause shall be without prejudice to any rights that may have accrued for either of the *Parties* before termination or suspension and all sums due to the *Verification Agency* shall become payable in full when termination or suspension takes effect. The *Verification Agency* will be entitled to raise a fee note upon receipt of such notification for an amount adequate to cover all work done to date and not yet billed including disbursements incurred and the *Rated Entity* shall pay any amount due to the *Verification Agency* on presentation of invoice.

18. SEVERABILITY

- Each clause or term of the *Services Contract* constitutes a separate and independent provision. If any of the provisions of the *Services Contract* are held by any court or authority of competent jurisdiction to be void or unenforceable, the remaining provisions shall continue in full force and effect.

19. EMPLOYEES OF THE VERIFICATION AGENCY

- The *Rated Entity* agrees not to make any offer of employment to or to employ any employees of the *Verification Agency* providing the *Services* for a period of not less than 12 months from the date of this agreement.

20. COMPLAINTS & APPEALS

- Should the *Rated Entity* feel the need to lodge a complaint or appeal against a verification score, it can contact the *Verification Agency* at their office on telephone number 0861 111 (BEE)233 for the relevant forms. The forms are also available in the Verification Process Document. The process and procedures for lodging complaints or appeals are available on the *Verification Agency's* website at www.beeratingsolutions.co.za (from 1 August 2008).

21. IMPARTIALITY

- The *Verification Agency* will ensure impartiality at all times.
 - **'Impartiality'** is the actual and perceived presence of objectivity. Objectivity means that conflicts of interest do not exist or are resolved so as not to influence adversely the subsequent activities of the BEE Verification Agency.
 - Being impartial and being perceived to be impartial, is necessary for a BEE Verification Agency to be able to deliver a verification that provides confidence. In order to obtain and maintain confidence, a BEE Verification Agency has to be able to demonstrate that its decisions are based on objective evidence and that its decisions have not been improperly influenced by other interests or by other parties.



22. PRICING

- The costs of providing the *Services* shall be in terms of the normal rates schedule of the *Verification Agency*, amended from time to time. Standard travelling rates will be charged at R2.80 per kilometre and travelling time at R600 per hour where applicable.
- The costs are subject to the *Rated Entity* providing full and timely access to all available information.
- The first payment (50% deposit) is payable after the first visit, once the Standard Terms and Conditions have been signed. The second payment (50%) is due before the on-site visit.
- The *Rated Entity* will be sent Documentation Worksheets which need to be completed and sent back to the *Verification Agency* along with the necessary evidentiary documentation. Should the relevant worksheets and documentation not be received within a period of 30 days from the request for information, the *Verification Agency* will have the right to close the file of the *Rated Entity*. Should the *Verification Agency* choose to do so all moneys paid by the *Rated Entity* to the *Verification Agency* up to that date will be forfeited to the *Verification Agency*.
- The cost of providing the *Services* shall be R....., excluding Value Added Tax and travelling expenses if applicable.

23. INDICATIVE SCORE

- Should an **Indicative score** be provided to the *Rated Entity*, it should be noted that this is purely an indication of what the score of the *Rated Entity* could be, based on unverified information supplied to the Rating Agency. The **Final verified score** will be based on the findings of the *Verification Agency's* Internal Auditor who will use the documentation and evidence provided by the *Rated Entity* to determine the rating.

24. NOTICES AND LEGAL PROCESS

- Each Party chooses as its address for all purposes under the *Services* ("chosen address"), whether for serving any court process or documents, giving any notice, or making any other communications of whatsoever nature and for any other purpose arising from the *Services Contract* ("notice"), as follows:

The Verification Agency:

BEE RATING SOLUTIONS (PTY) LTD

The Gables Office Estate, Block D Suite 9

C/O Tennis & J.G. Strijdom Road

Weltevredenpark, 1709

Rated Entity (Full Company name & Physical Address)

- Any notice required or permitted under the *Services Contract* shall be valid and effective only if in writing.
- Any notice required or permitted under the *Services Contract* shall be valid and effective only if in writing.
- Any Party may by notice to the other Party change its chosen address to another physical address in the Republic of South Africa and such change shall take effect on the seventh day after the date of receipt by the Party who last receives the notice.
- Any notice to a Party contained in a correctly addressed envelope and delivered by and to a responsible person during ordinary business hours at its chosen address, shall be deemed to have been received on the date of delivery.
- Notwithstanding anything to the contrary herein, a written notice actually received by a Party, including a notice sent by telefax, shall be an adequate notice to it notwithstanding that it was not sent or delivered to its chosen address.

25. RESPONSIBILITIES & OWNERSHIP OF INFORMATION

- The *Rated Entity* is responsible for conforming to the requirements for BEE verification.
- The *Verification Agency* is responsible for carrying out a factual evaluation of the *Rated Entity's* BEE status and for granting a BEE Certificate of the entity's BEE score.



26. DECLARATION BY THE VERIFICATION AGENCY

- The *Verification Agency* declares that the BEE Codes of Good Practice are binding on organs of state and public entities and voluntary for the private sector. Any *Service* performed in terms of this agreement is at the voluntary request of the *Rated Entity* for its own purposes. The *Verification Agency's Service* provides an independent verification of an entity's BEE status.

27. BINDING LEGAL AGREEMENT

- Upon signature of this agreement by a representative of the Rated Entity, this becomes a legally binding contract between the Rated Entity and Verification Agency.
- By signing the Rated Entity acknowledges the Verification Agency's Standard Terms & Conditions and expresses the desire to enter into a binding legal agreement with the Verification Agency.
- The signature of the Rated Entity is sufficient to bind the Rated Entity contractually with the Verification Agency and the Rated Entity acknowledges that this agreement becomes a legally binding contract.

THIS DONE AND SIGNED AT _____

ON THIS _____ DAY OF _____ 2010.

FOR AND ON BEHALF OF:

RATED ENTITY: _____

BY: _____

(Print Name)

(Signature)

WHO WARRANTS HIS/HER AUTHORITY HERETO