

BO110-02 - Standard Terms and Conditions



Standard Terms and Conditions between

Name of Measured Enterprise: _____ Registration Number of Measured Enterprise: _____ (hereinafter referred to as the Measured Enterprise) **AND** BEE Online (Pty) Ltd (hereinafter referred to as BEE Online)

1. Definitions and References

In this Agreement, unless the context otherwise indicates:

- **The Agreement** - means the Verification Proposal referred to above incorporating these Standard Terms and Conditions.
- **Assessment(s)** - means the Assessment(s) referred to below, which assessment(s) are rendered by BEE Online of the Measured Enterprise's BEE status and include the Initial BEE Assessment and the Verification Procedure.
- **BEE** - means Broad-Based Black Economic Empowerment, as defined in the Broad-Based Black Economic Empowerment Act, No. 53 of 2003 and/or any other black economic empowerment legislation, policies and charters as may be applicable from time to time.
- **Initial Assessment** - means the Assessment provided by BEE Online to the Measured Enterprise after the Questionnaire, as further contemplated by clause 4.1 hereof.
- **Logo** - means the logo provided by BEE Online to the Measured Enterprise upon completion of the Scorecard which appears on the Verification Certificate.
- **Parties** - means the Measured Enterprise and BEE Online.
- **Measured Enterprise** - means the Measured Enterprise applying for rating being:

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of
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- **BEE Online** - means BEE Online (Pty) Ltd acting as a Verification Agency as described above.
- **Verification Certificate** - means the Verification Certificate officially stating the BEE Status of the Measured Enterprise issued by BEE Online to the Measured Enterprise upon completion of the BEE Verification procedures.
- **Scorecard** - means the document issued by BEE Online to Measured Enterprise setting out the Measured Enterprise's compliance with the Elements of BEE measurement in the Measured Enterprise's business; and
- **Fees** - means the tariffs in terms whereof fees charged by BEE Online to the Measured Enterprise in consideration for the Evaluation(s) are calculated, as agreed to by the Measured Enterprise.
- **Verification** - the confirmation of the compliance with the Elements of and scorecarding of a Measured Enterprise in terms of the requirements of the Codes of Good Practice.

Words importing the singular shall include the plural, and vice versa, and words importing the masculine gender shall include the feminine and neuter genders, and vice versa, and words importing persons shall include partnerships, trusts and bodies corporate, and vice versa.

The headings to the paragraphs to these Standard Terms and Conditions are inserted for reference purposes only and shall not affect the interpretation of any of the provisions to which they relate.

If any provision in the abovementioned definitions is a substantive provision conferring rights or imposing obligations on any Party, notwithstanding that such provision is only contained in this clause, effect shall be given thereto as if such provision were a substantive provision in the body of this Standard Terms and Conditions and the agreement.

The Agreement shall be binding on and enforceable by the estates, heirs, executors, administrators, trustees, assigns, liquidators, curators or other legal representatives of the Parties as fully and effectually as if they had signed this Agreement in the first instance and reference to any Party shall be deemed to include such Party's estate, heirs, executors, administrators, trustees, assigns, liquidators, curators or other legal representatives, as the case may be.

Any reference in the Agreement to legislation or subordinate legislation is to such legislation or subordinate legislation at the Signature Date, together with any regulations and rules promulgated or passed in terms thereof and as amended and/or re-enacted and/or consolidated and/or replaced from time to time. The rule of interpretation that a contract shall be interpreted against the Party responsible for the drafting or preparation of the contract, shall not apply.

Where any term is defined within the context of any particular clause in this Agreement, the term so defined shall, unless it appears clearly from the clause in question that such term has limited application to the clause, bear the meaning ascribed to it for all purposes in terms of the Agreement, notwithstanding that such term has not been defined in this clause.

When any number of days is prescribed in the Agreement, same shall be reckoned exclusively of the first and inclusively of the last day, unless the last day falls on a day which is not a business day (which, for the purposes of this Agreement, shall include all days which are not a Saturday, Sunday or public holiday); in which case the last day shall be the next succeeding day which is a business day.

2. Introduction

2.1 BEE Online conducts the business of performing BEE Verification of organisations in relation to the performance by such organisations in terms of the Codes of Good Practice.

2.2 The Measured Enterprise has requested that BEE Online perform a BEE verification of the Measured Enterprise.

2.3 The Parties have agreed to enter into the Agreement to govern the BEE verification referred to in 2.2 above.

3. Final Agreement

This Agreement cancels and supersedes all prior negotiations and agreements entered into between the Parties relating to the matters set forth herein.

4. General Obligations of BEE Online

4.1 Subject to the payment referred to below, BEE Online shall conduct a BEE Verification and Verification of the Measured Enterprise within a reasonable time period, which time period shall afford BEE Online sufficient time within which to conduct such Verification and Verification. The said BEE Verification process shall, inter alia, entail a Verification and Assessment and Verification by BEE Online of the Measured Enterprise's compliance with the Codes of Good Practice.

4.2 Upon completion of the BEE Verification process as contemplated by clause 4.1 above, BEE Online shall issue a final Scorecard and Verification Certificate after discussing the findings of the Verification with the Measured Enterprise. This process will lead BEE Online to the making of the Verification Decision.

4.3 The said Verification Decision shall be taken by a Verification Manager employed by BEE Online who will make the Verification Decision. This Verification Decision is the sole right and obligation of BEE Online and shall be made within the sole discretion of the Verification Manager acting for BEE Online.

4.4 In the event that the Measured Enterprise disputes the Verification Decision, the Measured Enterprise may appeal the decision in terms of the terms of the Appeals Policy and Procedure (BOPol19) or Complaints Policy and Procedure (BOPol20) of BEE Online. The said Appeals Policy and Procedure (BOPol19) or Complaints Policy and Procedure (BOPol20) is available on the Website of BEE Online and for the purposes of the Agreement is hereby incorporated by reference.

4.5 BEE Online shall, in its provision of the Verification services in terms of this agreement, comply with any policy documents and/or the Codes of Good Practice which may be issued by the Department of Trade and Industry from time to time and any other official instruction applicable on or to the Business of a Verification agency.

5. General Obligations of the Measured Enterprise

5.1 In consideration for the Evaluation(s), the Measured Enterprise shall pay the fees to BEE Online in accordance with the Agreement, and as further contemplated by clause 6 below.

5.2 The Measured Enterprise shall further pay to BEE Online any reasonable disbursements incurred by BEE Online during the provision of the Evaluation(s) to the Measured Enterprise on presentation by BEE Online of the receipts for such disbursements. These repayments will be in addition to the agreed fees for the Verification of the Measured Enterprise in terms of the Agreement. See also clause 6 below.

5.3 The Measured Enterprise hereby undertakes that it shall not publish the Verified Logo in any instance other than to reflect the Measured Enterprise's final BEE Status, nor shall any publication infringe upon the rights or interests of BEE Online in any manner including, without limitation, the intellectual property rights of BEE Online

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6. Payment

6.1 The Measured Enterprise shall, prior to BEE Online commencing the BEE Verification process, pay to BEE Online the full fees calculated in accordance with the applicable Tariffs pertaining to the Verification for the Measured Enterprise.

The parties agree that BEE Online has agreed to the Fee as set out in the Verification Proposal based on the information which the Measured Enterprise has provided to it. In the event that more than one onsite visit is required (i.e. in the event that the Measured Enterprise may not have all the required information available) or the scope of the Verification changes, BEE Online will reserve the right to invoice any additional hours.

In the event that a multi site visit may be required, BEE Online will be entitled to recover all additional travel expenses disbursed from the Measured Enterprise.

In the event of any further or additional onsite verifications required to be done with a Measured Enterprise, due to any other reason (i.e. an update of a scorecard due to a special evaluation) BEE Online will likewise be entitled to recover all additional travel expenses disbursed, and reserve the right to invoice any additional hours.

BEE Online will attempt to complete the Verification process within a period of 6 weeks. In the event that the Measured Enterprise unduly delays the said Verification Process and thereby causing additional costs or expenses to BEE Online, BEE Online will be entitled to recover any and all such additional costs and/or expenses disbursed or suffered, from the Measured Enterprise.

6.2 All monies paid by the Measured Enterprise to BEE Online, whether contemplated by this clause 6 or otherwise, shall be deposited directly into the following bank account held by BEE Online:

BEE Online (Pty) Ltd, VAT 424 021 4355, First National Bank,
Account Number: 6206 981 3684, Bank Clearing Code: 261 150,
Quoting Contract Reference Number.

6.3 In the event that payments referred to in this clause 6 are not made timeously and at least within seven (7) days from date of signature of the Agreement or as may otherwise be set out in the Agreement, BEE Online shall be entitled to levy interest on all amounts outstanding at the maximum rate permissible in law on the overdue amount from the due date until the date of payment. BEE Online shall also not be obliged to start or proceed with the Verification process before the Measured Enterprise has complied with its payment obligations in terms of the Agreement.

6.4 A certificate by an officer/Director of BEE Online showing the amount due and owing by the Measured Enterprise to BEE Online at any given time shall be sufficient prima facie proof of the amount therein stated for the purpose of all legal proceedings against the Measured Enterprise for the recovery of the said amount.

6.5 In the event of BEE Online instructing attorneys to collect from the Measured Enterprise any amount owing to BEE Online, the Measured Enterprise agrees to pay all costs on an attorney and own client scale as well as collection charges and commission.

7. Information

7.1 The Measured Enterprise shall promptly provide BEE Online with:

7.1.1 access to all relevant information which BEE Online may require or request at any stage during its conduct of the Verification procedures and which may be in the possession or under the control or supervision of the Measured Enterprise; and

7.1.2 Any assistance it may require in relation to such documentation. This will specifically include assistance in the event that any of the suppliers of the Measured Enterprise delays the Verification process.

7.2 The Measured Enterprise hereby warrants that any and all information supplied to the BEE Online in terms of the Agreement, whether by the Measured Enterprise or by any person who represents the Measured Enterprise or by any person, whom BEE Online may reasonably believe to represent the Measured Enterprise, is factually accurate and that BEE Online may rely on same for the purposes of conducting the Verification process in terms of the Agreement.

8. Presentation of Findings

8.1 BEE Online may, from time to time, issue interim advice, reports or presentations to the Measured Enterprise.

8.2 The Measured Enterprise hereby undertakes that it shall place no reliance upon any interim advice, reports or presentations as contemplated by clause 8.1 above and further acknowledges that the only binding documents upon which it may place reliance are the Verification Certificate and Scorecard issued by BEE Online to the Measured Enterprise after the completion of the BEE Verification process.

8.3 Notwithstanding the provisions of clause 8.2 above, the advice and opinions supplied by BEE Online to the Measured Enterprise (including such advice and opinions as may be contained in the Verification Certificate and the Scorecard) shall in no way be construed or interpreted to mean that BEE Online guarantees or warrants the contents of such advice or opinion.

8.4 BEE Online shall not be under any obligation in any circumstances to update any advice, 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 Measured Enterprise may reapply for rating should it wish to highlight changes to the application and underlying information.

9. Termination

Either Party shall be entitled to terminate this Agreement upon the granting of reasonable written notice to the other Party. Termination shall be without prejudice to all rights which may have accrued to either Party prior to the termination thereof. All monies (whether in the form of fees or disbursements) shall become immediately due and payable in full by the Measured Enterprise upon the date of termination and BEE Online shall be entitled to issue an invoice in an amount adequate to cover all unbilled fees pertaining to Verifications already conducted, whether in part or in full (including any disbursement s incurred).

10. Reservation of Ownership

10.1 BEE Online shall remain owner at all times of all copyright, design, trade mark and any other intellectual property rights, whether registered, pending registration or unregistered, which may attach to the Logo or anything else produced by BEE Online during the provision of the Verification process including the final scorecard and the Verification Certificate.

10.2 BEE Online shall at all times remain owner of all working papers used in the provision of the Verification Process.

10.3 For the purpose of delivering Services to the Measured Entity or other clients, BEE Online shall be entitled to use or develop knowledge, experience and general application gained through performing the services.

10.4 BEE Online retains the right to revoke the issued BEE certificate if the Measured Entity uses it in a misleading manner.

11. Confidentiality

11.1 During the provision of the Verification process by BEE Online of the Measured Enterprise, BEE Online may acquire knowledge of certain information, documents, material, knowledge, know-how, trade secrets; and proprietary interests concerning the Measured Enterprise, including but not limited to its business and strategic plans, adherence to BEE principles, financial information, technology, computer systems, licensing arrangements and other technical information concerning its customers, financiers and suppliers, its methods of carrying on business and other confidential information which is not in the public domain and not readily available to a competitor of the Measured Enterprise (hereinafter collectively referred as "the confidential information").

11.2 BEE Online undertakes to and in favour of the Measured Enterprise that:

11.2.1 It shall maintain and uphold the confidentiality and good faith in relation to the confidential information; and

11.2.2 it shall not divulge, publish or disclose to any person, firm, company, corporation, trust or other entity whatsoever ("third party") any of the confidential information; and

11.2.3 it shall not at any time use any of the confidential information or any part or extract thereof for its own benefit or for the benefit of any third party; and

11.2.4 it shall, upon the request of the Measured Enterprise at any reasonable time and as soon as practicably possible, return and surrender to the Measured Enterprise all of the confidential information in its possession or under its control and all documents and other material containing confidential information together with all copies thereof, except for the information BEE Online may be expected to retain for the purposes of proving the Verification process or any findings in terms thereof.

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11.3 The undertakings given by BEE Online herein shall not preclude it from disclosing the confidential information:

11.3.1 to the extent that it may be obliged to do so in law, including, without limitation, any disclosure to the Department of Trade and Industry or SANAS;

11.3.2 in accordance with the disclosure requirements of any recognised stock exchange;

11.3.3 insofar as such disclosure is necessary for the purpose of the provision of the Verification, to its officers, employees and professional advisers.

11.4 The undertakings given by BEE Online shall not apply to any part of the confidential information which is public knowledge at the time of its disclosure or thereafter becomes part of the public domain, otherwise than as a result of a breach by BEE Online of any of its undertakings or obligations hereunder or by its employees, officers or professional advisers, as envisaged in 11.3.3 above.

12. Exclusion and Limitation of Liability

12.1 The Measured Enterprise hereby indemnifies and holds BEE Online harmless against all and any liability (whether in contract, delict or otherwise), which may arise as a result of:

12.1.1 any loss or damage suffered by the Measured Enterprise pertaining to the Verification decision referred to in clause 4.2 above or any of the Verifications provided by BEE Online in terms of the Agreement;

12.1.2 the factual inaccuracy of any information supplied by the Measured Enterprise or by any person who represents the Measured Enterprise or by any person whom BEE Online may reasonably believe to represent the Measured Enterprise;

12.1.3 any act performed by BEE Online or any representative thereof which is in accordance with the policy documents and/or Codes of Good Practice referred to above and which act which may diverge from the provisions of the Agreement;

12.1.4 any breach of the Agreement by the Measured Enterprise including, without limitation, the provision of inaccurate factual information by BEE Online to the Measured Enterprise; and

12.1.5 Any claims made or threatened by any third parties which arise from or are connected with a breach referred to in clause 12.1.4 above.

12.2 Notwithstanding anything to the contrary contained in this Agreement, the liability of BEE Online (or any Director or employee thereof as the case may be) in respect of any claim (whether in contract, delict or otherwise) arising out of this Agreement or in connection with the Verification provided to the Measured Enterprise in terms of this Agreement, shall be limited to the fees payable in accordance with the Fee structure, and shall not include any liability for any indirect or consequential loss or damages (including loss of profits) incurred by the Measured Enterprise or any other person.

13. Sub-Contractors

Notwithstanding anything to the contrary contained in this Agreement, BEE Online shall be entitled to appoint sub-contractors from time to time and to the extent necessary to assist it in the provision of the Verification process. The appointment of such sub-contractors shall be in the sole discretion of BEE Online.

14. Solicitation of Employees

The Measured Enterprise undertakes to and in favour of BEE Online that it shall not solicit for employment, either for itself or for any third party, any employee(s) of BEE Online who is/are in the employ of BEE Online as at the date of execution of the Agreement and at any time during the provision of the Verification.

15. Force Majeure

If any Party is prevented or restricted directly or indirectly from performing all or any of its obligations under this agreement by reason of strike, lock-out, fire, explosion, floods, riot, war, accident, act of God, embargo, legislation, shortage of or a breakdown in transportation facilities, civil commotion, unrest or disturbances, cessation of labour, government interference or control, or any other cause or contingency beyond the control of that Party, the Party so affected shall be relieved of its obligations hereunder during the period that such event and its consequences continue but only to the extent so prevented and shall not be liable for any delay or failure in the performance of any obligations hereunder or loss or damages either general, special or consequential which the other Party may suffer due to or resulting from such delay or failure.

16. Prohibition of Assignment

The Measured Enterprise shall not cede, delegate or assign any or all of its rights or obligations in terms of the Agreement without obtaining the prior written consent of BEE Online.

17. Breach

If either of the Parties commits a breach of this Agreement ("the defaulting party"), and/or fails to comply with any of the provisions hereof, then the other Party against whom the breach is committed ("the innocent party") shall be entitled to give the defaulting party 14 (fourteen) days notice in writing to remedy such breach and/or failure and if the defaulting party fails to comply with such notice, then the innocent party shall forthwith be entitled, but not obliged, without prejudice to any other rights or remedies which the innocent party may have in law, including the right to claim damages.:

17.1 To cancel this Agreement; or

17.2 To claim immediate performance and/or payment of all the obligations of the defaulting party in terms hereof.

18. Dispute Resolution

18.1 Should any dispute, disagreement or claim arise between the Parties ("the dispute") concerning the Agreement, the Parties shall endeavour to resolve the dispute by negotiation.

18.2 This entails one of the Parties inviting the other in writing to meet and to attempt to resolve the dispute within 7 (seven) days from date of written invitation.

18.3 If the dispute has not been resolved by such negotiation within 7 (seven) days of the commencement thereof, then the Parties shall:

18.3.1 submit the dispute to mediation to be administered by the Arbitration Foundation of Southern Africa, upon such terms as may be agreed between the Parties and the Secretariat of the Arbitration Foundation of Southern Africa; and

18.3.2 Failing agreement as aforesaid within 7 (seven) days of the dispute being submitted to mediation, the Parties shall refer the dispute to arbitration as provided in clause 18.5 below.

18.4 The decision of the mediator shall become final and binding within 7 (seven) days of delivery thereof to the Parties, unless one or either of the Parties disputes the mediator's decision by written notice to the other Party within the aforesaid 7 (seven) day period, in which event the dispute shall be referred to arbitration in accordance with the provisions of clause 18.5 below.

18.5 Failing agreement as referred to in clause 18.3.2 above or in the event of either of the Parties furnishing its notice of dispute within 7 (seven) days of the mediator's decision as envisaged in terms of clause 18.4 above, the dispute shall be submitted to arbitration for final resolution in accordance with the rules of the Arbitration Foundation of Southern Africa by an Arbitrator or Arbitrators appointed by the Foundation.

18.6 Unless otherwise agreed in writing by all the Parties, any such negotiation, mediation or arbitration shall be held in Cape Town.

In the unlikely event that BEE Online may not be licensed as a Verification Agency by the dti, the parties acknowledge that they are aware of the terms of SANAS document R47 -2 which states that the verifications done by the Verification Agent will remain valid for a period of at least one year from the date of promulgation of the Codes of Good Practice by the Minister.

19. Governing Law and Consent to Jurisdiction

This Agreement shall be governed in accordance with the laws of the Republic of South Africa and, subject to clause 18 above, the Parties consent to the jurisdiction of the Magistrates Court, notwithstanding that the claim by either Party may exceed the normal monetary jurisdiction of the Magistrates Court. Notwithstanding the foregoing consent, either Party may institute proceedings in any other court of competent jurisdiction at its own discretion.

20. Notices and Domicilia

20.1 Each of the Parties chooses *domicilium citandi et executandi* ("domicilium") for the purposes of the giving of any notice, the payment of any sum, the serving of any process and for any other purposes arising from this Agreement at their respective addresses set forth in the Agreement.

20.2 Each of the Parties shall be entitled from time to time, by written notice to the others to vary its *domicilium* to any other address within the Republic of South Africa which is not a post office box or poste restante.

20.3 Any notice given and any payment made by a Party to the other ("the addressee") which:

20.3.1 Is delivered by hand during the normal business hours of the addressee at the addressee's *domicilium* for the time being shall be presumed, until the contrary is proved by the addressee, to have been received by the addressee at the time of delivery;

20.3.2 Is posted by prepaid registered post from an address within the Republic of South Africa to the addressee at the addressee's *domicilium* for the time being shall be presumed, until the contrary is proved by the addressee, to have been received by the addressee on the fourth day after the date of posting.

20.4 Where, in terms of this Agreement any communication is required to be in writing, the term "writing" shall include communications by telex or facsimile or any other digital or electronic format. Communications by telex or facsimile shall, unless the contrary is proved by the addressee, be deemed to have been received by the addressee one hour after the time of transmission.

21. General

21.1 No extension of time or indulgence granted by either Party to the other shall be deemed in any way to affect, prejudice or derogate from the rights of such Party in any respect under this Agreement, nor shall it in any way be regarded as a waiver of any rights hereunder, or a novation of this Agreement.

21.3 No alteration, cancellation, variation of, or addition hereto shall be of any force or effect unless reduced to writing and signed by both the Parties and/or their duly authorised representatives.

21.4 This document contains the entire agreement between the Parties and neither Party shall be bound by any undertakings, representations, warranties, promises or the like not recorded herein.

21.4 All the provisions of this Agreement shall be severable and no provision shall be affected by the invalidity of any other provisions of this Agreement.

21.5 Nothing in this Agreement shall:

21.5.1 Constitute a partnership, joint venture or agency agreement between the Parties in any shape or form; or

21.5.2 Entitle or authorise either Party to incur liability on behalf of the other.

21.6 In the implementation of this Agreement, the Parties undertake to observe good faith and they warrant in their dealings with each other that they shall neither do nor refrain from doing anything which might prejudice the rights, assets or interests of the other of them.

21.7 BEE Online will make every effort to ensure that its website is available to subscribers but in the event of the BEE Online internet site being suspended for any reason there will be no liability for/to BEE Online.

21.8 Additional benefits afforded to the Measured Enterprise:

21.8.1 On signature of this Agreement, completion of the BEE Online Questionnaire and payment of all fees due the Measured Enterprise shall:

21.8.1.1 Have their profile displayed on the BEE Online website, accessible to other Measured Enterprises; and

21.8.1.2 Be able to view and consider the structure and profile of other Measured Enterprises, their products and services offered; and

21.8.1.3 Be entitled and obliged to display the BEE Online verification logo on the Measured Enterprise's website, and shall be entitled to utilise same on their letterheads and other print media.

THIS DONE AND SIGNED AT _____ ON THIS THE ____ DAY OF _____ 20__

FOR AND BEHALF OF:

(MEASURED ENTITY)

BY

WHO WARRENTS HIS AUTHORITY HERETO