



Terms and Conditions

IT IS HEREBY AGREED AS FOLLOWS

1. Interpretation

- 1.1. Except where the context requires otherwise words importing the masculine shall include the feminine; words importing the singular shall include the plural; words importing natural personage shall be equally applicable to corporate personage and vice versa.
- 1.2. References to any statutory provision, authority, rule or code of practice shall be deemed to include the amended versions, replacements or successors of such.
- 1.3. For the purposes of this agreement the term "**Intellectual Property**" shall include copyright, patents, design rights, trading names and brands, service marks and badges, trade-secrets or know-how, processes, design schemes and themes and anything else which is capable of being owned, recognised or registered as intellectual property in any part of the world.
- 1.4. For the purposes of this agreement references to the "**Service Proposal**" shall be references to a separate written document which shall contain detail of the services to be provided by BEE Rating SA to the Client, the way BEE Rating SA shall provide these services and the basis on which BEE Ratings SA shall be remunerated. The Service Proposal shall be attached as a schedule to this agreement and signed by both parties.
- 1.5. For the purposes of this agreement the term "**Confidential Information**" means all proprietary information of a Party including, without limitation, all information relating to their business, products, services, clients, affairs, specific markets and/or finances, which is not readily available, in the ordinary course of business, to third parties;
- 1.6. For the purposes of this agreement the term "**Contract**" means this Supply and Services Contract, together with the Service Proposal.
- 1.7. For the purposes of this agreement the term "**Contract Rates**" means the rates payable to BEE Ratings SA for the Services and Supplies, as set out in the Service Proposal.
- 1.8. For the purposes of this agreement the term "**Losses**" means all losses, liabilities, damages, costs (including legal costs on an attorney and client basis), charges, penalties and expenses suffered by the Party in question.
- 1.9. For the purposes of this agreement the term "**Tax Invoice**" means an invoice provided in accordance with Section 20 of the Value Added Tax Act, Act 89 of 1991, as amended.
- 1.10. Where figures are referred to in numbers and words, if there is any conflict between the two, the words shall prevail.
- 1.11. If any period is referred to in this Contract by way of reference to a number of days, the days 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 in South Africa, in which case the day shall be the next succeeding business day.
- 1.12. Any reference to days, months or years shall be a reference to calendar days, months, as the case may be.



- 1.13. The expiry or termination of this Contract shall not affect such of the provisions of this Contract which are expressly provided to operate after any such expiry or termination.
- 1.14. This Contract shall be governed by and construed and interpreted only in accordance with the laws of the Republic of South Africa.

2. Relationship between the Parties & Term of Agreement

- 2.1. No term of this agreement or course of dealings between the Parties shall operate to make any of BEE Ratings SA's employees an employee or agent of the Client.
- 2.2. Neither Party shall assign or transfer any of their rights, liabilities or obligations arising under this agreement without the prior written and authorised consent of the other Party.
- 2.3. This agreement shall govern the supply of services (as defined below) to the Client commencing on and continuing until terminated by either party in accordance with the terms of this agreement.

3. The Services Provided

- 3.1. BEE Ratings SA shall provide B-BBEE (Broad-Based Black Economic Empowerment) support and services to the client as required and as mutually agreed.
- 3.2. The exact nature and detail of the services which BEE Ratings SA shall provide to the Client shall be as set out in the Service Proposal.
- 3.3. Any amendment, extension or addition to the services must be agreed to in writing and be signed by authorised signatories of both parties.
- 3.4. BEE Ratings SA makes no guarantee that any services will be provided within a specific time frame or on any agreed dates and shall not be liable for any loss, damage or expense suffered by the Client due to a delay in service provision beyond the control of BEE Ratings SA.

4. Appointment and Duration

- 4.1. The client hereby appoints BEE Ratings SA to render and deliver the Services and Supplies, and BEE Ratings SA accepts the appointment and undertakes to render and deliver the Services and supplies in accordance with the terms and conditions as set out in this Contract.
- 4.2. BEE Ratings SA acts as an independent service provider and not as an agent of the client in performing its obligations in terms of this Contract and no partnership or joint venture is created by this Contract.
- 4.3. Notwithstanding the Signature Date of this Contract, and notwithstanding anything to the contrary contained in this Contract, the Contract shall come into force and effect as between



the Parties hereto with effect from the date notified by the client's Representative to BEE Ratings SA on page 1 – cover page - of the contract.

- 4.4. The duration of this contract will be (12 months) with the option to extend the contract for a further 12 months if agreed to in writing by both parties.

5. Rates and Payment for Services

- 5.1. The Client shall for the duration of this Contract in consideration for the Service and Supplies pay BEE Ratings SA a monthly fee calculated in accordance with the Contract Rates set out in the Service Proposal excluding VAT (the Fee).
- 5.2. All reasonable costs and disbursements incurred by BEE Ratings SA for and behalf of the Client in providing the services and supplies and approved in advance by the client Representative ("Disbursements") shall be reimbursed to BEE Ratings SA.
- 5.3. The Contract Rates are fixed for the initial 12-month duration of this Contract and may be subject to a rate increase as agreed to in writing by both parties for any period beyond the initial 12-month duration.
- 5.4. BEE Ratings SA shall by not later than the 25th day of each month provide the Client with a Tax Invoice in the name of the client setting out the order number (if applicable), the Client's VAT registration number, a description of the Services and Supplies provided in the previous month, the aggregate fee due for the services and Supplies provided during the previous month as determined with reference to the Contract Rates, the Disbursements incurred by BEE Ratings SA in providing the Services during the previous month and such VAT as may be payable.
- 5.5. The client shall pay the Service Fee and reimburse all Disbursements to BEE Ratings SA within 30 (Thirty) days of receipt by the client of the BEE ratings SA's invoice. The client shall make payment into BEE Ratings SA's bank account as notified to the client in writing, by way of electronic transfer of funds.

6. Travelling Expenses

Where the Client is based more than 50 km outside BEE Ratings SA's perimeter (based in eMalahleni, Mpumalanga) will charge to the Client all reasonable travel expenses which are incurred in attending the Client's premises. These shall include rail, air and taxi fares or, where BEE Ratings SA or its employees or agents travel by private car, an allowance of R3.75 per km and R200 per hour travel time.

7. Client's Obligations

- 7.1. The Client shall provide BEE Ratings SA with such information, documentation, support, co-operation and facilities as may be necessary to provide the service.
- 7.2. The Client agrees and covenants that he will not recruit or attempt to procure the recruitment of any employee of BEE Ratings SA between the signing of this agreement and the expiration of 6 months from the completion of the services as agreed in the Service Proposal or any extension or addition to these services which is agreed in writing.

8. BEE Ratings SA Obligations & Confidentiality



- 8.1. BEE Ratings SA shall provide all services to the Client with a reasonable standard of care, skill and attention to detail, and in line with any relevant regulations or industry codes of practice.
- 8.2. BEE Ratings SA shall render and deliver the Services and Supplies and execute its obligations in terms of this Contract.
 - 8.2.1. In accordance with the terms and conditions as set out in this Contract, the Description of the Services and Supplies set out in the Service proposal
 - 8.2.2. in accordance with all laws, bylaws and regulations applicable to the Services and Supplies, and applicable to the end client, including
 - a) The Labour Regulations Act, 66 of 1995, as amended
 - b) The Skills development Act, 97 of 1998
 - c) The Skills Development Act, 9 of 1999
 - d) The Employment Equity Act, 55 of 1998, as amended
 - e) The Broad-Based Black Economic Empowerment Act, 53 of 2003
- 8.3. The onus shall be on BEE Ratings SA to familiarise itself fully with the Contract prior to commencing the Services and Supplies. If, at any stage, BEE Ratings SA is of the view that there is an ambiguity, inconsistency or error in the Contract, it shall refer the matter to the client's Representative for clarification and shall comply with any instruction from the client Representative in this regard and the correction will be committed in writing for the record of both parties.
- 8.4. **"Confidential Information"** means any and all information disclosed (whether directly or indirectly or orally or by any other means and whether marked confidential or not) by the Client to Bee Ratings SA either before, on or after the execution of this Agreement which at the time of disclosure is not already part of the public domain and which relates to any business, concept, invention or idea or the execution thereof or to any related manner, including, but not limited to, the following classes of information:
 - a) Financial information, accounts or records
 - b) Commercial and marketing information, plans or strategies or market-research data
 - c) Electronic or technical information, data, designs or specifications
 - d) Information concerning internal procedures and processes
 - e) Know-how and industrial or trade secrets
 - f) Projections or forecasts
- 8.5. BEE Ratings SA undertakes that at no time, whether during the term of this agreement or thereafter, shall it disclose or permit to be disclosed to a third party any Confidential Information which he receives from the Client save as the Client may expressly authorise in writing or as it is compelled by any court or administrative body of competent jurisdiction.
- 8.6. Where BEE Ratings SA provides services to the Client through a delegate such as an employee or subcontractor, BEE Ratings SA will ensure that the said delegate signs a comparable confidentiality undertaking.

9. Intellectual Property



- 9.1. Where the Client provides BEE Ratings SA with documentation, literary materials or media in order to enable BEE Ratings SA to provide the services, there shall be no transfer of Intellectual Property vested in these, and the aforementioned Intellectual Property shall remain the sole property of the Client.
- 9.2. All Intellectual Property in the services provided and delivered to the Client by BEE Ratings SA shall remain the sole property of BEE Ratings SA and the Client shall not redistribute or publish this Intellectual Property without the prior written consent of BEE Ratings SA.
- 9.3. Neither the Client nor BEE Ratings SA claim or assert any rights to Intellectual Property belonging to any third party which may be used under licence or otherwise lawfully during the course of this agreement.

10. Termination

- 10.1. This Agreement shall terminate automatically upon the completion or delivery of services agreed under the Service Proposal or any extension or addition to those services which is agreed in writing.
- 10.2. Without prejudice to the above, this agreement may be terminated by either Party upon 30 days written notice served on the other at his address as set out at the head of this agreement by registered post or E-mail. Notice sent by registered post shall be effective 48 hours after sending.
- 10.3. Without prejudice to the above this Agreement may be terminated immediately where any of the following circumstances arise:
 - a) If BEE Ratings SA breaches any of its obligations in terms of this Contract, and, provided the breach is capable of being remedied, fails to remedy the breach within 14 (fourteen) days of receiving written notice to do so; or
 - b) If any provisional or final order is made or any effective resolution is passed for the winding up of BEE Ratings SA, other than for the purpose of a bona fide reconstruction or amalgamation with another company; or
 - c) If any scheme or compromise or arrangement is entered into or attempted by BEE Ratings SA with its creditors, or any class of them or commits any other act which is (or would be if BEE Ratings SA were a natural person) an act of insolvency in terms of the Insolvency Act, 1936; or
 - d) If BEE Ratings SA enter into a business rescue proceeding in terms of the Companies Act 2008; or
 - e) BEE Ratings SA ceases to conduct business; or
 - f) Upon giving BEE Ratings SA 30 (thirty) days' notice.
- 10.4. The Termination of this Contract for any reason shall be without prejudice to any obligation by either Party to the other which shall have accrued and become owing at the time of the termination.
- 10.5. In the event of termination of the contract, BEE Ratings SA shall immediately upon termination
 - a) Return all the client's Property to the client.
 - b) Deliver all BEE Ratings SA documentation in relation to the Services and Supplies and/or this Contract to the client.



c) On written request by the client, assign all existing subcontracts to the client, to extent that such contracts are assignable in accordance with their terms.

10.6. Upon termination of this agreement outstanding payments in respect of service provided by BEE Ratings SA shall become immediately due.

11. Disclaimers and Exclusions

11.1. BEE Ratings SA shall not be responsible in any circumstances to the Client or any third party for any indirect or consequential or inconsequential or economic damage or loss, howsoever caused, whether due to negligence, misrepresentation, breach of contract or otherwise.

11.2. Nothing in the forgoing shall be read as restricting or limiting in any way BEE Ratings SA's liability for death or personal injury.

11.3 BEE Ratings SA shall not undertake any services not defined in the Service Proposal as defined in Annexure 1.

12. Indemnity

12.1. The Client shall indemnify BEE Ratings SA against any loss or damage which results from the Client's breach of this agreement or failure to abide by any of its terms.

12.2. BEE Ratings SA hereby indemnifies and holds the client harmless against and from claims, actions proceedings and/or losses of whatsoever nature arising out of or in connection with any act or omission of BEE Ratings SA or BEE Ratings SA's personnel which is in connection with or arises out of this Contract, including without limitation, any claims, actions proceedings and/or losses which result from death or injury to any person, except to the extent that such Losses are solely caused by negligence or wilful misconduct or any Client

13. Force Majeure

Neither Party shall be liable for any delay or failure in performing its obligations or duties under this agreement which results from circumstances outside his reasonable control including but not limited to acts of God, industrial action, war, fire, threat of terrorism, civil disturbance or rioting, government or regulatory action.

13.1. Should a Party to this contract (the affected Party) be prevented from fulfilling any of its obligations in terms of this contract due to an event of Force Majeure (as defined above) then;

a) Those obligations shall be deemed to have suspended to the extent that and for so long as the affected party is so prevented from fulfilling them and the corresponding obligations of the party (Unaffected Party) shall be suspended to the corresponding extent; and

b) The affected party shall promptly notify the Unaffected Party in Writing of such Event of Force Majeure and such notice shall include an estimation of the approximate period for which the suspension in terms of clause 13.1 a) will endure (which estimate shall not be binding on the affected Party)



- c) Should the Event of Force Majeure continue for more than 14 (fourteen) days after the date of notice referred to in clause 13.1 a) and should notice of cessation in terms of clause 13.1 a) not have been given, then the Unaffected Party shall be entitled (but not obliged) to;
- 1) Terminate this contract by giving not less than 14 (fourteen) days Written notice to the Affected Party to that effect; and
 - 2) If the Unaffected Party is the client, procure the outstanding portion of services from an alternative source.

14. Warranty of Contractual Capacity

Both Parties and the signatories to this agreement warrant that they are authorised and permitted to enter into this agreement, and have obtained all necessary permissions and approvals.

15. Whole Agreement, Governing Law and Severability

- 15.1. This document constitutes the entirety of the agreement between the parties. It supersedes any prior representations which may have been made, whether orally or in writing. Any modification to this agreement must be made in writing and signed by both BEE Ratings SA and the Client.
- 15.2. This Agreement shall be governed by the Law of South Africa and the parties agree to submit to the exclusive jurisdiction of the South African Courts.
- 15.3. All clauses, sub clauses and parts thereof shall be severable and shall be read and construed independently. Should any part of this Agreement be found invalid this will not affect the validity or enforceability of any other provision or of this agreement as a whole.
- 15.4. All terms, conditions and covenants contained in this agreement shall bind the parties and their heirs, legal representatives, successors to title and permitted assignees.

Service Proposal

The services offered by BEE Ratings SA relate to:

1. Provide a basic overview of the B-BBEE regulation to the client's Directors and Management to facilitate an understanding of BEE compliance.
2. Implementation of a BEE policy signed by a Director of the client.
3. Verification of the BEE status of the client by use of an approved verification agent. The verification process includes on-site audits.
4. Provision of an authorised BEE status certificate.
5. Provision of an Executive Summary of BEE status per element and future BEE status improvements required where applicable.



6. A detailed action plan where required to improve the BEE status of the client indicating the current BEE rating status vs future BEE rating status for year 1 (and year 2 and year 3 if needed) as well as the estimated financial impact of such an action plan.
7. Provision of guidance per BEE element in BEE status Review Meetings; minimum quarterly review.
8. Informing the client's Directors and Management of any changes to the BEE regulatory framework as and when they arise.