



AQRate
VERIFICATION SERVICES

**APPLICATION FORM & STANDARD
TERMS AND CONDITIONS**

Document number

F 04-14(W)

Date Approved

30/08/2016

AQRate (Pty) Ltd

1st Floor, Acorn House, c/o Old Oak & Durban Road, Bellville, 7530
Tel : 021 914 9451 Fax : 021 914 6295 E-mail : wcape@aQrate.co.za

Instructions to completing this application form

1. Please complete ALL sections of the form in CLEAR PRINT and email to wcape@aQrate.co.za
2. Prior to completing this form you should read **AQRATE** document A 02 entitled "Information on the Application Process".
3. Initial each page.

Client Reference Code (or office use only)

TYPE OF BEE VERIFICATION

Type of Verification
(e.g. QSE, GENERIC or
Ownership Only)

Specify your relevant Code e.g. General, Construction,
Tourism, Transport, Forestry, FSC, CA, ICT, Agri etc..

What is the financial year for which you are having your B-BBEE status assessed? Indicate month and year.

What was the financial year upon which your most recent verified B-BBEE Certificate was based on?
Indicate month and year.

RELATED PARTY ENQUIRY

Did you use a BEE Consultant prior to applying for an AQRATE B-BBEE Verification Certificate?

YES

NO

If Yes, provide name of B-BBEE
Consultant

Name of Company
Consultant works for

Are you part of a Group of Companies?

YES

NO

If Yes, what is the combined
turnover of the group?

≤R10 mil

>R10 mil ≤
R50 mil

>R50
mil

Does any equity or debt arrangement exist between your Measured Entity and AQRate or its related parties?

YES

NO

Operations Manager Observation (for office use only))

CLIENT DETAILS (MEASURED ENTITY)

Organisation Registered Name

Trade Name

Company Registration Number

VAT number

Number of employees
*Required to determine which Scorecard to
be used*

Annual Turnover
Required to determine which Scorecard to be used

Physical Address

Postal Code

Postal Address

Postal Code

Contact Person

Position

Tel

Fax

Cell

E-mail

DOCUMENTATION REQUIRED (Please submit the following documentation with your Application Form):

Proof of payment (please use trade name when making payment)

Latest Tax Clearance certificate

Latest COR39 (or similar document)

Audited or reviewed Financial Statements for the most recently completed financial period (*only if these are
not yet available, Signed Management Accounts for the most recently completed financial period*)

Copy of most recent BEE Verification Certificate (if any)

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FEES (See 6.6 page 6 below for banking details)		
Total Fees (including VAT)	50% Deposit	Balance
R	R	R

STANDARD TERMS AND CONDITIONS

1. INTERPRETATION

- 1.1 In this Agreement, unless the context otherwise indicates:
- 1.1.1 "Agreement" means this "Application Form and Standard Terms and Conditions" and any signed annexures thereto;
 - 1.1.2 "BEE" means Broad-Based Black Economic Empowerment, as defined in the Broad-Based Black Economic Empowerment Act, No. 53 of 2003 as amended and/or any other black economic empowerment codes of good practice, legislation, policies and charters as may be applicable from time to time;
 - 1.1.3 "Input Sheets" means the preliminary request for information by the Verification Agency to the Measured Entity at the onset of the Verification Process. This document will contain input sheets for each element to be completed by the Measured Entity as well as lists of preliminary evidence required per element on the B-BBEE scorecard. The Verification Agency also uses the input sheets to select samples for verification purposes.
 - 1.1.3 "IRBA" means Independent Regulatory Board for Auditors;
 - 1.1.4 "IRBA approved auditor" means an auditor that have successfully completed the requisite Management Development Programme and have subsequently been approved by the IRBA to perform BEE verifications.
 - 1.1.5 "Logo" means the Logo provided by the Verification Agency to the Measured Entity upon completion of the verification.
 - 1.1.6 "Parties" means the Measured Entity and the Verification Agency;
 - 1.1.7 "Measured Entity" means the organisation / entity applying for verification as indicated on the cover page of this Agreement;
 - 1.1.8 "Review" means the evaluation and scrutinising of the completed Input Sheets (including preliminary evidence) and accompanying documentation by the Operations Manager to establish whether or not the Verification Agency is in a position ethically and practically to perform a verification of the Measured Entity and to determine the criteria for compiling the Verification Team;
 - 1.1.9 "SANAS" means South African National Accreditation Services;
 - 1.1.10 "Scorecard" means the document issued by the Verification Agency to the Measured Entity setting out the Measured Entity's compliance with BEE elements in various spheres of the Measured Entity's business;
 - 1.1.11 "Verification Agency" means AQRATE (PTY) LTD.



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- 1.1.12 "Verification Certificate" means the certificate officially stating the BEE Status and BEE Recognition level issued by the Verification Agency to the Measured Entity upon completion of the Initial/Annual Rating Evaluation;
- 1.1.13 "Verification Process" means the process that commences from the effective date of this agreement and includes the Reviewing, verifying and validation of the BEE statuses of Measured Entities in accordance with the provisions of the Broad-Based Black Economic Empowerment Act 53 of 2003, as amended and related legislation and commences with receipt of this signed Agreement by the Verification Agency.
- 1.1.14 "Verification Plan" means the plan agreed to at the onset of the Verification Process between the Measured Entity and the Verification Agency that sets out the timelines for the deliverables of each party during the Verification Process.
- 1.2 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.
- 1.3 The head notes to the paragraphs to this Agreement are inserted for reference purposes only and shall not affect the interpretation of any of the provisions to which they relate.
- 1.4 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 1, effect shall be given thereto as if such provision were a substantive provision in the body of the Agreement.
- 1.5 Any reference in this 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.
- 1.6 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.
- 1.7 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 relevant clause, bear the meaning ascribed to it for all purposes in terms of this Agreement, notwithstanding that such term has not been defined in this clause 1.
- 1.8 When any number of days is prescribed in this 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 The Verification Agency conducts the business of a BEE Verification Agency by reviewing, verifying and validating the BEE statuses of Measured Entities in accordance with the provisions of the Broad-Based Black Economic Empowerment Act 53 of 2003 and related legislation.
- 2.2 The Measured Entity has requested that the Verification Agency perform a verification of its BEE status.
- 2.3 The Parties have agreed to enter into this Agreement to govern the Verification Process referred to in 2.2 above.

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3 SUPERSESION

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 THE VERIFICATION AGENCY

4.1 Upon receipt of the signed Application Form and this Agreement and subject to payment referred to in clause 6 below, the Verification Agency shall allocate the Measured Entity to an Operations Manager who will arrange for a pre-verification engagement during which:

4.1.1 the parties will agree the Verification Plan;

4.1.2 the Verification Agency will conduct a client risk analysis of the Measured Entity to determine the risk associated with the verification and the commensurate sampling sizes;

4.1.3 the Input Sheets (including preliminary evidence) will be explained and the Measured Entity's queries addressed; and

4.1.4 if available and practical, the completed Input Sheets and preliminary evidence will be Reviewed.

4.2 The Measured Entity will be provided with Input Sheets for each element of the scorecard to be completed and provided to the Verification Agency by the Measured Entity, along with preliminary evidence, within 15 (FIFTEEN) days from the date of the pre-verification engagement or such other period of time as agreed between the Parties in terms of the Verification Plan. Should the Input Sheets not be completed and provided to the Verification Agency along with all the preliminary evidentiary documentation within this timeframe the Verification Agency will have the right to terminate the agreement as provided for in terms of clause 9 hereof. Should the Verification Agency elect to do so the deposit paid by the Measured Entity to the Verification Agency will be forfeited.

4.3 Upon the timeous provision of the completed Input Sheets (including preliminary evidence) by the Measured Entity, the Verification Agency will Review all information and documentation provided by the Measured Entity or presented to it at the pre-verification engagement. Based on the Review the Verification Agency will, as is required by SANAS, in its sole and absolute discretion decide and accordingly inform the Measured Entity of whether there exists a conflict of interest or any other impediment to its independence or objectivity or whether it has discovered *prima facie* evidence of fronting or misrepresentation which warrants it to terminate the verification engagement. Where it decides not to continue with the verification on these grounds it will terminate the Agreement in accordance with the provisions of clause 9.

4.4 In the event that the Verification Agency decides to continue with the verification the Verification Agency shall agree with the Measured Entity on a date/s and time period for the on site verification at the premises of the Measured Entity. Unless otherwise agreed the on site verification will not commence prior to all outstanding documentation subsequent to the documents review have been supplied to the Verification Agency and in any event not until at least two weeks has expired from the date of the Verification Agency having informed the Measured Entity of its decision in terms of clause 4.3 above. The time period agreed for the on site verification will be sufficient to allow the Verification Agency time to perform its on site verification duties.

4.5 Once Agreement has been reached on the issues contemplated in clause 4.3 above the Verification Agency will forward to the Measured Entity a verification plan, detailing the areas of responsibility allocated to each member of the verification team. The verification plan will act as a guide for the verification team but they will be allowed to deviate from the plan where necessary.



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- 4.6 The on site verification shall entail, inter alia, an evaluation by the Verification Agency of the Measured Entity with regard to the Measured Entity's adherence to BEE and shall culminate in the Verification Analyst compiling a Recommendation Report to the Verification Manager. The Verification Manager will make the final decision as to the outcome of the verification. Once a decision has been made the Measured Entity will be informed accordingly. A Verification Certificate and a completed Scorecard will be issued to the Measured Entity subject to payment in terms of clause 6 below being made but in any event not sooner than five days from the receipt of the final documentary evidence from the client and completion of site visit.
- 4.7 The Verification Agency shall provide the client with a 7 day notice period for the on-site verification. This 7 day notice period may be waived by the client if deemed necessary.
- 4.8 The Verification Agency will review, verify and validate not only information, evidence and documentation that were disclosed to it by the Measured Entity but also information, evidence and documentation that came to its attention that was not disclosed by the Measured Entity.
- 4.9 It is recorded that only certificates supplied by suppliers of the Measured Entity which was issued by a SANAS accredited verification agency or IRBA approved auditor will be acceptable evidence of the BEE status of the supplier. No self-assessments or assisted self assessments will be accepted as sufficient evidence nor will the Verification Agency be required to conduct the audits or assessments of information supplied by the suppliers other than certificates as mentioned above or in the case of Exempt Micro Enterprises sworn affidavits in terms of the amended codes or a certificate from a Verification Agency.
- 4.10 The Verification Agency shall during the course of its duties comply with all policy documents and/or Codes of Good Practice which may be issued by the Department of Trade and Industry from time to time.

5 GENERAL OBLIGATIONS OF THE MEASURED ENTITY

- 5.1 In consideration for the Verification, the Measured Entity shall pay those fees to the Verification Agency as set out in the Application Form signed by the Measured Entity.
- 5.2 The fees in 5.1 assumes, where the Measured Entity is rated against the Equity Ownership element, that all valid B-BBEE certificates and scorecards of each entity being considered in a group and/or complex ownership structure is readily available. Should B-BBEE certificates and scorecards not be available for any of the entities involved in the Measured Entity's ownership structure, the Verification Agency will, for purposes of timeous completion of the verification either:
 - 5.2.1 discount those B-BBEE points associated with the percentage ownership of the contributing entity, or
 - 5.2.2 conduct, upon the request of and for the additional cost of the Measured Entity, an Equity Ownership verification for the entity/s that do not have a valid BEE certificate and scorecard.
- 5.3 The Measured Entity shall upon the presentation of the relevant invoices from the Verification Agency pay to the Verification Agency any reasonable disbursements incurred by the Verification Agency in the course of performing its duties under this Agreement.
- 5.4 The Measured Entity will provide such information as requested by the Verification Agency. The Measured Entity acknowledges that one of the purposes of annual verification is to determine whether the status quo has changed from the one year to the other. Therefore even where documentary evidence has been provided in previous assessments, it is to be provided again upon request. The Verification Agency will not rely on previous verifications it conducted or documentary evidence provided by the Measured Entity to the Verification Agency during previous verifications, nor will the Measured Entity insist that the Verification Agency does so.

Initial	Initial
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- 5.5 The Measured Entity will not place undue pressure on AQRATE analysts while conducting the verification and will co-operate with the analysts in good faith and in an amicable manner.
- 5.6 Unless otherwise agreed all documentary evidence will be provided to the Verification Agency within a period of 3 (three) months from the date of application. Failure to do so will result in the Measured Entity's file being closed. All fees paid till that date will be forfeited.
- 5.7 The Measured Entity hereby undertakes that it shall not publish the Logo of the Verification Agency in any instance other than to reflect the Measured Entity's final verification or in any manner which will transgress the Conditions for Use of AQRate Verification Logo – R02 policy (see www.aqrate.co.za), nor shall any publication infringe upon the rights or interests of the Verification Agency in any manner including, without limitation, the intellectual property rights of the Verification Agency.

6 PRICE AND PAYMENT

- 6.1 The price to be paid as agreed between the Parties should be inserted by the Measured Entity at the top of page 2 of this document, signed by the Measured Entity, the terms of which forms an integral part of the Agreement between the Parties.
- 6.2 The price is payable in two portions, each being 50% (fifty percent) of the total price. The first portion is payable as a deposit upon signature of this Agreement. The final portion of the price together with all disbursements incurred by the Verification Agency in the carrying on of its duties under this Agreement (collectively referred to hereinafter as the "amount due"), becomes payable upon completion of the final on-site visit or such other date agreed to in terms of the Verification Plan. The Verification Agency will accordingly notify the Measured Entity that payment is due by issuing it with an invoice for the amount due.
- 6.3 The Verification Agency may levy reasonable disbursements for travel to venues that are more than 15km from the Verification Agency's office. Airfare and accommodation may only be charged in consultation with the Measured Entity.
- 6.4 The Verification Agency may also levy a disbursement for the printing of documents electronically forwarded to the Verification agency which exceeds 15 pages. In such cases a fee of R2.80 will be levied per page.
- 6.5 The Measured Entity will not be entitled to claim delivery of the Verification Certificate or completed Scorecard from the Verification Agency until such time as the amount due has been paid in full.
- 6.6 All monies paid by the Measured Entity to the Verification Agency, whether contemplated by this clause 6 or otherwise, shall be deposited directly into the following bank account held by the Verification Agency:

Account Name: AQRATE
Bank: ABSA
Account Number 4058 222 468
Branch Code: 334 409

- 6.7 The Verification Agency shall be entitled to levy compound interest calculated monthly in arrears on all overdue amounts at the maximum rate permissible in law on the overdue amount from the due date until the date of payment.
- 6.8 A certificate by an officer/director of the Verification Agency showing the amount due and owing by the Measured Entity to the Verification Agency at any given time shall be sufficient prima facie proof of the facts therein stated for the purpose of all legal proceedings against the Measured Entity for the recovery of the said amount.

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6.9 In the event of the Verification Agency instructing attorneys to collect from the Measured Entity any amount owing to the Verification Agency, then the Measured Entity 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 Entity shall upon request promptly provide the Verification Agency with:

7.1.1 access to all information, personnel and documentation which the Verification Agency may at any stage during its conduct of the Verification Process deem relevant and which may be in the possession or under the control or supervision of the Measured Entity; and

7.1.2 any assistance it may require in relation to such information, personnel and documentation.

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

8 PRESENTATION OF FINDINGS

8.1 The Verification Agency may, from time to time, issue interim advice, reports or presentations to the Measured Entity.

8.2 The Measured Entity 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 the Verification Agency to the Measured Entity after the completion of the verification.

8.3 Notwithstanding the provisions of clause 8.2 above, the advice and opinions supplied by the Verification Agency to the Measured Entity (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 the Verification Agency guarantees or warrants the contents of such advice or opinion.

8.4 Notwithstanding paragraph 8.2, it may be necessary to amend a certificate and/or scorecard subsequent to the issuing thereof either as a result of an error, or new information coming to light as a result of a special evaluation. In such cases the relevant documents will be amended and issued to the Measured Entity with a new version number. In such cases the issue date of the amended certificate will be the date of issue thereof but the expiry date will remain the same as the original certificate. The Measured Entity undertakes to discontinue the use of the old certificate or scorecard upon issue of the amended certificate and/or scorecard.

8.5 A special evaluation may be conducted upon request of the Measured Entity or in the case of a reasonable complaint received by the Verification Agency that, if left uninvestigated, could have a material impact on the BEE status level of the Measured Entity. In such cases the terms of this agreement will continue to govern the relationship between the Verification Agency and the Measured Entity but the Verification Agency will agree with the Measured Entity any additional terms under which such special evaluation is to take place.

9 TERMINATION

9.1 Either Party shall be entitled to terminate this Agreement upon the granting of reasonable written notice of 7 business days to the other Party. Termination shall be without prejudice to all rights that may have accrued to either Party prior to the termination thereof.



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- 9.2 All fees or reasonable disbursements pertaining to that part of the Verification Process already conducted up to the date of termination shall become payable in full upon the date of termination and the Verification Agency shall be entitled to issue an invoice to that effect.
- 9.3 Where the agreement is terminated by the Measured Entity all deposits paid up to the date of termination will be forfeited.
- 9.4 Where the Verification Agency terminates the agreement on the grounds stipulated in clause 4.2 or 5.6 all deposit/s paid by the Measured Entity will be forfeited in its entirety. In all other cases of termination by the Verification Agency prior to issuing of the certificate where the deposit/s paid up to date of termination exceeds the fees actually incurred up to that date, the Verification Agency will reimburse the balance of the deposit.

10 RESERVATION OF OWNERSHIP

- 10.1 Each Party shall remain the owner at all times of all copyright, design, trade marks and any other intellectual property rights, whether registered, pending registration or unregistered, which may attach to its Logo or anything else produced by it during the provision of the verification service.
- 10.2 Each Party shall retain ownership of all its intellectual property (including all rights to its Logo and trademarks). No Party may use the other Party’s intellectual property (including all rights to its Logo and trademarks) in any promotional or marketing material except with the express permission of the Measured Entity.
- 10.3 The Verification Agency shall at all times remain the owner of all working papers used in the provision of the verification service.

11 CONFIDENTIALITY

- 11.1 During the provision of the verification service by the Verification Agency to the Measured Entity, the Verification Agency may acquire knowledge of certain information, documents, material, knowledge, know-how, trade secrets and proprietary interests concerning the Measured Entity, including but not limited to its business and strategic plans, adherence to BEE, 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 Entity (hereinafter collectively referred to as “the confidential information”).
- 11.2 The Verification Agency undertakes to and in favour of the Measured Entity that:
 - 11.2.1 it shall maintain and uphold the confidentiality and good faith in relation to the confidential information;
 - 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;
 - 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 Entity at any reasonable time and as soon as practicably possible, return and surrender to the Measured Entity 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.

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- 11.3 The undertakings given by the Verification Agency 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;
 - 11.3.2 to the Department of Trade and Industry or the B-BBEE Commissioner in accordance with the Verification Agency's mandatory reporting obligations in terms of the B-BBEE Act 53 of 2003, as amended.
 - 11.3.3 to the SANAS in accordance with the mandatory accreditation requirements for the inspection of files imposed on the Verification Agency by SANAS.
 - 11.3.4 to the Association of BEE Professionals (ABP) and AQRATE's own directory of rated entities for publication by these entities, where such confidential information is limited to the information contained on the BEE Certificate and Scorecard that is issued to the Measured Entity;
 - 11.3.5 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 the Verification Agency 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 the Verification Agency of any of its undertakings or obligations hereunder or by its employees, officers or professional advisers, as envisaged in 11.3.4 above.

12 EXCLUSION AND LIMITATION OF LIABILITY

- 12.1 The Measured Entity hereby indemnifies and holds harmless the Verification Agency 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 Entity pertaining to the decision referred to in clause 4.3 above or any of the services provided by the Verification Agency in terms of this Agreement;
 - 12.1.2 the factual inaccuracy of any information supplied by the Measured Entity or by any person who represents the Measured Entity or by any person whom the Verification Agency may reasonably believe to represent the Measured Entity;
 - 12.1.3 any act performed by the Verification Agency or any representative thereof which is in accordance with provisions that have the effect of law and which act may diverge from the provisions of this Agreement;
 - 12.1.4 any breach of this Agreement by the Measured Entity including, without limitation, the provision of inaccurate factual information to the Verification Agency by the Measured Entity; 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 the Verification Agency (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 service provided to the Measured Entity in terms of this Agreement, shall be limited to the fees payable in accordance with this Application Form and Standard Terms and Conditions, and shall not include any liability for any indirect or consequential loss or damages (including loss of profits) incurred by the Measured Entity or any other person.



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13 SUB-CONTRACTORS

Notwithstanding anything to the contrary contained in this Agreement, the Verification Agency shall in accordance with the requirements of SANAS be entitled to appoint sub-contractors from time to time and to the extent necessary to assist it in the provision of the verification service. The appointment of such sub-contractors shall be in the sole discretion of the Verification Agency, but will be limited to sub-contractors that bind themselves to the terms of this Agreement in general but particularly to the confidentiality requirements of this Agreement.

14 SOLICITATION OF EMPLOYEES

The Parties undertakes to and in favour of each other that they shall not solicit for employment or for the rendering of services on a contractual basis (directly or indirectly), either for itself or for any third party, any employee(s) of the other Party who is/are in the employ of the other Party as at the date of execution of this Agreement and at any time during the provision of the verification service. A penalty equal to the annual cost to company package of the particular employee is payable by the transgressing Party upon breach of this undertaking in addition to any other remedies which might be available in law.

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, power outages, 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

Except as otherwise provided for herein no Party shall cede, delegate or assign any or all of its rights or obligations in terms of this Agreement without obtaining the prior written consent of the other Party.

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 this 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.



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- 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 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 the WESTERN CAPE.

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.

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 physical addresses set forth at the end of this Agreement with their signatures.
- 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 any of the others ("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, e-mail or facsimile. Communications by telex, e-mail or facsimile shall, unless



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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.
- 21.2 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 or their duly authorised representatives.
- 21.3 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.

MEASURED ENTITY SIGNATURE (Client)
who warrants that he/she is duly authorised thereto

Signed _____ at _____ on _____

As witnesses:

- 1. _____
- 2. _____

Initial	Initial
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AQRATE (PTY)LTD

who warrants that he/she is duly authorised thereto

Signed _____ at _____ on _____

As witnesses:

- 1. _____
- 2. _____