



AQRate
VERIFICATION SERVICES

**EME APPLICATION FORM
AND STANDARD TERMS
& CONDITIONS**

Document number

F 04A-05 (K)

Date Approved

09/12/2009

AQRate KZN (Pty) Ltd

Unit 3, Damlee House, 67 Chelsea Drive, Durban North, 4051

Tel: 031 563 7788 ; Fax: 086 669 7032 ; E-mail: kzn@aqrate.co.za

Bank Details:

Account Name: AQRate - KZN

Bank: Standard Bank

Account Number 032 547 692

Branch Code: 042 826

EME APPLICATION FORM

Please complete ALL sections of the form in CLEAR PRINT, INITIAL each page and FAX to 086 669 7032.

CLIENT DETAILS (MEASURED ENTERPRISE)

Client Reference Code (For official use only)

Organisation Registered Name

Trade Name

Company Registration Number

VAT Number

Number of employees

Annual Turnover (Excl VAT)

Physical Address

Postal Code

Postal Address

Postal Code

Contact Person

Position

Tel

Fax

Cell

E-mail

FEEES

(Pay into the AQRate-KZN Bank Account – Please use Trade Name as reference when making payment)

Total Fees (Excluding Vat)

R 850 – 00 (R 969-00 including Vat)

DOCUMENTATION REQUIRED

(Please submit the following documentation with your Application Form)

This Application form and Standard Terms and Conditions - signed & initialed on each page.

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

Company or CC registration documentation (CM1 or CK1) (Showing Shareholders / Members % Ownership in the Business)

Proof of VAT registration (where applicable)

Any ONE of the following documents

Signed certificate by the business' Auditor or Accounting Officer confirming Annual Turnover, Net Profit After Tax and Total Salaries/Wages paid (Incl. Directors/Members salaries/emoluments/drawings)

Last twelve months' bank statements of the business (only where the certificate from the auditor or accounting officer or the financial statements of the business is not available or you are a sole proprietor)

Affidavit confirming that the business is a start-up company with no trading history and that it is not merely a continuation of a pre-existing business (Only applicable for businesses that have a trading history of less than 12 months)

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Only Complete this section if there is any Black Ownership in the Business
(Remember "Black" Includes African, Indian, Coloured and Chinese)

DECLARATION OF BLACK OWNERSHIP		
I, the undersigned, hereby declare that the percentage black ownership in our business is as reflected below:		
1. % Shareholding by Black People in the Business	%	
2. % Shareholding by Black Women in the Business	%	
Has all debt, if any, associated with the purchase of the above Black Shareholding been repaid? <i>Tick Appropriate Block</i>	YES	NO

DOCUMENTATION REQUIRED – BLACK OWNERSHIP (Please submit the following documentation with your Application Form)	
Share register and share certificates (for companies that have any % of black ownership)	
Certified IDs of the members of the Close Corporation or shareholders of the Company or owners of the Business	
Diagram setting out ownership structure of the Measured Entity	
Where the business is more than 50% black owned, signed affidavit confirming that there are no third party rights attached to the black shareholders' shares	


Initial	Initial
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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 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 "Logo" means the logo provided by the Verification Agency to the Measured Enterprise upon completion of the verification.
 - 1.1.4 "Parties" means the Measured Enterprise and the Verification Agency;
 - 1.1.5 "Measured Enterprise" means organisation / entity applying for verification as indicated on the covering page of this agreement;
 - 1.1.6 "Review" means the evaluation and scrutinising of the evidentiary documentation, that should accompany the Application Form, by the Operations Manager to establish whether or the not the Verification Agency is in a position ethically and practically to perform a verification of the Measured Enterprise and to determine the criteria for compiling the Verification Team;
 - 1.1.7 "Verification Agency" means AQRATE KZN (PTY) LTD.
 - 1.1.8 "Verification Certificate" means the certificate officially stating the BEE Status and BEE Recognition level issued by the Verification Agency to the Measured Enterprise upon completion of the verification;
 - 1.1.9 "Verification Process" means the Reviewing, verifying and validation of the BEE statuses of Measured Enterprises in accordance with the provisions of the Broad-Based Black Economic Empowerment Act 53 of 2003 and related legislation and commences with receipt of this signed Agreement by the Verification Agency.
- 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.

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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 enterprises in accordance with the provisions of the Broad-Based Black Economic Empowerment Act 53 of 2003 and related legislation.

2.2 The Measured Enterprise 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.

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 all documentation that should accompany it, this Agreement and subject to payment referred to in clause 6 below, the Verification Agency shall allocate the Measured Enterprise to an Operations Manager who will perform a document review on the documents provided.

4.2 Where an on-site visit is required in the sole and absolute discretion of AQRATE, the Verification Agency shall agree with the Measured Enterprise on a date/s and time period for the on-site verification at the premises of the Measured Enterprise.

4.3 The verification shall entail, inter alia, an evaluation by the Verification Agency of the Measured Enterprise with regard to the Measured Enterprise's adherence to the requirements of an Exempt Micro Enterprise in accordance with the Codes of Good Practice 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 Enterprise will be informed accordingly. A verification certificate will be issued to the Measured Enterprise

4.6 The Verification Agency will review, verify and validate not only information, evidence and documentation that were disclosed to it by the Measured Enterprise but also information, evidence and documentation that came to its attention that was not disclosed by the Measured Enterprise.

4.7 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 ENTERPRISE

5.1 In consideration for the Verification, the Measured Enterprise shall pay those fees to the Verification Agency as set out in the Application Form signed by the Measured Enterprise.

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- 5.2 The Measured Enterprise 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.
- 5.3 The Measured Enterprise 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.
- 5.4 The Measured Enterprise hereby undertakes that it shall not publish the Logo of the verification agency in any instance other than to reflect the Measured Enterprise's final verification, 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 is reflected i on the Application Form signed by the Measured Enterprise, the terms of which forms an integral part of the agreement between the parties. The price excludes value added tax (VAT).
- 6.2 The price is payable upon application and proof of payment into AQRATE's bank account (see clause 6.4) must accompany the signed application form and this agreement for the application to be processed.
- 6.3 The Measured Enterprise 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.
- 6.4 All monies paid by the Measured Enterprise 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 - KZN*
Bank: *Standard Bank*
Account Number *032 547 692*
Branch Code: *042 826*
- 6.5 Where upon application it becomes evident that the Measured Enterprise wishes to claim black shareholding and that it has more than one tier of shareholding the Verification agency reserves the right to charge an additional fee of R2 500 (excl VAT) per additional tier of ownership to verify. This will be communicated to the Measured Enterprise prior to commencing with the verification. Should the Measured Enterprise then decide not to continue with the verification it may cancel this agreement and the initial fees paid by the Measured Entity will be refunded to it.
- 6.6 Where all the required information and documentary evidence is not provided by the client within a period of three months of the application the file will be closed and all monies paid to date will be forfeited by the client.

7 INFORMATION

- 7.1 The Measured Enterprise 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 Enterprise; and
- 7.1.2 any assistance it may require in relation to such information, personnel and documentation.
- 7.2 The Measured Enterprise will provide such information as requested by the Verification Agency. The Measured Enterprise 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 Enterprise to the

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Verification Agency during previous verifications, nor will the Measured Enterprise insist that the Verification Agency does so.

- 7.3 The Measured Enterprise hereby warrants that any and all information supplied to the Verification Agency in terms of this Agreement, whether by the Measured Enterprise or by any person who represents the Measured Enterprise or by any person whom the Verification Agency may reasonably believe to represent the Measured Enterprise, 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 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 outstanding monies (whether in the form of fees or disbursements) shall become payable in full upon the date of termination and the Verification Agency shall be entitled to issue an invoice in an amount adequate to cover all unbilled fees pertaining to that part of the verification process already conducted, whether in part or in full (including any disbursements incurred).

9 RESERVATION OF OWNERSHIP

- 9.1 The Verification Agency shall remain the owner at all times of all copyright, design, trademarks and any other intellectual property rights, whether registered, pending registration or unregistered, which may attach to the Logo or anything else produced by the Verification Agency during the provision of the verification service.
- 9.2 The Verification Agency shall at all times remain owner of all working papers used in the provision of the verification service.

10 CONFIDENTIALITY

- 10.1 During the provision of the verification service by the Verification Agency to the Measured Enterprise, the Verification Agency 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, 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 to as "the confidential information").
- 10.2 The Verification Agency undertakes to and in favour of the Measured Enterprise that:
- 10.2.1 it shall maintain and uphold the confidentiality and good faith in relation to the confidential information;
 - 10.2.2 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;
 - 10.2.3 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
 - 10.2.4 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.
- 10.3 The undertakings given by the Verification Agency herein shall not preclude it from disclosing the confidential information:

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- 10.3.1 to the extent that it may be obliged to do so in law;
 - 10.3.2 to the Department of Trade and Industry in accordance with the Verification Agency's mandatory reporting obligations to the Department of Trade and Industry.
 - 10.3.3 the South African National Accreditation System (SANAS), the Association of BEE Verification Agencies (ABVA) 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 that is issued to the Measured Enterprise;
 - 10.3.4 insofar as such disclosure is necessary for the purpose of the provision of the verification, to its officers, employees and professional advisers.
- 10.4 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 10.3.4 above.

11 EXCLUSION AND LIMITATION OF LIABILITY

- 11.1 The Measured Enterprise 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:
 - 11.1.1 any loss or damage suffered by the Measured Enterprise pertaining to the decision referred to in clause 4.2 above or any of the services provided by the Verification Agency in terms of this Agreement;
 - 11.1.2 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 the Verification Agency may reasonably believe to represent the Measured Enterprise;
 - 11.1.3 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;
 - 11.1.4 any breach of this Agreement by the Measured Enterprise including, without limitation, the provision of inaccurate factual information to the Verification Agency by the Measured Enterprise; and
 - 11.1.5 any claims made or threatened by any third parties which arise from or are connected with a breach referred to in clause 11.1.4 above.
- 11.2 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 Enterprise 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 Enterprise or any other person.

12 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.

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13 SOLICITATION OF EMPLOYEES

The Measured Enterprise undertakes to and in favour of the Verification Agency that it 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 Verification Agency who is/are in the employ of the Verification Agency 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 Measured Entity upon breach of this undertaking in addition to any other remedies which might be available in law.

14 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.

15 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:


- 15.1 to cancel this agreement; or
- 15.2 to claim immediate performance and/or payment of all the obligations of the defaulting party in terms hereof.

16 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.

17 NOTICES AND DOMICILIA

- 17.1 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.
- 17.2 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.
- 17.3 Any notice given and any payment made by a Party to any of the others ("the addressee") which:
 - 17.3.1 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;

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17.3.2 is posted by prepaid registered post from an address within the Republic of South Africa to the addressee at the addressee's domicile 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.

17.4 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 the contrary is proved by the addressee, be deemed to have been received by the addressee one hour after the time of transmission.

18 GENERAL

18.1 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.

18.2 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.

18.3 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.


18.4 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.

18.5 Nothing in this Agreement shall:

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

18.5.2 entitle or authorise either Party to incur liability on behalf of the other.

18.6 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.

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

Signed _____ at _____ on _____

As witnesses:

1. _____

2. _____

AQRATE KZN (PTY) LTD
 who warrants that he/she is duly authorised thereto

Signed _____ at _____ on _____

As witnesses:

1. _____

2. _____