



**AQRate**  
VERIFICATION SERVICES

**APPLICATION FORM & STANDARD  
TERMS AND CONDITIONS**

**Document number**

F 04-19(W)

**Date Approved**

08/11/2021

**AQRate (Pty) Ltd**

Old Oak Office Park, Unit OL012, Ground Floor, Oak Leaf Terrace, 1 Edmar Street, Bellville, 7530  
Tel : 021 914 9451 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	EME		Specify your relevant Code e.g. General, Construction, Tourism, Transport, Forestry, FSC, ICT, Agri, MAC, Defence or Property. (include sub-sector if applicable)
	51% Black Owned EME (Construction)		
	51% Black Owned QSE (Construction)		
	QSE		
	GENERIC		
	OWNERSHIP ASSESSMENT		
	OPINION		
	SED CONFIRMATION		
	ICPR		
	DRAFT ASSESSMENT		
JOINT VENTURE			
OTHER:			

Will you be using signed off/audited Annual Financial Statements, or Management Accounts?  
(mark with X)

Signed/Reviewed AFS

Management Accounts

What is the financial year for which you are having your B-BBEE status assessed?  
Indicate **month and year**.  
(Please note this needs to be your **most recent financial year-end**)

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

**RELATED PARTY ENQUIRY**

Will you be using a BEE Consultant as your main point of contact for the B-BBEE Verification?\*

YES

NO

Name of B-BBEE Consultant  
(if applicable)

Name of Company  
Consultant works for

Are you part of a Group of  
Companies?

YES

NO

If Yes, what is the  
**combined Group**  
turnover

≤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

CEO or Delegated authority  
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

 <b>APPLICATION FORM &amp; STANDARD TERMS AND CONDITIONS</b>	<b>Document number</b>
	F 04-19(W)
	<b>Date Approved</b>
	08/11/2021

Postal Address			
Postal Code			
Contact Person		Position	
Tel		Fax	
Cell		E-mail	

<b>DOCUMENTATION REQUIRED (Please submit the following documentation with your Application Form):</b>		
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 <i>(only if these are not yet available, Signed Management Accounts for the most recently completed financial period)</i>		
Copy of most recent BEE Verification Certificate (if any)		
Ownership Organogram (for ownership assessments, consolidation applications and opinions only)		
<b>FEES (See 6.6 page 6 below for banking details)</b>		
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 attached thereto;
- 1.1.2. "B-BBEE" 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. "Confidentiality Agreement" means the confidentiality agreement contained in Annexure A of this Agreement;
- 1.1.4. "Confidential Information" means information or data, whether disclosed orally or in writing, that is identified as being confidential or proprietary at the time of disclosure or has the necessary quality of confidence about it and includes, without limitation, any information relating to a Party's:
  - 1.1.4.1. business, business policies, strategic business plans, pricing models and other business and commercial information;
  - 1.1.4.2. know-how, trade secrets, specification, drawings, sketches, models, samples, data, diagrams and flow charts;
  - 1.1.4.3. business relationships, products, services, customers and clients (both existing and potential) sales and sales figures;
  - 1.1.4.4. technical information, including use of technology, systems, hardware, software (and the incidence of any faults therein), architectural information, demonstrations, processes and machinery and related material and documentation;
  - 1.1.4.5. past, present and future research and development;
  - 1.1.4.6. strategic objectives and planning;
  - 1.1.4.7. plans, designs, drawings, functional and technical requirements and specifications;
  - 1.1.4.8. personal information as defined in the POPIA; but excluding information which;
  - 1.1.4.9. is at the time of Disclosure to the Receiving Party lawfully and without breach of any confidentiality obligations, within the public domain;
  - 1.1.4.10. is, at the time of such disclosure, already within the possession of the Receiving Party, or it has been independently developed by the Receiving Party; or

Initial	Initial
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 <b>AQRate</b> <small>VERIFICATION SERVICES</small>	<b>APPLICATION FORM &amp; STANDARD TERMS AND CONDITIONS</b>	<b><u>Document number</u></b>
		F 04-19(W)
		<b><u>Date Approved</u></b>
		08/11/2021

1.1.4.11. is obliged to be produced under order of a court or government agency of competent jurisdiction, or in terms of statute;

Provided that the onus shall at all times rest on the Receiving Party to establish that such information falls within the exceptions contained in clauses 1.1.4.9 to 1.1.4.11 inclusive and provided further information disclosed in terms of this Agreement will not be deemed to be within the foregoing exceptions merely because such information is embraced by more general information in a Party's possession.

- 1.1.5. "Data" means any data supplied, stored, collected, collated, accessed or processed by or for the benefit of the Disclosing Party, including Personal Information as defined in the POPIA.
- 1.1.6. "Disclosing Party" means any Party who discloses information to the other Party, and includes any subsidiaries or members of that Party's group of companies;
- 1.1.7. "Disclosing Purpose" means the purpose or reason for which the Parties have entered into or will enter into discussion which purpose shall be limited to the Verification Process resulting in the disclosure of Confidential Information to each other;
- 1.1.8. "Information Officer" means the appointed information officer of the Responsible Party;
- 1.1.9. "Input Sheets" means the preliminary request for information by the Rating 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 Rating Agency also uses the input sheets to select samples for verification purposes.
- 1.1.10. "Issue Date" means the date the B-BBEE Certificate is issued
- 1.1.11. "Logo" means the Logo provided by the Rating Agency to the Measured Entity upon completion of the verification.
- 1.1.12. "Measured Entity" means the organisation / entity applying for verification as indicated on the cover page of this Agreement;
- 1.1.13. "Parties" means the Measured Entity and the Rating Agency and either the responsible Party or the Operator or both as the context may require;
- 1.1.14. "POPIA" means the Protection of Personal Information Act 4 of 2013;
- 1.1.15. "Rating Agency" means AQRATE (PTY) LTD.
- 1.1.16. "Receiving Party" means any Party who receives or acquires the Confidential Information of the other Party under any circumstances whatsoever;
- 1.1.17. "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 Rating 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;
- 1.1.18. "SANAS" means South African National Accreditation System;
- 1.1.19. "Scorecard" means the document issued by the Rating Agency to the Measured Entity setting out the Measured Entity's compliance with BEE elements in various spheres of the Measured Entity's business;
- 1.1.20. "Signature Date" means the date of signature of this Agreement by the last Party to do so in time;
- 1.1.21. "Verification Certificate" means the certificate officially stating the BEE Status and BEE Recognition level issued by the Rating Agency to the Measured Entity upon completion of the Initial/Annual Rating Evaluation;
- 1.1.22. "Verification Process" means the process that commences from the effective date of this Agreement and includes the Reviewing, verifying and validation of the B-BBEE 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 Rating Agency.

 <b>AQRate</b> <small>VERIFICATION SERVICES</small>	<b>APPLICATION FORM &amp; STANDARD TERMS AND CONDITIONS</b>	<u>Document number</u>
		F 04-19(W)
		<u>Date Approved</u>
		08/11/2021

1.1.23. "Verification Plan" means the plan agreed to at the onset of the Verification Process between the Measured Entity and the Rating Agency that sets out the timelines for the deliverables of each party during the Verification Process;

1.1.24. "Verification Services" means the supply or rendering of verification services by the Operator to the responsible Party in terms of the Agreement and in terms of which the Operator *inter alia* Processes Personal Information of Data Subjects.

- 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.
- 1.9. Any Party shall, where relevant, be deemed to be references to, or to include, as appropriate, their respective successors or permitted assigns;
- 1.10. References to statutory provisions shall be construed as references to those provisions as respectively amended, consolidated, extended or re-enacted from time to time and shall be construed as including references to the corresponding provisions of any earlier legislation directly or indirectly amended, consolidated, extended or replaced by those statutory provisions or re-enacted and shall include any orders, ordinance, regulations, instruments or other subordinate legislation made under the relevant statute;
- 1.11. Expressions defined in the main body of this Agreement shall bear the same meanings in Annexures to this Agreement which do not themselves contain their own definitions.

**2. INTRODUCTION**

- 2.1. The Rating Agency conducts the business of a BEE Rating 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 Rating 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. SUPERSESSION**

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

 <b>AQRate</b> <small>VERIFICATION SERVICES</small>	<b>APPLICATION FORM &amp; STANDARD TERMS AND CONDITIONS</b>	<u>Document number</u>
		F 04-19(W)
		<u>Date Approved</u>
		08/11/2021

**4. GENERAL OBLIGATIONS OF THE RATING AGENCY**

- 4.1. Upon receipt of the signed Application Form and this Agreement and subject to payment referred to in clause 6 below, the Rating 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 Rating 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 being measured. This is to be completed and provided to the Rating Agency by the Measured Entity, along with preliminary evidence, within the timeframe as agreed between the Parties in terms of the Verification Plan. Should the Input Sheets not be completed and provided to the Rating Agency along with all the preliminary evidentiary documentation within this timeframe the Rating Agency will have the right to terminate the agreement as provided for in terms of clause 9 hereof. Should the Rating Agency elect to do so, the deposit paid by the Measured Entity to the Rating Agency will be forfeited.
- 4.3. Upon the timeous provision of the completed Input Sheets (including preliminary evidence) by the Measured Entity, the Rating 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 Rating 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 Rating Agency decides to continue with the verification the Rating 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 Rating Agency and in any event not until at least two weeks has expired from the date of the Rating 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 Rating 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 Rating 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.
- 4.6. The on-site verification shall entail, inter alia, an evaluation by the Rating 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 Technical Signatory. The Technical Signatory 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 Rating 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 Rating 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 Rating Agency 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 Rating Agency be required to conduct the audits or

 <b>AQRate</b> <small>VERIFICATION SERVICES</small>	<b>APPLICATION FORM &amp; STANDARD TERMS AND CONDITIONS</b>	<u>Document number</u>
		F 04-19(W)
		<u>Date Approved</u>
		08/11/2021

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 Rating Agency.

- 4.10. The Rating 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 Dtic and any other legislation and regulatory requirements relevant to the territory that AQRate operates in, including compliance with the POPIA in relation to all personal information provided by the Measured Entity.
- 4.11. The B-BBEE Rating Agency shall ensure that all dealings are directly with the Measured Entity and not a third party or B-BBEE consultant unless the B-BBEE Rating Agency has been provided with a Power of Attorney signed by the Measured Entity authorising such third party or B-BBEE consultant to act on its behalf.

**5. GENERAL OBLIGATIONS OF THE MEASURED ENTITY**

- 5.1. In consideration for the Verification, the Measured Entity shall pay those fees to the Rating 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 Rating 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 B-BBEE certificate and scorecard.
- 5.3. The Measured Entity shall upon the presentation of the relevant invoices from the Rating Agency pay to the Rating Agency any reasonable disbursements incurred by the Rating Agency in the course of performing its duties under this Agreement.
- 5.4. The Measured Entity will provide such information as requested by the Rating 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 Rating Agency will not rely on previous verifications it conducted or documentary evidence provided by the Measured Entity to the Rating Agency during previous verifications, nor will the Measured Entity insist that the Rating Agency does so.
- 5.5. The Measured Entity will not place undue pressure on AQRATE analysts while conducting the verification and will cooperate with the analysts in good faith and in an amicable manner.
- 5.6. Unless otherwise agreed all documentary evidence will be provided to the Rating 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 Rating 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](http://www.aqrate.co.za)), nor shall any publication infringe upon the rights or interests of the Rating Agency in any manner including, without limitation, the intellectual property rights of the Rating 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 Rating 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 Rating Agency will accordingly notify the Measured Entity that payment is due by issuing it with an invoice for the amount due.
- 6.3. The Rating Agency may, with the prior consent of the Measured Entity, levy reasonable disbursements for travel to venues that are more than 15km from the Rating Agency's office. Airfare and accommodation may only be charged in consultation with the Measured Entity.

 <b>AQRate</b> <small>VERIFICATION SERVICES</small>	<b>APPLICATION FORM &amp; STANDARD TERMS AND CONDITIONS</b>	<b>Document number</b>
		F 04-19(W)
		<b>Date Approved</b>
		08/11/2021

- 6.4. The Rating Agency may also, with the prior consent of the Measured Entity, levy a disbursement for the printing of documents electronically forwarded to the Rating Agency which exceeds 15 pages. In such cases a fee of R2.80 will be levied per page.
- 6.5. The Rating Agency reserves the right to recover any costs involved in addressing queries from the BEE commissioner, SANAS and or any legal related costs for external legal counsel from the Measured Entity. Such costs will be recovered at the billable hourly rate of employees of AQRate that are involved in addressing such queries together with any disbursements reasonably incurred in addressing such queries.
- 6.6. The Measured Entity will not be entitled to claim delivery of the Verification Certificate or completed Scorecard from the Rating Agency until such time as the amount due has been paid in full.
- 6.7. All monies payable by the Measured Entity to the Rating Agency, whether contemplated by this clause 6 or otherwise, shall be deposited directly into either of the following bank accounts held by the Rating Agency:

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

or

*Account Name:*        **AQRATE**  
*Bank:*                    **First National Bank**  
*Account Number*    **6236 495 7624**  
*Branch Code:*        **209 809**

- 6.8. The Rating 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
- 6.9. A certificate by an officer/director of the Rating Agency showing the amount due and owing by the Measured Entity to the Rating 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.
- 6.10. In the event of the Rating Agency instructing attorneys to collect from the Measured Entity any amount owing to the Rating 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 Rating Agency with:
  - 7.1.1. access to all information, personnel and documentation which the Rating 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 Rating 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 Rating Agency may reasonably believe to represent the Measured Entity, is factually accurate and that the Rating Agency may rely on same for the purposes of conducting the verification in terms of this Agreement.
- 7.3. The Measured Entity also hereby agrees to the recording of all calls to and from the AQRate offices for quality control purposes.

## 8. PRESENTATION OF FINDINGS

- 8.1. The Rating 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



 <b>APPLICATION FORM &amp; STANDARD TERMS AND CONDITIONS</b>	<b><u>Document number</u></b>
	F 04-19(W)
	<b><u>Date Approved</u></b>
	08/11/2021

reliance are the Verification Certificate and Scorecard issued by the Rating 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 Rating 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 Rating 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 Rating 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 Rating Agency and the Measured Entity but the Rating 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.
- 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 Rating 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 Rating Agency terminates the agreement on the grounds stipulated in clause 4.2 or 5.6 all fees paid by the Measured Entity will be forfeited in its entirety.

## 10. RESERVATION OF OWNERSHIP

- 10.1. Each Party 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 its logo including the logo, trade names, trade or other similar marks, branding, social media name, channel or handle 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 such other Party..
- 10.3. The Rating 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 Rating Agency to the Measured Entity, the Rating Agency may acquire knowledge of certain information, documents, material, knowledge and proprietary interests concerning the Measured Entity, including but not limited to its adherence to B-BBEE, financial information,, licensing arrangements, financiers and suppliers, its methods of carrying on business, information relating to its employees, personal Information and other confidential information which is not in the public domain and not readily available to a competitor of the Measured Entity.
- 11.2. The Rating 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;



 <b>AQRate</b> <small>VERIFICATION SERVICES</small>	<b>APPLICATION FORM &amp; STANDARD TERMS AND CONDITIONS</b>	<b><u>Document number</u></b>
		F 04-19(W)
		<b><u>Date Approved</u></b>
		08/11/2021

- 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 after the expiration of the mandatory SANAS retention period, , return and surrender to the Measured Entity all Confidential Information in its possession or under its control and all documents and other material containing confidential information together with all copies thereof.
- 11.3. The undertakings given by the Rating 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 Rating 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 Rating Agency by SANAS.
- 11.3.4.to the Association of B-BBEE 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 B-BBEE 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 Rating 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 Rating Agency of any of its undertakings or obligations hereunder or by its employees, officers or professional advisers, as envisaged in 11.3.4 above
- 11.5. In the event that any Confidential Information amounts to Personal Information as defined in Annexure B hereto, such information will be subject to the terms and conditions therein contained..

**12. EXCLUSION AND LIMITATION OF LIABILITY**

- 12.1. The Measured Entity hereby indemnifies and holds harmless the Rating 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 Rating 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 Rating Agency may reasonably believe to represent the Measured Entity;
- 12.1.3.any act performed by the Rating 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, save for any breach emanating from the provisions as contained in Annexure B hereto, but including without limitation, the provision of inaccurate factual information to the Rating 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 either Party (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

 <b>AQRate</b> <small>VERIFICATION SERVICES</small>	<b>APPLICATION FORM &amp; STANDARD TERMS AND CONDITIONS</b>	<b><u>Document number</u></b>
		F 04-19(W)
		<b><u>Date Approved</u></b>
		08/11/2021

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 either Party or any other person, save for any liability emanating from the provisions as contained in Annexure B hereto, and in which event, such liability will be dealt with in accordance with the provisions therein contained.

**13. SUB-CONTRACTORS**

Notwithstanding anything to the contrary contained in this Agreement, the Rating Agency shall in accordance with the requirements of SANAS be entitled to appoint sub-contractors from time to time subject to the Measured Entity's prior approval 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 Rating 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, lockdown, fire, power outages, explosion, floods, pandemics, 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) day's 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.

 <b>APPLICATION FORM &amp; STANDARD TERMS AND CONDITIONS</b>	<b><u>Document number</u></b>
	F 04-19(W)
	<b><u>Date Approved</u></b>
	08/11/2021

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 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.



**APPLICATION FORM & STANDARD TERMS AND CONDITIONS**

<b>Document number</b>
F 04-19(W)
<b>Date Approved</b>
08/11/2021

- 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. \_\_\_\_\_

**AQRATE (PTY)LTD**

who warrants that he/she is duly authorised thereto:

Signed \_\_\_\_\_ at \_\_\_\_\_ on \_\_\_\_\_

As witnesses:

- 1. \_\_\_\_\_
- 2. \_\_\_\_\_

 <b>AQRate</b> <small>VERIFICATION SERVICES</small>	<b>APPLICATION FORM &amp; STANDARD TERMS AND CONDITIONS</b>	<b><u>Document number</u></b>
		F 04-19(W)
		<b><u>Date Approved</u></b>
		08/11/2021

**ANNEXURE A**

**CONFIDENTIALITY AGREEMENT**

between

\_\_\_\_\_  
**[NAME OF MEASURED ENTITY]**  
 (Registration Number: \_\_\_\_\_)

and

**AQRATE (PTY) LTD**  
 (Registration Number: 2002/001364/07)

**1. RECITALS**

- 1.1 The Parties wish to hold discussions for the purposes of conducting the Verification Process (“the Disclosing Purpose”), during the course of which certain confidential and proprietary information will be disclosed.
- 1.2 The Parties wish to record the basis on which they will honour and protect each other’s Confidential Information.

**2. RESTRICTIONS ON DISCLOSURE AND USE**

- 2.1 Each Party agrees, insofar as it may be the Receiving Party:
  - 2.1.1 that it shall only be entitled to use the Confidential Information of the Disclosing Party for the specific purpose set out in the Disclosing Purpose, and it shall not utilize, employ, exploit or in any other manner use the Confidential Information of the Disclosing Party for any purpose other than the Disclosing Purpose;
  - 2.1.2 subject to clause 2.1.1, not disclose the Confidential Information of the Disclosing Party to any third party or publish such information in any manner, for any reason or purpose whatsoever without the prior written consent of the Disclosing Party, which consent may be withheld in the sole discretion of the Disclosing Party;
  - 2.1.3 it will restrict the dissemination of the Confidential Information of the Disclosing Party to only those of its personnel who are actively involved in the Disclosing Purpose and then only on a ‘need to know’ basis and will take all practical steps to impress upon those personnel who need to be given access to Confidential Information, the secret and confidential nature thereof;
  - 2.1.4 that any unauthorized use, publication or other disclosure of the Confidential Information of the Disclosing Party may cause irreparable loss, harm and damage to the Disclosing Party. Accordingly, the Disclosing Party hereby indemnifies and holds the Receiving Party harmless against any loss, action, expense, claim, harm or damage of whatsoever nature suffered or sustained by the Disclosing Party pursuant to:

 <b>APPLICATION FORM &amp; STANDARD TERMS AND CONDITIONS</b>	<b>Document number</b>
	F 04-19(W)
	<b>Date Approved</b>
	08/11/2021

2.1.5 a breach by the Receiving Party of the provisions of this Agreement; and

2.1.6 any unauthorized use, publication or disclosure of any Confidential Information by any of the Receiving Party's personnel.

**3. TITLE**

3.1 The Receiving Party shall acquire no right, title or interest in any information disclosed to it by the Disclosing Party pursuant to this Agreement and it shall not remove any proprietary trademarks, copyright notice or logos from material containing the Confidential Information. In addition, the Receiving Party shall further, upon written request from the Disclosing Party, add any proprietary trademarks, copyright notices or logos to such materials.

**4. STANDARD OF CARE**

4.1 Standard of Care. The Receiving Party shall protect the Confidential Information of the Disclosing Party in the same manner and with the same degree of care which a reasonable person would use to protect his own Confidential Information. Should the Receiving Party become aware of any unauthorized copying, disclosure or use of the Disclosing Party's Confidential Information, it shall immediately notify the Disclosing Party thereof in writing and, without in any way detracting from the Disclosing party's rights and remedies in terms of this Agreement, take such steps as may be reasonably necessary to prevent a recurrence thereof.

4.2 Forced Disclosure. To the extent that the Receiving Party is ordered to disclose any of the Disclosing Party's Confidential Information pursuant to a judicial or government request, requirements or order (hereafter referred to as "Forced Disclosure"), the Receiving Party shall, unless legally prohibited to do so, promptly notify the Disclosing Party thereof and take any and all reasonable steps to assist the Disclosing Party in contesting such a request, requirement or order, or otherwise take all reasonable steps to protect the Disclosing Party's rights prior to Forced Disclosure.

**5. DISCLAIMER**

5.1 The Receiving Party acknowledges that the Confidential Information may still be under development, or may be incomplete, and that such information may relate to products that are underdevelopment or are planned for development. The Disclosing Party makes no warranties regarding the accuracy of the Confidential Information.

**6. RETURN OF CONFIDENTIAL INFORMATION**

6.1 **On request.** Subject to clause 11.3 above, the Disclosing Party may request the Receiving Party to return any material containing, pertaining to, or relating to the Confidential Information of the Disclosing Party and may, in addition, request the Receiving Party to furnish a written statement to the effect that upon such return, the Receiving Party has not retained in its possession, or under its control, either directly or indirectly, any such material.

6.2 **Destruction.** Alternative to clause 6.1 and subject to clause 11.3 above, the Receiving Party shall, at the instance of the Disclosing Party, destroy such material and furnish the Disclosing Party with a written statement to the effect that such material has been destroyed.

6.3 **Compliance with request.** The Receiving Party shall comply with a request in terms of this clause 6 within 5 (five) days of receipt of such request, or such shorter period as the Disclosing Party may demand, so long as this allows the Receiving Party adequate time to comply.

**7. DURATION**

7.1 This Confidentiality Agreement shall remain in force for the duration of the mandatory SANAS retention period commencing from issue date of the B-BBEE Verification Certificate.

**8. PERSONAL INFORMATION**

8.1 Where any Confidential Information amounts to Personal Information as defined in Annexure B hereto, such information will be treated in accordance therewith.

 <b>AQRate</b> <small>VERIFICATION SERVICES</small>	<b>APPLICATION FORM &amp; STANDARD TERMS AND CONDITIONS</b>	<b><u>Document number</u></b>
		F 04-19(W)
		<b><u>Date Approved</u></b>
		08/11/2021

**ANNEXURE B**

**PROTECTION OF PERSONAL INFORMATION ACT (POPIA) OPERATOR AGREEMENT**

between

**MEASURED ENTITY (as referred to on page 1) (Responsible Party)**

*and*

**AQRATE (PTY) LTD  
(Registration No: 2002/001364/07)  
(Operator)**



 <b>APPLICATION FORM &amp; STANDARD TERMS AND CONDITIONS</b>	<u>Document number</u>
	F 04-19(W)
	<u>Date Approved</u>
	08/11/2021

**1. INTRODUCTION AND RECITAL**

- 1.1 The Protection of Personal Information Act, No. 4 of 2013 (POPIA) regulates and controls the Processing of Personal Information.
- 1.2 The Responsible Party, for the purposes of carrying out its business and related objectives, does and will from time to time, Process Personal Information belonging to living individuals and legal entities including public and private entities (hereinafter referred to as "Data Subjects"), such as Personal Information relating to employees and staff, prospective employees and job applicants, students and interns, service providers and contractors, vendors, clients customers and third parties.
- 1.3 The Responsible Party is obligated to comply with POPIA and the data protection conditions contained under POPIA in respect of the Processing of any and all Personal Information.
- 1.4 In order for the Responsible Party to pursue its business interests, to protect its legitimate interests and to manage its risks, the Responsible Party may from time to time have to disclose certain Personal Information, which it has obtained from Data Subjects, to other parties, such as the Operator.
- 1.5 In terms of section 20 of POPIA, if the Responsible Party discloses Personal Information which it has collected from a Data Subject to another Party for the purpose of further Processing on its behalf, or where the Responsible Party has appointed another Party to Process Personal Information of a Data Subject, on its behalf (such as the Operator), then any such Processing must be subject to a written agreement concluded between the Responsible Party and the Operator, which contractually obliges the Operator to comply with the provisions of POPIA, including inter alia, an undertaking to keep all the Personal Information held by the Operator on behalf of the Responsible Party confidential and secure.
- 1.6 The Responsible Party is desirous of providing the Operator with certain Personal Information, which the Responsible Party would like the Operator to Process on its behalf, and the Operator has agreed to Process the Personal Information on behalf of the Responsible Party, subject to the terms and conditions set out herein.
- 1.7 The Responsible Party hereby grants to the Operator a mandate to Process certain Personal Information, in a reasonable manner and as is necessary to complete its mandate.
- 1.8 Where the provisions of POPIA apply to the Processing of Personal Information in relation to the Verification Process, these terms and conditions shall apply to and supplement the Application Form and Standard Terms and Conditions.
- 1.9 In the event of a conflict between the provisions of this Annexure B and the Application Form and Standard Terms and Conditions, the provisions of this Annexure will take precedence with regards to aspects pertaining to any Processing of Personal Information by the Operator of any Data Subjects for the Responsible Party.

**2. DEFINITIONS**

The following definitions apply to this Annexure B, unless the context indicates a contrary meaning. The definitions outlined in the Application Form and Standard Terms and Conditions are also applicable to this Annexure B, unless the context indicates a contrary meaning or the definitions are in conflict with these below:

- 2.1 **"Annexure B"** means this operator agreement concluded between the Responsible Party and the Operator;
- 2.2 **"Data Subject"** means the Person whose Personal Information will be Processed by the Operator;
- 2.3 **"Operator"** means AQRate (Pty) Ltd with registration number: 2002/001364/07, who has been mandated by the Responsible Party to carry out the Verification Process and to Process Personal Information on behalf of the Responsible Party;
- 2.4 **"Person"** means an identifiable, living, natural person, or an identifiable, existing juristic person;
- 2.5 **"Personal Information"** means information relating to a Person, including, but not limited to:

 <b>AQRate</b> <small>VERIFICATION SERVICES</small>	<b>APPLICATION FORM &amp; STANDARD TERMS AND CONDITIONS</b>	<b><u>Document number</u></b>
		F 04-19(W)
		<b><u>Date Approved</u></b>
		08/11/2021

- a) Information relating to the race, gender, sex, pregnancy, marital status, national, ethnic, or social origin, colour, sexual orientation, age, physical or mental health, well-being, disability, religion, conscience, belief, culture, language, and birth of the Person;
  - b) Information relating to the education or the medical, financial, criminal or employment history of the Person;
  - c) Any identifying number, symbol, e-mail address, physical address, telephone number, location information, online identifier, or other assignment to the Person;
  - d) The biometric information of the Person;
  - e) The individual opinions, views, or preferences of the Person;
  - f) Correspondence sent by the Person that is implicitly or explicitly of a private or confidential nature or further correspondence that would reveal the contents of the original correspondence;
  - g) The views or opinions of another individual about the Person, and
  - h) The name of the Person if it appears with other Personal Information relating to the Person or if the disclosure of the name itself would reveal information about the Person;
- 2.6 **"Process or Processing"** means any operation or activity, or any set of operations, whether by manual or electronic means, performed by the Operator concerning a Person's Personal Information, including-
- a) The collection, receipt, recording, organisation, collation, storage, updating or modification, retrieval, alteration, consultation, or use;
  - b) Dissemination by means of transmission, distribution or making available in any other form;
  - c) Merging, linking, as well as restriction, degradation, erasure, or destruction of information;
- 2.7 **"Responsible Party"** means (INSERT NAME & REGISTRATION No. OF MEASURED ENTITY) who has mandated the Operator to Process certain Personal Information belonging to Data Subjects on its behalf, in carrying out the Verification Process, in accordance with this Agreement;
- 2.8 **"The/this Agreement"** means the Application Form and Standard Terms and Conditions together with all its annexures, including this Annexure B.

**3. COMMENCEMENT AND DURATION**

The provisions of this Annexure B shall commence on the Signature Date hereof and shall continue until terminated in accordance with clause 11 hereof.

**4. PROCESSING BY THE OPERATOR**

- 4.1 The Operator acknowledges and agrees that the Responsible Party retains all right, title and interest in and to the Personal Information and that the Personal Information shall constitute the Responsible Party's Confidential Information.
- 4.2 Unless required by law, the Operator shall Process the Personal Information only:
  - 4.2.1 in compliance with this Agreement;
  - 4.2.2 for the purposes connected with the provision of the Services to be rendered by the Operator;
  - 4.2.3 as specifically otherwise instructed or authorised by the Responsible Party in writing.

 <b>AQRate</b> <small>VERIFICATION SERVICES</small>	<b>APPLICATION FORM &amp; STANDARD TERMS AND CONDITIONS</b>	<b><u>Document number</u></b>
		F 04-19(W)
		<b><u>Date Approved</u></b>
		08/11/2021

- 4.3 If the Operator is ever unsure as to the parameters or lawfulness of the instructions issued by the Responsible Party, the Operator will, as soon as reasonably practicable, revert to the Responsible Party for the purpose of seeking clarification or further instructions.
- 4.4 The Operator shall co-operate and assist the Responsible Party in consultations with or notifications to the relevant regulatory authorities and/or Data Subjects should it become necessary.
- 4.5 The Operator shall treat the Personal Information that comes to its knowledge or into its possession as confidential and shall not disclose it, other than in accordance with the terms of the Agreement, or unless required to do so by law.
- 4.6 Without limiting the Operator's obligations under this Agreement, the Operator shall comply with the Responsible Party's data privacy and protection policies, applicable industry or professional rules and regulations, in relation to the safeguarding of Personal Information, which may apply to it and take steps to keep abreast and ensure that it complies fully with all applicable laws and regulations that are applicable to the Agreement.

**5. SECURITY**

- 5.1 The Operator shall secure the integrity and confidentiality of Personal Information provided by the Responsible Party by taking appropriate, reasonable technical and organisational measures to prevent:
  - 5.1.1 loss of damage to or unauthorised destruction of Personal Information;
  - 5.1.2 unlawful access to or Processing of Personal Information.
- 5.2 The Operator will take reasonable measures to:
  - 5.1.2.1 identify all reasonably foreseeable internal and external risks to Personal Information in its possession or under its control;
  - 5.1.2.2 establish and maintain appropriate safeguards against the risks identified;
  - 5.1.2.3 regularly verify that the safeguards are effectively implemented; and
  - 5.1.2.4 ensure that the safeguards are continually updated in response to new risks or deficiencies in previously implemented safeguards.
- 5.2 Within 5 (five) business days of a request from the Responsible Party, the Operator shall provide to the Responsible Party a written explanation and full details of the technical and organisational measures taken by or on behalf of the Operator to demonstrate and ensure compliance with this clause.

**6. SECURITY COMPROMISE**

- 6.1 The Operator shall notify the Responsible Party in writing immediately and in any event, no later than 24 (twenty-four) hours if there has been a security compromise.
- 6.2 The Operator shall as soon as reasonably possible investigate the security compromise and furnish the Responsible Party with:
  - 6.2.1 a preliminary report within 24 (twenty-four) hours from its initial notification to the Responsible Party setting out the details of the Data Subjects affected by the security compromise and the nature and extent of the security compromise; and
  - 6.2.2 daily reports on progress made at resolving the compromise.
- 6.3 The Operator shall take reasonable steps to mitigate the effects and to minimise any damage resulting from a security compromise and assist the Responsible Party in remediating or mitigating any potential damage from the breach to the extent that such remediation or mitigation is within the Operator's control as well as reasonable steps to prevent a recurrence of such a security compromise, including interviewing and the possible removal of staff from the performance of Services for the Responsible Party.

**7. OPERATOR STAFF**

The Operator shall:

- 7.1 limit the Processing of and access to the Personal Information, to those staff who need to know the Personal Information to enable the Operator to render the Verification Services;

 <b>AQRate</b> <small>VERIFICATION SERVICES</small>	<b>APPLICATION FORM &amp; STANDARD TERMS AND CONDITIONS</b>	<u>Document number</u>
		F 04-19(W)
		<u>Date Approved</u>
		08/11/2021

- 7.2 ensure that its staff will not Process Personal Information: (i) except in accordance with the provisions of this Agreement; and (ii) procure that its staff are contractually obligated to maintain the security and confidentiality of any Personal Information during and even after their engagement ends; and
- 7.3 take all reasonable steps to ensure the staff Processing Personal Information receive adequate training on compliance with this Agreement and POPIA as applicable to the Processing.

**8. ACCESS REQUESTS**

- 8.1 The Operator shall provide the Responsible Party with full cooperation and assistance in relation to any requests for access to, correction of or complaints made by the Data Subjects relating to their Personal Information.
- 8.2 The Operator shall notify the Responsible Party in writing:
  - 8.2.1 within 3 (three) business days of receipt thereof, of any request for access to or correction of the Personal Information or complaints received by the Operator relating to the Responsible Party's obligations in terms of POPIA and provide the Responsible Party with full details of such request or complaint; and
  - 8.2.2 promptly of any legally binding request for disclosure of Personal Information or any other notice or communication that relates to the Processing of the Personal Information from any supervisory or governmental body.

**9. CROSS-BORDER DATA TRANSFER**

- 9.1 It is hereby recorded and agreed that in order for the Operator to be able to fulfil its obligations in terms of the Agreement, it may be necessary for the Operator to transfer Personal Information to a third party outside of South Africa.
- 9.2 In the event of such cross-border transfer, the Operator hereby warrants and undertakes in favour of the Responsible Party that:
  - 9.2.1 it shall procure the third party's compliance with all the obligations of this Agreement insofar as the Processing of Personal Information by the third party is concerned;
  - 9.2.2 the Operator shall at all times be accountable to the Responsible Party for fulfilment of all the Operator's obligations under the Agreement and remain the Responsible Party's sole point of contact regarding the services, including payment obligations;
  - 9.2.3 the third party is prevented from further transferring Personal Information to other third parties, unless otherwise agreed;
  - 9.2.4 it shall ensure that the third party implements the appropriate technical and organisational security measures in the relevant jurisdiction in which the Personal Information is being transferred; and
  - 9.2.5 it has implemented and taken technical and organisational security measures to safeguard the security of the Personal information in-transit.

**10. LIABILITY**

The Operator indemnifies and holds the Responsible Party harmless against loss, damage, action or claim which may be brought by whomsoever against the Responsible Party or any of its directors or employees in consequence of the Operator or its employees or agents breaching:

- (a) Any of the undertakings relating to Personal Information contained under this Agreement, or;
- (b) Any of the provisions of POPIA and/or the POPIA Personal Information conditions, and which breach applies to the Personal Information which the Operator has been mandated to Process in terms of this Agreement.

**11. TERMINATION**

- 11.1 Notwithstanding anything to the contrary contained in this Agreement, the Parties shall be entitled to terminate this Agreement by mutual consent which must be recorded in writing.
- 11.2 The provisions of this clause shall not affect or prejudice any other rights/remedies which the Parties may have in law or the Agreement between the Parties.

 <b>AQRate</b> <small>VERIFICATION SERVICES</small>	<b>APPLICATION FORM &amp; STANDARD TERMS AND CONDITIONS</b>	<b><u>Document number</u></b>
		F 04-19(W)
		<b><u>Date Approved</u></b>
		08/11/2021

- 11.3 The termination of this Agreement shall not affect the rights of either of the Parties that accrued before termination of this Agreement, or which specifically survives the termination of the Agreement.
- 11.4 Should this Agreement be terminated by either Party prior to the issue date of the B-BBEE Verification Certificate, the Operator shall upon the request of the Responsible Party, return or destroy any material containing, pertaining or relating to the Personal Information disclosed pursuant to this Agreement, unless the law prohibits the Operator from doing so. In that case, the Operator agrees that it will maintain the confidentiality of the Personal information and will not Process the Personal information any further.
- 11.5 Should this Agreement be terminated by either of the Parties subsequent to issuing of the B-BBEE Verification Certificate, the Operator shall return or destroy any material containing, pertaining or relating to the Personal Information disclosed pursuant to this Agreement upon expiration of the mandatory documentation retention period as required by SANAS or by applicable legislation.
- 11.6 The Parties agree that the termination of this Agreement at any time, in any circumstances and for whatever reason does not exempt them from the obligations and/or conditions set out under this Agreement with regards to the Processing of the Personal Information.

**12. WAIVER**

- 12.1 Failure or delay by either Party in exercising any right will not constitute a waiver of that right.
- 12.2 No waiver of any right under this Agreement will be binding unless reduced to writing and signed by the Party waiving the right.

**13. SEVERABILITY**

If any part of this Agreement is found to be invalid or unenforceable, it shall be severed from the remainder of this Agreement, which shall remain valid and enforceable.

**14. CESSION AND DELEGATION**

The Operator may not cede its rights or delegate its obligations in terms of this Agreement, without the prior written consent of the Responsible Party, which consent shall not be unreasonably withheld.

**15. NON-VARIATION**

The Parties may not modify the provisions of this Agreement, unless such variation is reduced to writing and signed by the Parties.

**16. GOVERNING LAW**

This Agreement and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed exclusively in accordance with South African law, regardless of where the Personal Information is, will be or was Processed.