

TERMS & CONDITIONS

IN TERMS OF SECTION 11(3) OF THE ELECTRONIC COMMUNICATIONS AND TRANSACTIONS (ECT) ACT 25 OF 2002, THESE TERMS AND CONDITIONS ARE BINDING AND ENFORCEABLE AGAINST ALL PERSONS THAT ACCESS **the dti** B-BBEE WEBSITE, **the dti** B-BBEE ONLINE TOOLKIT, OR ANY PART THEREOF. IF YOU DO NOT AGREE TO THESE TERMS AND CONDITIONS YOU MUST LEAVE **the dti** B-BBEE WEBSITE IMMEDIATELY, AS FURTHER USE WILL AUTOMATICALLY BIND YOU TO THESE TERMS AND CONDITIONS.

DEFINITIONS AND INTERPRETATION

- a) "**the dti**" means the Department of Trade and Industry, its employees, and B-BBEE website technology service providers
- b) "agents" means B1SA BEE Software Management Solutions Pty Ltd
- c) "dti website" means **the dti** B-BBEE Website located at <http://bee.thedti.gov.za> and referenced by www.thedti.gov.za and includes any part or element thereof, and specifically includes **the dti** Online B-BBEE Toolkit web application, which use is offered under license by the terms of this agreement;
- d) "User" means any person who enters or uses **the dti** B-BBEE Website or **the dti** Online B-BBEE Toolkit, notwithstanding the fact that such a person only visited the home page of **the dti** B-BBEE website;
- e) References herein to the singular include the plural and vice versa; and
- f) Notwithstanding the fact that hyperlinks in these terms and conditions to copyright notices and legislation should be deemed part of these terms and conditions in terms of section 11 of the ECT Act, the fact that some or all of the hyperlinks may be non-operational, shall not play a role in determination of the validity and interpretation of these terms and conditions.

1. GENERAL

the dti provides B-BBEE regulatory oversight, and its agents provide under license the technology and infrastructure, services and solutions used in **the dti** B-BBEE Website and **the dti** B-BBEE Online Toolkit web application.

2. ALLOWED USE AND LICENSE

- 2.1. **the dti** licenses the User to view, download and print the content of **the dti** B-BBEE website, provided that such content is used for personal, educational and/or non-commercial purposes only;
- 2.2. Content from **the dti** B-BBEE website shall not be used or exploited by Users for any commercial and non-private purposes in the absence of prior written consent of **the dti**;
- 2.3. Users may only access and use **the dti** B-BBEE website for lawful purposes;
- 2.4. The caching of **the dti** B-BBEE website shall only be allowed if:

2.4.1. The purpose of the caching is to make the onward transmission of the content from **the dti** B-BBEE website more efficient;

2.4.2. The cached content is not modified in any manner whatsoever;

2.4.3. The cached content is updated at least every 12 (twelve) hours; and

2.4.4. The cached content is removed or updated when so required by **the dti**.

2.5. If any User uses content from **the dti** B-BBEE website in breach of the provisions detailed herein:

2.5.1. **the dti** reserves the right to claim damages from the User;

2.5.2. **the dti** reserves the right to institute criminal proceedings against the User; and

2.5.3. dti shall not be liable, in any manner whatsoever, for any damage, loss or liability that resulted from the use of such content by the User or any third party who obtained any content from the User.

2.6. Hyperlinks to **the dti** B-BBEE website from any other source shall be directed at the home page of **the dti** website. **the dti** shall not be liable, in any manner whatsoever, for any damage, loss or liability that resulted from the use of content from **the dti** B-BBEE website, if such content was accessed through a hyperlink not directed at the home page of **the dti** B-BBEE website. Persons that wish to link to content beyond the home page of **the dti** B-BBEE website shall do so at their own risk and indemnify **the dti** against any loss, liability or damage that may result from the use of content from **the dti** B-BBEE website, if such content was accessed through a hyperlink not directed at the home page of **the dti** B-BBEE website;

2.7. No person may frame **the dti** B-BBEE website, in any manner whatsoever, without the prior written consent of dti;

2.8. Apart from bona-fide search engine operators and use of the search facility provided on **the dti** B-BBEE website by Users, no person may use or attempt to use any technology or applications (including web crawlers or web spiders) to search or copy content from **the dti** B-BBEE website for any purposes, without the prior written consent of dti; and

2.9. All licenses and/or permissions granted in terms of this clause 2 are provided on a non-exclusive and non-transferable basis and may be terminated or cancelled by dti at any time without giving reasons therefore.

3. INTELLECTUAL PROPERTY RIGHTS AND DOMAIN NAME USE

All intellectual property on **the dti** B-BBEE website, including but not limited to content, trademarks, domain names, patents, design elements, software, databases, text, graphics, icons and hyperlinks are the property of or licensed to **the dti** or its agents and as such, are protected from infringement by domestic and international legislation and treaties. Subject to the rights licensed to the User in clause 2, all other rights to intellectual property on **the dti** B-BBEE website are expressly reserved.

4. SOFTWARE AND EQUIPMENT

It is the responsibility of the User to acquire and maintain, at his/her own expense, the computer hardware, software, lines and access accounts required to access the Internet and **the dti** B-BBEE website and/or download content from this website.

5. DISCLOSURES REQUIRED BY SECTION 43 OF THE ECT ACT

Access to the services, content, software and content downloads available from **the dti** B-BBEE website is classified as “electronic transactions” in terms of the ECT Act and therefore Users have the rights detailed in Chapter 7 of the ECT Act and dti has the duty to disclose the following information:

5.1. The full name and legal status of the website owner: Department of Trade and Industry (**the dti**);

5.2. VAT registration number: Not Applicable

5.3. The website address of **the dti** website is: <http://bee.thedti.gov.za> and <http://beenetwork.thedti.gov.za>;

5.4. Membership of self-regulatory or accreditation bodies: Not Applicable

5.5. Alternative dispute resolution: Subject to urgent and/or interim relief, all disputes regarding:

5.5.1. access to **the dti** website;

5.5.2. the inability to access **the dti** website;

5.5.3. the services and content available from **the dti** website; or

5.5.4. these terms and conditions shall be referred to arbitration in terms of the expedited rules of the Arbitration Foundation of South Africa and such arbitration proceedings shall be conducted in Pretoria in English. The arbitration ruling shall be final and the unsuccessful party shall pay the costs of the successful party on a scale as between attorney and own client.

5.6. The costs associated with the access and use of **the dti** website, including **the dti** self assessment calculator, but specifically excluding **the dti** Management Information System and/or any pay transactions optionally entered into by the User: Free;

5.7. Cooling-off period: In terms of the operation of section 42(1)(d) of the ECT Act, the cooling-off provisions of the ECT Act do not apply to this web site; and

5.8. Users may lodge complaints concerning **the dti** website at support@dti.co.za. Users hereby assign the copyright in such complaints to **the dti** and understand that **the dti** may use, disclose and publish such

complaints and is furthermore under no legal duty to answer, address or resolve such complaints.

6. CHANGES AND AMENDMENTS

- 6.1. **the dti** expressly reserves the right, in its sole and absolute discretion, to do any of the following, at any time without prior notice:
- 6.2. change these terms and conditions;
- 6.3. change the content and/or services available from **the dti** B-BBEE website;
- 6.4. discontinue any aspect of **the dti** B-BBEE website or service(s) available from **the dti** website; and/or
- 6.5. change the software and hardware required to access and use dti B-BBEE website.

7. PRIVACY

- 7.1. **the dti** shall take all reasonable steps to protect the personal information of Users and for the purpose of this clause, "personal information" shall be defined as detailed in the Promotion of Access to Information Act 2 of 2000 (PAIA);
- 7.2. **the dti** may electronically collect, store and use, amongst other, the following personal information of Users:
 - 7.2.1. name and surname;
 - 7.2.2. contact details;
 - 7.2.3. non-personal browsing habits and click patterns;
 - 7.2.4. e-mail address; and
 - 7.2.5. IP address.
 - 7.2.6. Information pursuant to the measurement of B-BBEE as facilitated by **the dti** B-BBEE website and **the dti** B-BBEE Online Toolkit
- 7.3. **the dti** collects, stores and uses the abovementioned information for the following purposes:
 - 7.3.1. communicate requested information to the User;
 - 7.3.2. registration and / or authentication of Users; and

7.3.3. to compile non-personal statistical information about browsing habits, click-patterns, access to **the dti** B-BBEE website and consolidated B-BBEE information;

7.4. Information detailed above is provided voluntarily by the User.

7.5. **the dti** may collect, maintain, save, compile, share, disclose and sell any information collected from users, subject to the following provisions:

7.5.1. **the dti** shall not disclose personal information from Users unless the User consents thereto;

7.5.2. **the dti** shall disclose information without the User's consent only through due legal process; and

7.5.3. **the dti** may compile, use and share any information that does not relate to any specific individual; and

7.5.4. **the dti** owns and retains all rights to non-personal statistical information collected and compiled by dti.

8. HYPERLINKS TO THIRD PARTY SITES

8.1. **the dti** may provide hyperlinks to websites not controlled by **the dti** (target sites) and such links do not imply any endorsement, agreement on or support for the content of such target sites; and

8.2. **the dti** does not editorially control the content on such target sites and shall not be liable, in any manner whatsoever, for the access to, inability to access or content available on or through such target sites.

9. SECURITY

9.1. dti and its agents have taken all reasonable steps to secure the content of **the dti** website and database and the information provided by and collected from Users from unauthorised access and/or disclosure. However, **the dti** does not make any warranties or representations that content shall be 100% safe and secure;

9.2. Although **the dti** encrypt and digitally authenticate access to certain parts of **the dti** B-BBEE website and **the dti** B-BBEE online Toolkit, **the dti** is under no legal duty to encrypt any content or communications from and to **the dti** website and is also under no legal duty to provide digital authentication of any page on **the dti** website;

9.3. Users may not deliver or attempt to deliver, whether on purpose or negligently, any damaging code, such as computer viruses, to dti website or the server and computer network that support dti website;

9.4. Notwithstanding criminal prosecution, any person who delivers any damaging code to **the dti** website, whether on purpose or negligently, shall, without any limitation, indemnify and hold dti harmless against any and all liability, damages and losses dti and its agents may suffer as a result of such damaging code;

9.5. Users may not develop, distribute or use any device to breach or overcome the security measures of **the dti** website and dti reserves the right to claim damages any and all persons concerned with a security failure or breach; and

9.6. Any User who commits any of the offences detailed in sections 85 to 88 of the ECT Act shall, notwithstanding criminal prosecution, be liable for all resulting liability, loss or damages suffered and/or incurred by **the dti** and its agents.

10. DISCLAIMER AND LIMITATION OF LIABILITY

10.1. Subject to the provisions of sections 43(5) and 43(6) of the ECT Act, if applicable, and as far as allowed by law, **the dti** (including its employees, suppliers, Internet service providers, partners, affiliates and agents and subcontractors covered by principle contract with **the dti**) shall not be liable for any damage, loss or liability of any nature incurred by whomever and resulting from:

10.1.1. access to **the dti** B-BBEE website;

10.1.2. access to websites linked to **the dti** B-BBEE website;

10.1.3. inability to access **the dti** B-BBEE website;

10.1.4. inability to access websites linked to **the dti** B-BBEE website;

10.1.5. content available on **the dti** B-BBEE website;

10.1.6. services available from **the dti** B-BBEE website;

10.1.7. downloads and use of content from **the dti** B-BBEE website; or

10.1.8. any other reason not directly related to **the dti**, or its agents', gross negligence.

10.2. **The dti** B-BBEE website is supplied on an "as is" basis and has not been compiled to meet the User's individual requirements. It is the responsibility of the User to satisfy himself or herself, prior to entering into this agreement with **the dti**, that the content available from and through **the dti** B-BBEE website meets the User's individual requirements and is compatible with the User's computer hardware and/or software;

10.3. Information, ideas and opinions expressed on **the dti** website should not be regarded as professional advice or the official opinion of **the dti** and Users are encouraged to seek professional advice before taking any course of action related to the information, ideas or opinions expressed on **the dti** website;

10.4. **the dti** does not make any warranties or representations that content and services available from **the dti** B-BBEE website will in all cases be true, correct or free from any errors. **The dti** shall take all reasonable steps to ensure the quality and accuracy of content available from dti B-BBEE website and encourages Users to report incorrect and untrue information subject to the right of **the dti** to rely on its free expression rights and determine, in its sole and absolute discretion, the contents of this website;

10.5. **the dti** does not make any warranties or representations that **the dti** B-BBEE website shall be available at all times. Users acknowledge that **the dti** B-BBEE website may be unavailable due to updates or other causes beyond the reasonable control of dti, including, but not limited to virus infection, unauthorised access, power failure or other “acts of God.”

11. REMOVAL AND CORRECTION OF CONTENT

Users are encouraged to report untrue, inaccurate, defamatory, illegal, infringing and/or harmful content available from **the dti** B-BBEE website to **the dti** and **the dti** undertakes to correct and/or remove such content or any part thereof if the person reporting such content provided reasonable grounds to prove the alleged nature of the content.

12. INTERCEPTION OF COMMUNICATIONS

12.1. Subject to the provisions of the Regulation of Interception of Communications (RIC) Act 70 of 2002, the User agrees to **the dti**'s right to intercept, block, filter, read, delete, disclose and use all communications sent or posted by the User to **the dti** website, its staff and employees; and

12.2. The User agrees and acknowledges that the consent provided by the User in clause 12.1 satisfies the “writing” requirement as detailed in the ECT Act and the RIC Act.

13. ENTIRE AGREEMENT AND SEVERABILITY

13.1. These terms and conditions constitute the entire agreement between **the dti** and the User and shall take precedence over any disclaimers and/or legal notices attached to any communications and/or postings received by **the dti** from the User;

13.2. Any failure by **the dti** to exercise or enforce any right or provision shall in no way constitute a waiver of such right or provision; and

13.3. In the event that any term or condition detailed herein is found unenforceable or invalid for any reason, such term(s) or condition(s) shall be severable from the remaining terms and conditions. The remaining terms and conditions shall remain enforceable and applicable.

14. AGREEMENT IN TERMS OF SECTION 21 OF THE ECT ACT

The User and **the dti** agree that:

14.1. The User shall be bound to these terms and conditions and such agreement is concluded in Pretoria (South Africa) at the time the User enters **the dti** B-BBEE website for the first time;

14.2. Data messages (as defined in the ECT Act) addressed by the User to **the dti** shall only be deemed to have been received if and when responded to;

14.3. Data messages (as defined in the ECT Act) addressed to the User by **the dti** shall be deemed to be received by the User as detailed in section 23(b) of the ECT Act;

14.4. Data messages (as defined in the ECT Act) addressed by the User to **the dti** shall be deemed to have been created and sent by the User from within the geographical boundaries of South Africa;

14.5. Electronic signatures, encryption and/or authentication is not required for valid electronic communications between the User and **the dti**; and

14.6. The User agrees and warrants that data messages that are sent to **the dti** from a computer, IP address or mobile device normally used by or owned by the User, was sent and/or authorised by the User personally.

15. APPLICABLE AND GOVERNING LAW

the dti B-BBEE website is hosted, controlled and operated from the Republic of South Africa and therefore the South African law enforced by the South African courts governs the use or inability to use **the dti** B-BBEE website, its content, services and these terms and conditions.

16. LEGAL COSTS

the dti, its agents and suppliers, shall not be liable for costs incurred by Users to obtain professional advice relating to these terms and conditions.

17. REFUNDS POLICY

In instances where levies or administration fees are charged to the User, such fees will only be refunded in the event of a material breach in service outcomes and where there is failure to remedy such breach within 14 days of having received written notice of breach. In such cases, the Agents may refund the User within a period of 30 days from the initial transaction date.