

XCELERATE VERIFICATION AGENCY VERIFICATION AGREEMENT

1. Standard Terms and Conditions

The standard terms and conditions listed below pertain to the Verification Agreement between Xcelerate Verification Agency (Pty) Ltd and the Measured Entity. This Agreement is valid for the duration of the Verification Service and for the 12 months thereafter during the Verification Certificate validity period.

2. Definitions

- 2.1 "BEE" means Broad-Based Black Economic Empowerment as defined in the Broad-Based Black Economic Empowerment Act No. 53 of 2003, and any other applicable black economic empowerment legislation, policies or charters.
- 2.2 "Xcelerate" means Xcelerate Verification Agency (Pty) Ltd (Registration number 2016/294904/07) of Suite 3A The Ridge, Torsvale Office Park, 8 Torsvale Crescent, La Lucia Ridge, Durban – previously known as Izikhulu BEE Ratings.
- 2.3 "Measured Entity" means the business applying for a verification or assessment service from Xcelerate, and who has accepted this Agreement by initialling each page and signing on the last page of this document.
- 2.4 "Parties" means Xcelerate and the Measured Entity.
- 2.5 "Verification Process" means the process mapped by Xcelerate for the Parties to follow to obtain an ordered and successful Verification Service.
- 2.6 "Verification Service" means the services provided by Xcelerate culminating in the provision of a verification certificate officially stating the BEE status of the Measured Entity.

3. General Obligations of Xcelerate

- 3.1 Xcelerate shall, subject to the payment as stipulated in Clause 6 below, the signed acceptance of this Agreement by the Measured Entity and the required information provided by the Measured Entity, provide an annual/initial evaluation of the Measured Entity's adherence to BEE culminating in the provision of a written report and a verification certificate to the Measured Entity.
- 3.2 In providing the Verification Service, Xcelerate shall comply with the relevant BEE legislation, policies and charters issued by the Department of Trade and Industry.
- 3.3 Xcelerate shall not be obliged in any circumstances to update any reports or verification certificate for events occurring after these reports and certificates have been issued in final form. Should updates be required, the Measured Entity would need to re-apply to Xcelerate.
- 3.4 Xcelerate reserves the right to finalise a Verification Service to a Measured Entity based only on information submitted should the Verification Process continue for longer than 60 days due to delays caused by the Measured Entity.
- 3.5 Xcelerate may, unless otherwise stated in writing by the Measured Entity, rely on written requests, instructions, information or any other notices by a person known or deemed to be authorised by the Measured Entity to liaise with Xcelerate.
- 3.6 Xcelerate cannot perform a verification service for any Measured Entity that its associate company, BEE Insight (Pty) Ltd has consulted to for a period of 2(two) years after the BBEE consulting service was completed.

4. General Obligations of the Measured Entity

- 4.1 The Measured Entity shall timeously provide Xcelerate with all required personnel, information and documents as per stipulated timeframes and conform to the requirements for verification as stated in the proposal. It is the responsibility of the Measured Entity to facilitate information required from third parties.
- 4.2 The Measured Entity hereby undertakes to comply with the following:
- 4.2.1 Conforms to the requirements of Xcelerate when making reference to its verification status in communication media such as the internet, documents, brochures or advertising;
- 4.2.2 Does not make or permit the use of any misleading statement regarding its BEE score;
- 4.2.3 Does not use or permit the use of a BEE verification certificate or any part thereof in a misleading manner;
- 4.2.4 Does not use its verification status in such a manner that would bring Xcelerate in disrepute and lose public trust;
- 4.2.5 Reproduces any verification report only in full.

- 4.3 The Measured Entity hereby warrants that all information supplied to Xcelerate in terms of this agreement, whether by the Measured Entity or a representative of the Measured Entity is factually accurate and can be relied on as such when conducting the Verification Service.
- 4.4 In the event that incorrect or fraudulent information is submitted to Xcelerate by the Measured Entity or their representative(s), Xcelerate has the right to terminate this agreement with immediate effect at any stage of the Verification Process without refund, cancel the issued verification certificate without refund, and report such entities to the Department of Trade & Industry.
- 4.5 The Measured Entity hereby undertakes that it shall place no reliance on interim advice or reports, and acknowledges that the only binding documents it may place reliance on are the final report and verification certificate issued by Xcelerate to the Measured Entity at the end of the Verification Service.
- 4.6 The Measured Entity shall not cede, delegate or assign any or all of its rights or obligations in terms of this agreement without first obtaining the prior written consent of Xcelerate.
- 4.7 The Measured Entity is required to retain documents used for the Verification Process for a minimum period of five (5) years.
- 4.8 By signing this document, the Measured Entity hereby officially engages Xcelerate in line with the quote prepared, and is liable for the whole amount unless this Agreement is terminated.
- 4.9 In the event of the Measured Entity cancelling an audit appointment, the Measured Entity undertakes to inform Xcelerate at least 72 hours before the appointment. Should this notice period be any less than 72 hours or if the Measured Entity re-schedules more than once, Xcelerate has the right to impose a penalty equal to the costs incurred to meet the appointment.
- 4.10 The Measured Entity undertakes to provide all required information by the period stated in the Verification Checklist, and/or negotiated with Xcelerate. Should this not occur, Xcelerate reserves the right to terminate this agreement and all monies paid until that point forfeited.
- 4.11 The Measured Entity undertakes to replace their original certificate with an updated version of their certificate should the previous version(s) be withdrawn for any number of reasons such as, inter alia, re-evaluation, errors, and incorrect submitted information. The previous version(s) will be deleted both physically and electronically and recalled from third parties where possible.
- 5. Rights of the Measured Entity**
- 5.1 The Measured Entity, or the users of the verification results, has the right to lodge an appeal or complaint against Xcelerate within 7(seven) days of the issue of the verification result in question. The procedure followed is detailed in Handling of Appeals IC-P02 or Handling of Complaints IC-P14 that can be obtained directly from Xcelerate.
- 5.2 The Measured Entity has the right to terminate this Agreement in accordance with Clause 12 below.
- 6. Payment**
- 6.1 Measured Entities shall make payment to Xcelerate in line with the payment terms listed in the proposal. Any remaining costs for additional services, travel expenses as well as any other expenses that may be incurred during the Verification Service as agreed to by the Parties shall be payable prior to the verification audit. The final report and verification certificate will not be issued until full payment has been received.
- 6.2 All fees are to be paid directly into the bank account of Xcelerate Verification Agency (Pty) Ltd.
- 6.3 In the event that Xcelerate needs to instruct attorneys to collect from the Measured Entity any amount owing to Xcelerate, the Measured Entity agrees to pay all attorney costs and collection charges and commissions.
- 6.4 Quotes are prepared according to standard sampling techniques and the business information provided upfront by the Measured Entity. Should samples be found to be defective, or information provided upfront factually inaccurate, Xcelerate reserves the right to increase the number of hours required to complete the Verification Service.
- 6.5 Should the Measured Entity require the rating to be expedited in shorter than the standard turnaround times stated in the proposals, the Measured Entity is liable for an additional 20 - 30% of the fee structure.
- 7. Employees/Sub-contractors**
- 7.1 The Measured Entity agrees not to make any offer of employment to or employ any staff of Xcelerate providing the Verification Service, and similarly Xcelerate undertakes not to make any offer of employment or employ any staff of the Measured Entity during the provision of the Verification Service.
- 7.2 Xcelerate shall have the right to appoint suitable sub-contractors to assist in the delivery of the Verification Service.

8. Confidentiality

- 8.1 In the course of the Verification Service, Xcelerate may acquire knowledge of sensitive information concerning the Measured Entity that it undertakes to treat as confidential and not disclose to third parties unless written consent to do so is received by the Measured Entity. This information does not include that which the Measured Entity itself makes publicly available. This clause does not apply where disclosure is a requirement by law or Xcelerate's professional advisors or on requests by the South African National Accreditation System (SANAS), ABVA or the Department of Trade & Industry (DTI),
- 8.2 The SANAS regulation R47-01 requires that Xcelerate make publicly accessible information about the BEE status level granted to the Measured Entity. It also requires that Xcelerate provide the DTI with this BEE status level. The national association, ABVA, also requests BEE certificates to load onto its database for access by the public.
- 8.3 The Measured Entity and its representatives agrees to keep confidential all methodologies, tools, processes and other intellectual property used by Xcelerate to carry out the Verification Service, and shall not be copied or disclosed to a third party without the written consent of Xcelerate.

9. Ownership

Xcelerate shall retain ownership of the copyright, design, trademark and all other intellectual property rights of all products of the Verification Service, whether tangible or intangible.

10. Exclusions and Limitation of Liability

- 10.1 The Measured Entity hereby indemnifies Xcelerate against all and any liability that may arise as a result of:
- 10.1.1 any loss or damage suffered by the Measured Enterprise or a third party pertaining to the Verification Service provided by Xcelerate in terms of this agreement.
 - 10.1.2 the factual inaccuracy of any information supplied by the Measured Entity or by any person representing the Measured Entity.
 - 10.1.3 any breach by the Measured Entity of its obligations under this agreement
 - 10.1.4 any claims made or threatened by a third party which arises from or are connected with a breach referred to in clause 10.1.3 above.
- 10.2 Notwithstanding anything to the contrary contained in this agreement, the liability of Xcelerate (or any member, employee or agent thereof) in respect of any claim arising out of this agreement or related to the Verification Service provided to the Measured Entity in terms of this agreement, shall be limited to the fees payable in accordance with the upfront quote to the Measured Entity, and shall not include any liability for any indirect or consequential loss or damages incurred by the Measured Entity or any other person.

11. Force Majeure

Should any Party be unable to comply with this agreement as a result of a cause beyond their reasonable control, neither Party shall be in breach of their contractual obligations nor incur any liability to the other Party. In the event of such an occurrence affecting one Party, that Party shall be obliged to notify the other as soon as reasonably practicable. The other Party shall then have the option of suspending or terminating the Verification Service.

12. Termination/Breach

- 12.1 Either Party may terminate this agreement by giving 14 (fourteen) days due notice to the other in writing. Termination shall be without prejudice to all rights which have accrued to either Party prior to the termination thereof. All monies due (whether in the form of fees or disbursements) shall become payable in full upon date of termination, and Xcelerate shall be entitled to issue an invoice for an amount covering all unbilled fees pertaining to the Verification Service already conducted, whether in part or full.
- 12.2 If either of the Parties commits a breach of this agreement ("defaulting party") and/or fails to comply with the provisions hereof, then the other against whom the breach is committed ("innocent party") shall be entitled to give the defaulting party 14 (fourteen) days notice in writing to remedy such breach. Should the defaulting party fail to comply with such notice then the innocent party shall forthwith be entitled, without prejudice to any other rights or remedies which the innocent party may have in law, including the right the right to claim damages:
- to cancel this agreement; or
 - to claim immediate performance and/or payment of all the obligations of the defaulting party in terms hereof.

13. General

- 13.1 This agreement supercedes all prior agreements entered into between the parties relating to the subject matters thereof.
- 13.2 This agreement constitutes the sole record of agreement between the Parties relating to the subject matter thereof. Any additions, variations or termination to this agreement shall be deemed in force or affect only if it is in writing and signed by the Parties.
- 13.3 This agreement shall not create nor give rise to, nor shall it be intended to create or give rise to any third party rights.
- 13.4 No relaxation or indulgence which any Party may grant to any other shall constitute a waiver of the rights of that Party, and shall not preclude that Party from exercising any rights which may have arisen in the past or which might arise in the future.
- 13.5 All provisions of this agreement shall be severable and no provision shall be affected by the invalidity of any other provisions of this agreement.
- 13.6 Each party consents in terms of Section 45 of the Magistrates Court Act of 1944 to the jurisdiction of the magistrates court in respect of any proceedings on this Agreement.
- 13.7 Xcelerate reserves the right to report any circumvention of the Codes or fronting practices to the Department of Trade & Industry.
- 13.8 Xcelerate has the right to use comments made by the Measured Entity in their marketing material without express permission to do so.

14. Notices and Domicilia

- 14.1 Each Party chooses as its address for the purposes of giving any notice, serving any process or any other communications of whatsoever nature arising from this agreement, those stipulated in Clause 2.2 and Clause 15 of this agreement.
- 14.2 Any Party may by written notice to the other Party change it's chosen address to another physical address in the Republic of South Africa.
- 14.3 Any document to a Party contained in a correctly addressed envelope and delivered by hand to a responsible person during normal business hours at it's chosen address shall be deemed to have been received on the date of delivery.
- 14.4 Where, in terms of this agreement any communication is required to be in writing, the term "writing" shall include communications by facsimile, and shall be considered to be adequate notice.

15. Acceptance

Measured Entity:

Signed at _____ on this ____ day of _____ 20__

For and on behalf of _____ (Measured Entity)

of _____

_____ (Physical Address) by _____

_____ (Signature) (Name) who warrants that he/she is
duly authorised thereto

Xcelerate:

Signed at _____ on this ____ day of _____ 20__

For and on behalf of Xcelerate by _____
(Verification Manager) who warrants his/her authority hereto