

Online Registration System Terms and Conditions

Terms & Conditions

1. INTERPRETATION

In this agreement unless the context indicates a contrary meaning:

- 1.1. a natural person shall include an legal person and vice versa;
- 1.2. any gender shall include the other genders;
- 1.3. the singular shall include the plural and vice versa;
- 1.4. the headings to "this Agreement" are used for the sake of convenience and shall not govern the interpretation of any of the provisions to which they relate;
- 1.5. where figures are referred to in numerals and in words, if there is any conflict between the two, the words shall prevail.

2. DEFINITIONS

Unless the context indicates otherwise;

- 2.1. **ACTION DATE** – means the date on which the payment and/or value becomes effective, being the date on which the relevant bank passes the entry in its books certifying that it has received the amounts from the CLIENT;
- 2.2. **APS** – means the Automated Payments System which is an Online payments and related services system owned by BDB Data Bureau (Pty) Ltd;
- 2.3. **BANK** – means any bank registered in terms of the Banks Act, 1990 as amended;
- 2.4. **BANKSERV** - means the South African Bankers Services Company Limited (previously Automated Clearing Bureau (Pty) Limited) ("ACB");
- 2.5. **BDB** – means BDB Data Bureau (Pty) Ltd a private company incorporated in the Republic of South Africa, with company registration number 1977/000748/07;
- 2.6. **BDB's ACCOUNT** - means the bank account of BDB Data Bureau (Pty) Ltd into which the CLIENT will pay the necessary amounts to fund payments to be processed.
- 2.7. **BUSINESS DAY** – means a day other than a Saturday, Sunday and a public holiday in the Republic of South Africa;
- 2.8. **CLIENT ACCOUNT** – means the bank account details as provided by the CLIENT;
- 2.9. **COMPANY REPRESENTATIVE** – means the person Authorised by the CLIENT to give instructions in terms of this Agreement to BDB, which authorisation BDB shall be entitled to assume exists;
- 2.10. **CUSTOMISED OUTPUT** – means reports, plans, diagrams, schematics, flow charts, studies, software programs and all other documentation and information or products prepared by BDB uniquely for the CLIENT in connection with the provision of SERVICES or as requested by the CLIENT;
- 2.11. **EFT** – means Electronic Funds Transfer;
- 2.12. **FICA** – means the Financial Intelligence Centre Act, No 38 of 2001;
- 2.13. **INPUT** – means the data or assistance that BDB requires from the CLIENT to perform the service effectively and timeously;
- 2.14. **INSTRUCTIONS** - means the instructions provided by the CLIENT and/or its Company Representative by means of the APS to BDB in relation to performing certain Online services on behalf of the CLIENT;
- 2.15. **INTELLECTUAL PROPERTY** - means all patents, trade marks, service marks, source codes, inventions, design rights, copyright, know-how, trade or business names and other similar rights and obligations, whether registered or application for registration thereof has been made;
- 2.16. **MEDIUM** - means any computer hardware, software, paper and electronic methods, including direct links and the Internet, upon which information shall be supplied and data transfer to and by BDB to and from the CLIENT;
- 2.17. **ONLINE SERVICES** – means any service provided by BDB to the CLIENT via an internet connection on APS.

- 2.18. **ONLINE REGISTRATION** – means registering or applying for the Online services offered by BDB via APS, by means of the Online Registration SYSTEM;
- 2.19. **ONLINE REGISTRATION SYSTEM** – means the Online system provided by BDB to enable electronic application for BDB Online services and electronic submission of most if not all required documentation;
- 2.20. **OUTPUT** – means documentation, including account statements, created as a result of the use of the Service as agreed upon between the Parties from time to time, excluding CUSTOMISED Outputs;
- 2.21. **PARTIES**- means the CLIENT and BDB and PARTY shall have a corresponding meaning;
- 2.22. **PRIME RATE** – means the publicly quoted prime rate of interest ruling from time to time expressed as a rate per annum at which ABSA Bank Limited lends on overdraft to customers as certified by any manager of that bank whose authority and appointment need not be approved;
- 2.23. **QUOTATION** – means the official quotation for each service applied for by the CLIENT during the registration process;
- 2.24. **SERVICE** – means the services to be provided by BDB to the CLIENT whereby BDB, on receipt by it of the CLIENT's Instructions performs certain Online services on behalf of the CLIENT;
- 2.25. **SERVICE FEE** – means the remuneration due to BDB as agreed to between the parties, for providing the Service;
- 2.26. **SETTLEMENT AMOUNT** - means the amount received by BDB from the CLIENT to be processed by BDB as per the CLIENT's instructions;
- 2.27. **SOFTWARE** - means any computer software developed or purchased by BDB or licensed to BDB as well as customisation of such Software utilised by BDB in order to provide the Service.

3. **PROVISION AND NATURE OF THE SERVICE**

- 3.1. BDB shall provide the Services to the CLIENT whereby BDB on receipt by it of the CLIENT's Instructions shall perform certain Online services on behalf of the CLIENT.
- 3.2. The CLIENT acknowledges and accepts that it will only gain access to the service if it has the necessary medium specified by BDB from time to time, of which the cost associated to obtain the medium will be for the CLIENT's account.
- 3.3. In the event that alterations to the software are required to enable BDB to render its service, the CLIENT will allow BDB a reasonable period of time to render such support to effect such changes, if required by the CLIENT.
- 3.4. In the event that the CLIENT elects to establish a direct (data) line/link to BDB, any loss and/or maintenance of the line/link shall be for the CLIENT's own account.
- 3.5. The CLIENT acknowledges and accepts that it will only gain access to the specific Online service selected during the registration process on completion of the necessary documents relating to the specific Online service.
- 3.6. **The CLIENT authorises BDB and/or its appointed service providers to carry out the necessary credit, verification and reference checks which might be required;**
- 3.7. The CLIENT acknowledges and accepts it is responsible for the accuracy and correctness of all information provided during the registration process;
- 3.8. The CLIENT understands that BDB delivers these Online services based on the input and instructions provided by the CLIENT and holds BDB in no way responsible for any incorrect payments or information supplied via APS, due to incorrect/inaccurate input or instructions.
- 3.9. Notwithstanding any provision in this Agreement or Online service agreements, the CLIENT must ascertain telephonically that BDB has in fact received any communications which the CLIENT may have faxed or e-mailed to them.

4. **TARIFFS AND FEES**

- 4.1. Service fees are payable per the specific Online service chosen by the client.

- 4.2. Online registration is free of charge.
- 4.3. In respect of the Service/s rendered to the CLIENT by BDB, the CLIENT undertakes to pay those tariffs and fees, calculated in accordance with the formula and at the times and frequencies fully set out in the quotation to be accepted by the CLIENT during the registration process.
- 4.4. The tariffs and fees set out in quotation do not include levies, stamp duties or taxes.
- 4.5. BDB service fees are payable on date of service provision.
- 4.6. In the event that any fees and tariffs are not paid timeously, such outstanding amount due to BDB by the CLIENT shall bear interest at the prime rate plus 2% calculated daily from the day that fees and tariffs become due and payable until the day of final payment to BDB.
- 4.7. The CLIENT hereby agrees and undertakes to make payment to BDB in full, without deduction or set-off whatsoever in nature, of all amounts.
- 4.8. The CLIENT shall be entitled to change the specified CLIENT account details per the Specific Online Service by providing BDB with 30 (thirty) days prior written notice of any such change.

5. **OBLIGATIONS**

- 5.1. By accepting these Terms and Conditions the CLIENT agrees to all the terms contained in these Terms and Conditions, but until the CLIENT has successfully registered for a specific Online service with BDB no Service Fee obligation exists.
- 5.2. BDB shall rely on the information supplied via the Online Registration System to perform the necessary credit and FICA checks.

6. **LIMITATION OF LIABILITY**

- 6.1. Neither party excludes or limits liability to the other party for death or personal injury caused by its negligence or the negligence of its employees, directors, partners or authorised agents.
- 6.2. Subject to Clause 6.1, **BDB's** liability (whether in contract or in delict and regardless of the nature of the conduct giving rise to such liability) to **CLIENT** concerning performance or non-performance by **BDB**, or in any manner related to this Agreement, for any and all claims, shall be limited to the aggregate of the Service Fees paid (or payable if none has been paid) by **CLIENT** to **BDB** hereunder with respect to the Services.
- 6.3. Subject to clause 6.1 and 6.2, **CLIENT's** exclusive remedy for any claim arising out of this Agreement shall be for **BDB**, upon receipt of written notice of a breach of this Agreement, either to use commercially reasonable efforts to cure the breach at its expense or the return of Service Fees paid to **BDB** for the Services related to the breach.
- 6.4. **BDB** will not be liable for any loss or damage whatever suffered by the **CLIENT** unless **BDB** is the sole cause of such loss or damage.
- 6.5. In no event shall either party be liable (whether in contract or in delict and regardless of the nature of the conduct giving rise to such liability) for any loss of production, loss of or corruption to software or data, loss of profits or of contracts, loss of business or of revenues, loss of operation time, loss of goodwill or reputation, whether caused directly or indirectly, or for any indirect, incidental, punitive or consequential loss, damage, cost or expense whatsoever
- 6.6. The allocations of liability in this Agreement represent the agreed and negotiated understanding of the parties and **BDB's** charges for the Services reflect such allocations.
- 6.7. Neither Party shall be liable to the other for any indirect, special or consequential damages arising from this Agreement, of whatever nature and regardless of how it arose.

7. **REPRESENTATIONS**

- 7.1. Except as stipulated in this Agreement, the **CLIENT** acknowledges that no representations have been made by **BDB** and that no guarantees have been extended by **BDB**.

8. **WARRANTIES**

- 8.1. **BDB** warrants that all computer software and hardware under its supervision is free of any computer viruses and shall at all time apply the latest version of any recognised anti-virus program. In the event that **BDB** should send a virus-infected diskette and/or data to the **CLIENT**, **BDB's** liability shall be limited to the reasonable costs associated with removing the said viruses from the **CLIENT's** computers and/or computer systems.

- 8.2. The **CLIENT** warrants all computer software and computer hardware under its supervision is and will be free of computer viruses. Should the **CLIENT** send virus-infected data to **BDB**, the **CLIENT shall** be liable for the reasonable costs associated with removing any of the viruses thus transmitted to the computer hardware of **BDB** and/or Software.
- 8.3. The **CLIENT** understands that **BDB** delivers the service via Bankserv and South African Banks and cannot guarantee the accuracy of the account verification as information is managed and supplied by the participating banks as is.

9. **INDEMNITIES**

- 9.1. The **CLIENT** acknowledges that **BDB** relies solely on the information provided by the **CLIENT**, when receiving any Instructions from the **CLIENT** to process, and that the **CLIENT** is accountable and responsible for the correctness of every Instruction.
- 9.2. **BDB** shall not incur any liability as a result of any mistake made by the **CLIENT** when submitting its Instructions to **BDB**.
- 9.3. The **CLIENT** hereby indemnifies **BDB**, its officers and its employees and holds them harmless against all or any claims or action whatsoever in nature which may be instituted against **BDB** in respect of loss and/or damages which may be incurred by the **CLIENT** arising out of:
 - 9.3.1. the **CLIENT**'s utilisation of the Service/Software or any breach of these terms and conditions by the **CLIENT**; and
 - 9.3.2. without derogating from the above, the entry or execution of any erroneous data supplied by the **CLIENT** to **BDB**.

10. **PROPRIETARY RIGHTS**

- 10.1. All material, including Software, shall at all times, remain the property of **BDB**. The **CLIENT** shall return such items to **BDB** immediately on termination of this Agreement.
- 10.2. The Parties each reserve the right to control and use their respective Intellectual Property. Neither of the Parties may use the other's Intellectual Property without the other Party's written consent. If prior written consent is obtained, the usage shall stop immediately upon written notice being given by one Party to the other to do so or when this Agreement terminates, whichever is the sooner.
- 10.3. It is an express term of this Agreement that the **CLIENT** shall in no way make or be allowed to make any copy of any Software or documentation that **BDB** makes or may make available to the **CLIENT** without the prior written consent of **BDB**.
- 10.4. Either Party shall ensure that the property of the other Party which may be in its possession in order to fulfil this Agreement shall not be subject or become subject to attachment, pledge, retention or any other legal impediment. The **CLIENT** shall provide **BDB** with the address of the owner of the premises or the building in which it is accommodated and shall indemnify **BDB** against any damage or loss suffered by **BDB** as a result of the **CLIENT** being in breach of the above undertaking.
- 10.5. **CLIENT** shall have no rights in any Proprietary Items (or in any modifications or enhancements to them) other than (i) to use them as authorised by **BDB** in writing from time to time solely for purposes of performing any **CLIENT** responsibilities in relation to the Services, (ii) to the extent the Proprietary Items are incorporated into the Services, to use them as part of the Services for purposes of **CLIENT**'s internal business only, or (iii) pursuant to **BDB**'s standard license for such Proprietary Items or, in the case of Proprietary Items owned by third parties, pursuant to terms acceptable to the applicable third party

11. **POSITION OF TRUST**

- 11.1. During the course of **BDB** performing Services for **CLIENT**, each party may be given access to information (in hard copy, verbal and/or electronic form) that relates to the other's past, present and future research, development, business activities, finances, products, services and technical knowledge and which is either marked as confidential or which by its nature should reasonably be understood to be confidential ("Confidential Information"). In connection therewith, this Clause 11 shall apply.
- 11.2. The **CLIENT** and **BDB** hereby acknowledge that they are aware that the rendering of the Service/s to the **CLIENT**, by **BDB**, results in information which may be regarded as secret and/or confidential being made available to each Party. The Parties therefore undertake not to make known and/or otherwise divulge in any way whatsoever to any third parties, any information made available to either Party without the prior written consent of the other Party unless same is required by the prevailing laws of the Republic of South Africa.
- 11.3. The Parties undertake, in respect of any and all such information disclosed by either Party to the other, to:
 - 11.3.1. preserve the confidentiality of such information by using the utmost good faith and care;

- 11.3.2. use the information only to meet their obligations contained in this Agreement;
- 11.3.3. obtain the other Party's prior written consent to disclose the information to a third party.

12. **NON-SOLICITATION**

- 12.1. **BDB** reserves the right to determine which of its personnel shall be assigned to perform the Services and to replace or reassign such personnel during the term hereof, provided, however, that it will, subject to scheduling and staffing considerations, attempt to satisfy Client's request for specific individuals. **BDB** shall also be permitted to use sub-contractors to perform the Services where appropriate.
- 12.2. Except as **BDB** expressly authorises in writing in advance, Client shall not solicit, offer work to, employ, or contract with, whether as a partner, employee or independent contractor, directly or indirectly, any of **BDB's** Personnel during their participation in the Services or during the twelve (12) months thereafter. For purposes of this Clause 12.2, "Personnel" includes any individual or company **BDB** employs as a partner, employee or independent contractor and with which the Client comes into direct contact in the course of the performance of the Services.
- 12.3. Neither party shall be deemed a joint employer of the other's employees, each party being responsible for any and all claims by its employees.

13. **JURISDICTION**

- 13.1. This agreement shall be governed by and construed in accordance with the laws of the Republic of South Africa.
- 13.2. The parties consents and submits to the jurisdiction of the Magistrate's Court having the necessary jurisdiction in respect of any claim or dispute arising out of or in connection with this Agreement, notwithstanding that the amount claimed or value of dispute might be in excess of the Magistrate's Court.
- 13.3. The aforesaid does not in any way constitute a waiver of any of the parties' rights to institute proceedings in the High Court or any other appropriate forum with the competent jurisdiction and either party reserves the right in its sole discretion to decide whether or not to proceed in the Magistrate's Court.
- 13.4. Notwithstanding the provisions of clauses 13.1 and 13.2, either party may elect, in its sole discretion, to refer the dispute to be resolved by way of arbitration, which arbitration shall be conducted in terms of the rules of the Arbitration foundation of South Africa (AFSA), unless otherwise agreed upon between the parties.

14. **INDULGENCE**

No relaxation or indulgence granted by **BDB** to **CLIENT** shall be deemed to be a waiver of **BDB's** rights in terms hereof, nor shall any such relaxation or indulgence be deemed to be a novation or waiver of the terms and conditions of this Agreement.

15. **INDUCEMENT**

It is recorded that **BDB** and the **CLIENT** has not entered into this Agreement due to any inducement of any nature whatsoever and that there is no other terms other than those recorded in this Agreement.

16. **ENTIRE AGREEMENT**

This Agreement and annexures hereto constitutes the entire Agreement between the Parties and any amendment, addition or alteration to the provisions hereof shall only be of force and effect if such amendment, addition or alteration is reduced to writing and signed by both Parties.

17. **CLIENT VERIFICATION**

- 17.1. **BDB** verifies the Identify of each **client** it does business with included and not limited to the authorised signatories to this Agreement.
- 17.2. **The CLIENT** agrees to supply **BDB** with the documentation as required **BDB and** agrees to handle the information confidentially and only for purposes of client and credit verification.
- 17.3. The **CLIENT** hereby authorises **BDB** to obtain information from Credit Bureaus and other organisations to perform the necessary risk evaluations that **BDB** may deem necessary.
- 17.4. It is specifically noted that **BDB** cannot commence with the Service until the **CLIENT** has supplied all documentation as mentioned in clause 17.2 to **BDB**.