

Business Control Online (“BCO”)Terms of Use

Important Notice

- We are Business Control Online (Pty) Ltd trading as Business Control Online. We are a private company incorporated in accordance with the company laws of the Republic of South Africa with registration number 2019/237222/07 and usual place of business at 29 Third Avenue, Wellington, Western Cape.
- Please read our Terms of Use carefully. Your use of our services will be subject to the then current version of these terms published on our web site or mobile application at the time of your use. If you do not accept our Terms of Use, you may not use our services.
- Insofar as it relates to website use, these Terms apply to you whenever you visit the Business Control Online website (“BCO”) whether or not you have chosen to register with us, so please read them carefully. By accessing, using, registering for or receiving services offered on BCO you are expressly accepting and agreeing to be bound by the Terms.
- Our terms contain specific provisions to limit our liability, allocate risk or liability to you or constitute acknowledgement of facts by you. These terms have been set out in capital letters. You should pay particular attention to these terms since they limit your ability to recover losses that you may incur in connection with your use of our services.
- If you are not yet 18, you must obtain your parents' or legal guardians' advance authorisation, permission and consent to be bound by our Terms of Use prior to you using any of our services or participating in any of the activities offered. If you are under 18 and fail to obtain such consent you may not use the services or participate in the activities. The use of some of our services may require that you are over 18 and of full legal capacity. In such event you should ask your parent or legal guardian to perform the transaction for you.
- We may change our Terms of Use from time to time. Such changes will take effect as and when published. Therefore, you should keep up-to-date with their content and read these Terms of Use at all times prior to using our services since the then current version of the terms will apply to your use.

1 Definitions

- 1.1 In these Terms of Use the following words shall have the meanings given to them:

- 1.1.1 "Additional Terms" means any additional guidelines, rules and/or policies applicable to your use of the BCO Application, BCO Websites, and related goods and/or Services that may be published on the BCO Websites from time to time, which will apply in addition to these Terms of Use;
- 1.1.2 "Content" means various forms of content supported by the BCO Application from time to time, including but not limited to, images, sound clips, video clips and news;
- 1.1.3 "Intellectual Property" means all intellectual property rights, howsoever arising and in whatever tangible or intangible media including (without limitation) patents, rights to inventions, utility models, copyright, trademarks, service marks, trade, business and domain names, rights in trade dress or get-up, rights in goodwill or to sue for passing off, unfair competition rights, rights in designs, rights in computer software, database rights, domain names, topography rights, moral rights, business processes, rights in confidential information (including trade secrets and know-how) and any other intellectual property rights, in each case whether registered or unregistered and including all applications for and renewals or extensions of such rights, and all similar or equivalent rights or forms of protection in any part of the word;
- 1.1.4 "Business Control Online" and "BCO" means Business Control Online (Pty) Ltd, a private company incorporated in accordance with the company laws of the Republic of South Africa with registration number 2019/237222/07 and usual place of business at 29 Derde Laan, Wellington, Western Cape.
- 1.1.5 "BCO Application" means the software and/or web application under the trade name 'BCO' made available by BCO for installation and/or use on supported mobile devices or personal computers to use the Services;
- 1.1.6 "BCO User" means a user of the BCO Application, and includes Guests and Registered Users. For purposes of greater clarity:
- 1.1.6.1 "Registered Users" refers to a BCO User that is registered on the BCO Website or Application as such;
- 1.1.6.2 "Guest" refers to a BCO User that is not registered on the BCO Website or Application, and which accordingly have limited rights of usage and access;
- 1.1.7 "BCO Websites" refers to desktop or mobile websites related to either BCO or the BCO Application;
- 1.1.8 "Paid Value-added Services" refer to Services provided by BCO. For the purpose of clarity, these include, but are not limited to:

- 1.1.8.1 Once-off value-added services which are paid to BCO as and when purchased by a BCO User; as well as
- 1.1.8.2 Subscription-based services which are provided to certain categories of BCO Users affording such users additional functionality on the BCO Website or Application, and which is subject to a recurring fee;
- 1.1.9 "Services" means the services provided by BCO from time to time, including, but not limited to, services provided via the BCO Application and BCO Websites, the general nature of which relates to the sale of online listing space, advertising space as well as related value-added services to buyers and sellers of secondary market artistic works;
- 1.1.10 "Terms of Use" means these terms and conditions, which regulate your use of the BCO Application, the BCO Websites and the Services;
- 1.1.12 "Upload" means the electronic transfer of information or data by you to the Services; and
- 1.1.13 "User Account" refers to the account (or 'profile') you create with BCO to enable you to use the Services.
- 1.2 In these Terms of Use any reference to:-
 - 1.2.1 the singular includes the plural and vice versa;
 - 1.2.2 natural persons includes juristic persons and vice versa;
 - 1.2.3 any one sex or gender includes the other sexes or genders, as the case may be;
 - 1.2.4 "including" (or words of similar meaning) means to include without limitation and "include" shall have a corresponding meaning;
 - 1.2.5 "law" means any law of general application and includes the common law and any statute, constitution, decree, treaty, regulation, directive, ordinance, by-law, order or any other enactment of legislative measure of government (including local and provincial government) statutory or regulatory body which has force of law;
 - 1.2.6 "person" means any person, company, close corporation, trust, partnership or other entity whether or not having separate legal personality;
 - 1.2.7 a "Party" includes a reference to that Party's successors in title and assignees allowed at law.
- 1.3 The words "shall" and "will" and "must," used in the context of any obligation or restriction imposed on a person in these Terms of Use, has the same meaning.

- 1.4 Except insofar as these Terms of Use state otherwise, the relevant definitions of the Electronic Communications and Transactions Act, No. 25 of 2002 (hereafter simply 'ECTA'), Consumer Protection Act, No. 68 of 2008, and the Protection of Personal Information Act, No. 4 of 2013, will apply herein.
- 1.5 The clause headings in this document have been inserted for convenience only and will not be taken into consideration in the interpretation of this document.
- 1.6 Reference to months or years shall be construed as calendar months or years.
- 1.7 No provision herein shall be construed against or interpreted to the disadvantage of any party hereto by reason of such party having or being deemed to have structured, drafted or introduced such provision.
- 1.8 Whenever the term "including" is used followed by specific examples, such examples shall not be construed so as to limit the meaning of that term.

2 Terms of Use

- 2.1 Your use of the BCO Application, the BCO Websites and of our Services shall at all times be subject to these Terms of Use and any Additional Terms which may be applicable from time to time.
- 2.2 BCO reserves the right to amend these Terms of Use and to publish or amend any Additional Terms at any time, with the new or amended terms coming into force on the date of publication on the BCO Website. While BCO will take reasonable steps to bring these to your attention, it is your responsibility to continually stay abreast of changes to the Terms of Use, and any Additional Terms which apply to you that may be published from time to time.
- 2.3 If there is any conflict between the Additional Terms and these Terms of Use, these Terms of Use will prevail, unless otherwise stated in the relevant Additional Terms and provided that any terms of BCO will prevail against any conflicting third-party terms.
- 2.4 The date of publication at the end of these Terms of Use shall be *prima facie* proof of the date of publication and contents of the particular version of the Terms of Use.

3 Eligible Persons

- 3.1 Unless otherwise stated by BCO in writing, you must be at least 18 (eighteen) years old to make use of the BCO Application, the BCO Websites and the Services. If you are 17 (seventeen) years and younger, but older than 13 (thirteen), you will inform your parents or guardians that you have registered for

and are using the Services of BCO and upon request provide reasonable proof that you have complied with this prerequisite for access to the BCO Application and the Services.

3.2 BCO reserves the right to place an age restriction on any Services at any time.

4 Use and licence

4.1 The Intellectual Property rights in the BCO Application, the BCO Websites and the Services are either owned by BCO or licensed to BCO and include any applications or renewals of such rights and are protected by intellectual property laws. This includes (without limitation) any compilation of such Intellectual Property rights which is likewise the property of BCO and protected by applicable law.

4.2 The trade names 'BCO' and 'Business Control Online' are related to the goodwill of BCO and its affiliated companies and may not be used in any manner without BCO's prior written permission. All other Intellectual Property not owned by BCO that appear on the BCO Application, the BCO Websites or the Services are the property of their respective owners.

4.3 Your use of the BCO Application, the BCO Websites and the Services is for lawful use only, and you agree not to use the BCO Application, the BCO Websites or Services to operate any commercial activities or to promote any products or services, other than expressly authorised by BCO in writing.

4.4 If applicable, BCO grants you a non-exclusive, non-transferable, revocable licence to download and install the BCO Application on a mobile device, personal computer or other supported device for the sole purpose of using the Services provided by BCO.

4.5 You may not do anything in respect of the BCO Application, BCO Websites or the Services unless these Terms of Use expressly permit you to do so. Without limiting the general nature of this prohibition, you may not distribute, sell, grant sub-licences or grant any rights to another person, nor render any services in respect of the BCO Application, BCO Websites or the Services and you may not modify, reverse engineer, decompile, hack or create a derivative work from it.

4.6 Unless otherwise specifically agreed thereto in writing, BCO is under no obligation to release new versions of the BCO Application, nor to support any older version of the BCO Application.

4.7 It is specifically recorded that BCO may secure revenue from other sources such as advertising, sponsorship of content or Services and promotional

activities. Such activities are regulated in terms of BCO's Privacy Policy, an up to date version of which may be found on our website.

- 4.8 BCO may communicate with you and/or send you information messages via the BCO Application, BCO Websites and the Services or to your email address from time to time, provided that this is done in accordance with BCO's Privacy Policy as referred to above.
- 4.9 You should not choose brand names or trademarks as your username and/or display name since the Intellectual Property rights in such names do not belong to you. BCO reserves the right, using its reasonable discretion, to take over any BCO User's username and/or display name at any time (without compensation), should it require such username and/or display name for any reason whatsoever, including should BCO be requested to do so by the owner of a brand name or trade mark. In such event BCO will contact the BCO User and notify the BCO User that it requires the username and/or display name in question. In such event, BCO shall move the BCO User's account to a mutually agreed replacement username and/or link same to a mutually agreed replacement display name.
- 4.10 All rights not expressly granted to you in these Terms of Use shall remain reserved in favour of BCO.

5 Registration for and Use of Services

- 5.1 In order to make use of some of the Services provided through the BCO Application and/or BCO Websites, you must register an account to become a BCO User.
- 5.2 It is free to register an account, though some categories of BCO Users will receive Paid Value-Added Services through the BCO Application and/or BCO Website, and these additional services will be subject to a subscription fee payable to BCO.
- 5.3 Through registration, you warrant and represent that:
 - 5.3.1 any and all information you submit as part of the process to become a BCO User is true and correct and that you are the legitimate owner of such information, including (but not limited to) your date of birth, sex, location, first & last name, cell phone number and contact details;
 - 5.3.2 you are the legitimate owner of (or that have obtained the necessary license or permission in respect of) any content or images that you Upload via the BCO Application;

- 5.3.3 you have the right, authority and capacity to enter into and be bound by the Terms and that by using the BCO Website or Application you will not be violating any law or regulation of the country in which you are resident. You are solely responsible for your compliance with all applicable local laws and regulations;
- 5.4 You hereby agree that:
- 5.4.1 The onus is on a User to complete the relevant Health and Safety documentation prior to commencement of a particular project, and any downtime or aspects affecting availability of the BCO Application or BCO Website will not be a cause of or excuse for non-compliance with relevant laws;
- 5.4.2 Use of the BCO Application or Website does not constitute legal advice;
- 5.4.3 The responsibility to comply with relevant laws remains the sole responsibility of the User and its stakeholders as stipulated by such laws;
- 5.4.4 A User may make use of templates provided via the BCO Application or BCO Website or make use of their own, and the according choice will not affect BCO's liability as governed in terms of this document;
- 5.4.5 The BCO Application or Website is not able to verify the correctness (or lack thereof) of any information entered into the system by a user; and
- 5.4.6 that BCO has the right to disclose aspects of your identity to any third party who is able to show on a *prima facie* basis that any Content posted or uploaded by you to the BCO Website or Application constitutes a violation of their intellectual property rights, their right to privacy or any other law.
- 5.5 It is your responsibility to ensure the secrecy of your User Account's registration details, including but not limited to your username and/or display name, password and contact details.
- 5.6 Any activity on the BCO Application, the BCO Websites or the Services authenticated with your login credentials shall be deemed binding on and attributable to you personally.
- 5.7 We reserve the right to revoke any privilege or access to the BCO Application, the BCO Websites and/or the Services granted to you without prior notice to you if BCO has determined that you are in breach of these Terms of Use.
- 5.8 You may not give your username and password to someone else to log on to your User Account or to access the Services using your User Account or authorise another person to do so.

- 5.9 You agree that you are responsible for the security of your mobile device or any other device used to access the BCO Application, BCO Websites and/or the Services.
- 5.10 Messages sent to Users on the BCO Application may contain links to third party websites that are not owned or controlled by BCO. BCO has no control over, and assumes no responsibility for, the content, privacy policies, or practices of any third-party websites. In addition, BCO will not and cannot censor or edit the content of any third-party site. By using the Service, you expressly acknowledge and agree that BCO shall not be responsible for any damages, claims or other liability arising from or related to your use of any third-party website or services.
- 5.11 You agree to notify BCO immediately in writing to support@businesscontrol.co.za when you become aware of any unauthorised use of your User Account or other breach of security or attempted breach of security.
- 5.12 If your use of the Services is dependent on using a mobile device, personal computer or bandwidth of another person, you hereby represent that you have received that person's permission.

6 Nature of Services Provided through the BCO Application and/or Websites

- 6.1 BCO provides Users with the opportunity to generate and manage Health and Safety documentation files via online means in order to facilitate ease of compliance with the relevant provisions of the Occupation Health and Safety Act, 1993 (as amended).
- 6.2 Paid Value-added Services are subject to Additional Terms, the up to date version of which may be found on our website.

7 Payment

- 7.1 We are committed to providing secure online payment facilities. All transactions are encrypted using appropriate encryption technology.
- 7.2 Payment for BCO Services are usually made through the PayCycle payment platform.
- 7.3 Notwithstanding the above mentioned, BCO reserves the right to allow payment to be made via -
- 7.3.1 debit card;
- 7.3.2 credit card: where payment is made by credit card, we may require additional information in order to authorise and/or verify the validity of payment. In such

cases we are entitled to withhold delivery until such time as the additional information is received by us and authorisation is obtained by us for the amounts. If we do not receive authorisation your order for the Services will be cancelled. You warrant that you are fully authorised to use the credit card supplied for purposes of paying the Services. You also warrant that your credit card has sufficient available funds to cover all the costs incurred as a result of the services used on the Website;

7.3.3 Electronic Funds Transfer or related system; and/or

7.3.4 A digital wallet service such as Masterpass

7.4 You may contact us to obtain a full record of your payment. We will also send you electronic communications about your order and payment.

7.5 Once you have selected your payment method, you will be directed to a link to a secure site for payment of the applicable purchase price for the Services.

7.6 Payment for Paid Value-Added Services will be made upfront. Except insofar as is otherwise stated in the Additional Terms, in the case of Paid Value-Added Services which are subscription-based, payments will be automatically recurring unless otherwise stated.

7.7 It is hereby recorded that the prices for Paid Value-Added Services and subscription services are subject to change at BCO's discretion. Reasonable notice of a change in prices will be given by information provided through the BCO Application or Website.

7.8 It is specifically recorded that Paid Value-Added Services may be subject to the payment of Value-Added Tax which may be chargeable in addition at the applicable rate current from time to time.

8 Errors

We shall take all reasonable efforts to accurately reflect the description, availability, and purchase price of services listed on the BCO Application or Website. However, should there be any errors of whatsoever nature on the Application or Website (which are not due to our gross negligence), we shall not be liable for any loss, claim or expense relating to a transaction based on any error.

9 Returns and Refund

9.1 Because of the nature of the Services, the provision of Services by BCO is subject to availability, which a BCO User hereby accepts and agrees to.

- 9.2 Certain Paid-Value Added Services may be subject to a cooling off-period and Users may be entitled to a full or partial refund under certain circumstances. Further details of this are set out in the particular Additional Terms for the specific Paid Value-Added Service.
- 9.3 In the instance where a BCO User opts to terminate a Paid-Value Added Service prior to its conclusion, notice must be given, and any refund payable may be subject to an early termination administration fee. Due to the nature of certain Paid Value-Added Services, a refund may not be possible. Further details of this are set out in the particular Additional Terms for the specific Paid Value-Added Service.

10 Management of Content

- 10.1 Unless otherwise agreed in writing, by an Upload of any content to the BCO Application, BCO Websites and/or related Services, you grant BCO and its affiliated companies a non-exclusive, royalty-free, worldwide and perpetual licence to use the said Content, inclusive of the right to amend the said Content.
- 10.2 BCO has the right, but not the obligation (unless expressly required by applicable law), to monitor postings and uploaded content, and also has the right, but not the obligation, to exercise editorial control over any material which may be made publicly available.
- 10.3 BCO, without derogation to the general provision in clause 11.2 above, has the right, but not the obligation, to appoint a moderator to manage any postings or uploaded content, and such person may edit or remove any Content that was posted by you that may contravene any Additional Terms which may apply to the use of the BCO Application, BCO Websites and/or related Services.
- 10.4 You agree that BCO has no control over any Content or communication you receive from any person other than BCO or its employees. You may therefore be exposed to unwanted Content and it is your duty to report any undesirable Content to BCO.
- 10.5 You agree to that you will not use the BCO Application or Services to transmit, disseminate or upload:
- 10.5.1 unsolicited commercial communications;
 - 10.5.2 Content that:
 - 10.5.2.1 Is Unlawful, harassing, abusive, threatening, or obscene communications of any kind;

- 10.5.2.2 Could infringe or violate any third party's copyright, trademark, trade secret, privacy or other proprietary or property right;
 - 10.5.2.3 could constitute a criminal offense, give rise to civil liability or otherwise violate any applicable law or regulation;
 - 10.5.2.4 Is Objectionable, including but not limited to, content that contains blatant bigotry, racism, or hatred or that promotes illegal activities or physical harm against anyone;
 - 10.5.2.5 Any other type of communications, be they of a commercial nature or not, to people or entities who have not agreed to be part of such broadcast;
 - 10.5.2.6 Amounts to any harmful, disruptive or destructive files or software;
 - 10.5.2.7 Is adult or pornographic in nature; or
 - 10.5.2.8 is generally unacceptable in the view of the public at large.
- 10.6 You accept the risk that, due to the interactive nature of the Services, you may be exposed to Content that contravenes these Terms of Use. In such event, you are required to immediately report the infringing Content to BCO so that appropriate action can be taken.

11 Availability of Services

- 11.1 You hereby acknowledge and agree that your use of the BCO Application, BCO Websites and the Services are entirely at your own risk.
- 11.2 BCO does not warrant that you will always be able to have access to the Services and Content.
- 11.3 Whilst we endeavour to ensure that the BCO Application, the BCO Websites and the Services are always accessible and messages delivered, we make no warranties or representations as to the accuracy and correctness thereof, level of uptime, the speed of access that can be expected or that messages and communications will be posted and/or delivered.
- 11.4 It is your responsibility to acquire the hardware and Internet connectivity necessary to access the Services and you are responsible for paying all fees that are due in respect of the hardware, mobile and the Internet connectivity

and bandwidth consumed while accessing the BCO Application, the BCO Websites and the related Services.

- 11.5 The capabilities of your mobile device may limit the availability of some features and Services to you or may mean that certain Content cannot be played or displayed on your mobile device.
- 11.6 BCO may suspend the Services for any reason, including for repairs or upgrades to any of BCO's systems and BCO may suspend your account pending any investigation into a possible breach by you of these Terms of Use.
- 11.7 BCO may decide to change the features and technical aspects of the BCO Application, BCO Websites or the Services. Such changes may cause interruptions to the Services and may require you to make changes to the settings on your mobile device or to your personal computer, including but not limited to the downloading of an updated version of the BCO Application.
- 11.8 Whilst we endeavour to ensure that information on the BCO Website or Application is accurate and complete, we make no warranties about the accuracy, reliability, completeness or timeliness of information published or provided.
- 11.9 Where we provide third party Content, feedback or publish advertisements as part of your use of the BCO Application or a Service we do not:
 - 11.9.1 warrant or represent that the third-party Content or advertisements are suitable, accurate, correct, complete, reliable, appropriate, or lawful; or
 - 11.9.2 endorse the third-party Content or advertisements.
- 11.10 Your correspondence or dealings with, or participation in promotions and/or competitions of advertisers through the BCO Application, BCO Websites and related Services, and any other terms, conditions, warranties or representations associated arising therefrom, lie between you and the relevant advertisers. You agree that BCO shall not be liable for any loss or damage of any nature incurred as a result of any such interactions between you and the advertisers, or as the result of the presence of such advertisers on the BCO Application or BCO Websites.
- 11.11 TO THE EXTENT PERMITTED BY LAW, YOU HEREBY AGREE TO RELEASE BCO FROM LIABILITY RELATED TO ANY CLAIM, LOSS, INJURY OR DAMAGE ARISING OUT OF OR IN CONNECTION WITH THE USE OF INFORMATION AND/OR GOODS AND/OR SERVICES AVAILABLE FROM OR THROUGH THE BCO APPLICATION, THE BCO WEBSITES OR THE SERVICES, WHETHER DIRECT OR INDIRECT INCLUDING, WITHOUT LIMITATION, ANY LIABILITY RELATING TO ANY LOSS OF USE,**

INTERRUPTION OF BUSINESS, LOST PROFITS OR LOST DATA, OR INCIDENTAL, SPECIAL OR CONSEQUENTIAL DAMAGES OF ANY KIND.

11.12 TO THE EXTENT PERMITTED BY LAW, YOU HEREBY AGREE TO INDEMNIFY, DEFEND AND HOLD BCO, ITS AFFILIATES, RELATED COMPANIES, PARENT COMPANIES, SUBSIDIARIES, OFFICERS, DIRECTORS, AGENTS, LICENSORS AND ANY OTHER PARTNERS AND EMPLOYEES HARMLESS FROM ANY AND ALL CLAIMS, LOSSES, EXPENSES, DAMAGES, ACTIONS, DEMANDS, LIABILITIES OR COSTS, RESULTING OUT OF OR YOUR USE OF THE BCO APPLICATION, THE BCO WEBSITES OR THE SERVICES.

12 Unauthorised Conduct

- 12.1 You may not monitor, intercept or modify any communication that is not addressed to you or to your User Account.
- 12.2 You may not use any harmful or malicious code, including (without limitation) viruses, Trojan horses, worms or spiders, to interfere with or access any data, communications or software associated with the Services, the BCO Application, BCO Websites or any Services/Content otherwise owned by BCO.
- 12.3 You may not send any unsolicited communication to BCO or to any BCO User, whether such unsolicited communication is sent to the BCO User's User Account or to any other address of such BCO User.
- 12.4 You may not use the Services in such a manner as to threaten, harass, embarrass or invade the privacy of any person or to contravene any applicable law or regulation.
- 12.5 You may not impersonate any other BCO User or any other person, and you may not use another person's BCO username and password to access another BCO User's account, nor may you access or assume another BCO User's profile. You may not use or distribute the images taken by and/or belonging to any other person via the BCO Application in any manner without such person's consent.
- 12.6 Other than as may be authorised by BCO in writing and bona fide public search engines generally, you may not programmatically access any Services using an electronic or other automated means used independently to initiate an action or respond to data messages or performances in whole or in part, including (without limitation) any web spiders, crawlers or similar technologies.

- 12.7 You are notified that it is a criminal offence to gain unauthorised access to any restricted areas of the BCO Websites or to otherwise interfere with the proper functioning thereof.

13 Breach and termination

- 13.1 If you are found or are believed to violate any of your obligations as described in these Terms of Use as determined by BCO in its sole and absolute discretion, BCO may, without limiting or prejudice to any other right, warranty or indemnification that may be granted to it under these Terms of Use, cancel any right, privilege or entitlement you may have hereunder immediately and without prior notice to you, suspend your access to the Services, remove any Content Uploaded by you and/or ban you for such period as BCO may deem fit from using the Services and/or take such other steps as BCO may (in its sole and absolute discretion) deem reasonable under the circumstances.
- 13.2 If BCO terminates your User Account as provided for in these Terms of Use, any licence(s) granted to you hereunder will also terminate at the same time and you will immediately stop using the BCO Application, the BCO Websites and the Services and, in the case of the BCO Application, remove it from the mobile device and personal computer and/or other devices on which it has been installed and destroy all other copies of the BCO Application in your possession.

14 Privacy

- 14.1 In circumstances where data generated from the use of the Services (which does not constitute 'personal information' as defined in terms of the Protection of Personal Information Act, 2013) will be stored in a data centre outside of South Africa, you hereby consent for such data to be stored abroad.
- 14.2 **IN THE INSTANCE WHERE A USER PROVIDES PERSONAL INFORMATION OF THIRD PARTIES, THE USER WARRANTS THAT THE NECESSARY CONSENT HAS BEEN SECURED FOR THE PURPOSES OF CAPTURING, PROCESSING AND RETAINING THE RELEVANT INFORMATION. IN THE INSTANCE WHERE THE USER HAS NOT OBTAINED THE NECESSARY CONSENT, THEY HEREBY INDEMNIFY BCO FROM ANY AND ALL CLAIMS ARISING FROM SUCH A BREACH.**
- 14.3 In relation to data which does constitute 'personal information' as defined in terms of the Protection of Personal Information Act, 2013, the terms of BCO's Privacy Policy will apply and are hereby incorporated into this Document by reference. An up to date version of our Privacy Policy may be found on our website.

15 Jurisdiction, Enforceability and Limitation of Liability

- 15.1 Should any dispute (other than a dispute in respect of which urgent relief may be obtained from a court of competent jurisdiction) arise in connection with these Terms of Use or which relates in any way to any matter affecting the interests of the a party in terms of these Terms of Use, the parties will forthwith meet to attempt to settle such dispute or difference in good faith, whether by means of negotiation or mediation.
- 15.2 In the event where the Parties are unable to settle the above dispute within a period of 14 (fourteen) days, then the client consents to the jurisdiction of the Wellington Magistrate's Court (in the Western Cape of South Africa) in regard to any legal proceedings instituted in connection with this agreement.
- 15.3 Notwithstanding Clause 15.2 above, BCO reserves the right to, in its sole discretion, institute proceedings in the Western Cape Division, Cape Town of the High Court of South Africa. or have the matter be referred to arbitration.
- 15.4 In the event where BCO elects to refer the dispute for arbitration, then the arbitration shall be held:-
- 15.4.1 In Wellington, Western Cape;
- 15.4.2 with only the representatives and legal representatives of the parties to the dispute present thereat;
- 15.4.3 in accordance with the rules elected by BCO;
- 15.4.4 otherwise in terms of the Arbitration Act, No. 42 of 1965, it being the intention that the arbitration shall be held and completed as soon as reasonably possible after it was demanded; and
- 15.4.5 The arbitrator for such arbitration proceedings will be a legal practitioner with at least 10 years' relevant experience agreed upon by the Parties and failing agreement, nominated by the chairperson for the time being of the Cape Bar Council.
- 15.5 The arbitrator:-
- 15.5.1 will have regard to the desire of the Parties to dispose of such dispute expeditiously, economically and confidentially;
- 15.5.2 will determine the Party liable for their costs and the costs of an expert they consult and such Party will pay their costs;
- 15.5.3 may, in addition to any other award they may be able to make:-
- 15.5.3.1 award interest with effect from any date, and on any other basis, they considers appropriate in the circumstances;

- 15.5.3.2 shall make such order as to cost as they deem just.
- 15.5.4 The Parties irrevocably agree that the decision in any proceedings hereunder:-
- 15.5.4.1 will be final and binding on all of them;
- 15.5.4.2 will forthwith be carried into effect;
- 15.5.4.3 may be made an order of any court of competent jurisdiction; and
- 15.5.4.4 Will have the power to give Default Judgment if any Party fails to make submissions on due date and/or fails to appear at the hearing.
- 15.6 The provisions of this clause 15 are severable from the rest of this document and shall remain in effect even if the agreement contained in this document is terminated for any reason. The parties shall keep the evidence in the proceedings and any order made by the arbitrator confidential, unless otherwise contemplated herein.
- 15.7 No clause herein which refers to mediation, conciliation or arbitration shall mean or be deemed to mean or interpreted to mean that either of the parties shall be precluded from obtaining interim relief on an urgent basis from a court of competent jurisdiction pending the outcome of mediation, conciliation or decision of the arbitrator.
- 15.8 Should BCO have to take any legal action against the client to enforce its obligations in terms of this Document, the client shall pay all legal costs incurred by BCO on attorney and own client scale which includes collection commission, VAT and tracing costs, and administration charges or any other collection commission charged by its attorneys.
- 15.9 YOU HEREBY AGREE THAT, IN THE INSTANCE WHERE BCO IS LIABLE TO YOU, THE CUMULATIVE MAXIMUM LIABILITY OF BCO FOR ALL CLAIMS, ACTIONS, DEMANDS AND PROCEEDINGS OF WHATEVER NATURE AND HOWEVER ARISING (INCLUDING, WITHOUT LIMITATION, FOR BREACH OF CONTRACT, IN DELICT, FOR ALL ACTS AND OMISSIONS, AND FOR NEGLIGENCE) SHALL IN TOTAL BE LIMITED TO THE TOTAL VALUE OF PAYMENTS ACTUALLY MADE TO BCO BY YOU.**
- 15.10 Each provision of these Terms of Use shall be severable from the other provisions. Should any provision be found by a Court of competent jurisdiction to be invalid or unenforceable for any reason, the remaining provisions of these Terms of Use shall nevertheless remain binding and continue with full force and effect.

16 Notices

- 16.1 BCO hereby selects **29 Derde Laan, Wellington, Western Cape, 7655** as its address for the service of all formal notices and legal processes in connection with these Terms and Conditions (“legal address”). BCO may change this address from time to time by updating these Terms and Conditions.
- 16.2 You hereby select the delivery address specified with your order for Paid Value-Added Services as your legal address, but you may change it to any other physical address by giving BCO not less than 7 days’ notice in writing.
- 16.3 Notices must be sent either by hand, prepaid registered post, telefax or email and must be in English. All notices sent -
- 16.3.1 by hand will be deemed to have been received on the date of delivery;
- 16.3.2 by prepaid registered post, will be deemed to have been received 10 days after the date of posting;
- 16.3.3 **by email will be deemed to have been on the date indicated in the “Read Receipt” notification. All email communications between you and BCO must make use of the ‘Read Receipt’ function to serve as proof that an email has been received.**

17 General

- 17.1 You may not cede, assign, delegate or in any other way alienate or dispose of any or all of your rights and obligations under and in terms of these Terms of Use without the prior written approval of BCO.
- 17.2 Any failure on the part of you or BCO to enforce any right in terms hereof shall not constitute a waiver of that right.
- 17.3 If any term or condition contained herein is declared invalid, the remaining terms and conditions will remain in full force and effect.
- 17.4 These Terms of Use constitute the whole agreement between you and BCO relating to the matters dealt with herein and, save to the extent otherwise provided herein, no undertaking, representation, term or condition relating to the subject matter of these Terms of Use not incorporated in these Terms of Use shall be binding on any of the parties.
- 17.5 No indulgence, leniency or extension of a right, which may be granted or shown to you shall in any way prejudice BCO or preclude BCO from exercising any of the rights that it has derived from these Terms of Use or be construed as a waiver by the BCO.

17.6 We reserve the right to provide further explanation and clarification related to the above terms by means of a Frequently Asked Questions (“FAQ”) section posted on our website. Insofar as they do not contradict or materially alter the provision of this document, the relevant answers found in the FAQ section are hereby incorporated by reference.

18 Information

For the purposes of ECTA, BCO’s information is as follows, which should be read in conjunction with its product descriptions and other terms and conditions contained on the BCO Website or BCO Application:

- Full name: Business Control Online (Pty) Ltd
- Main business: Online Health and Safety File Generation and retention
- Physical address for receipt of legal service (also postal and street address): 29 Third Avenue, Wellington, Western Cape, 7655
- Phone number: 084 667 7144
- Email address: support@businesscontrol.co.za
- PAIA: BCO currently has no manual published in terms of section 51 of the Promotion of Access to Information Act 2 of 2000. A copy of the Act may be downloaded from http://www.polity.org.za/attachment.php?aa_id=3569

Date of First Publication of this Version: **[01.08.2020]**

BCO Additional Terms for Free and Paid Value-Added Services

1 General

- 1.1 This document sets out the Additional Terms for both free and Paid Value-Added Services currently provided to BCO Users by BCO. It is intended to be read along with the BCO Terms of Use.
- 1.2 Except insofar as otherwise provided for in these Additional Terms, the definitions and obligations as set out in the BCO Terms of Use are hereby incorporated by reference.
- 1.3 Unless a provision of these Additional Terms expressly amends the provisions found in the Terms of Use, the provisions in the Terms of Use will apply to these Additional Terms.

2 Features available to registered BCO Users

- 2.1 Registered Users are afforded limited rights of access and use of the functionality provided on the BCO Website and/or Application. In order to obtain access to additional features and functions, they must pay a subscription fee. The nature of these services will be set out below and in particular in Clause 3.
- 2.2 The features and functions which are freely available to all BCO Users are:
 - 2.2.1 Access to the BCO Website; and
 - 2.2.2 **The ability to subscribe for services as a registered user**
- 2.3 You hereby agree that the features and functions set out in these Additional Terms may change dependent on a variety of circumstances, including but not limited to market demand and updates to the BCO Application or Website. BCO will take reasonable steps to notify you of such changes.

3 Subscription as a Registered User

- 3.1 If an BCO User opts to subscribe and register as a Registered User, they will be granted access to the following features and functions on the BCO Website and/or Application:

- 3.1.1 The ability to build a business profile, including an employee register, chemical register and equipment register in relation to Health & Safety documentation;
- 3.1.2 The ability to facilitate the compilation of a Health & Safety plan and file as required by the Construction Regulation, including the maintaining of required records;
- 3.1.3 Access to generic templates pertaining inspections and records;
- 3.1.4 The ability to make files electronically available to all approved users;
- 3.1.5 The ability to dynamically upload project administration and inspection records;
- 3.1.6 The ability to store or download completed Health and Safety documentation;
- 3.1.7 The ability to collaborate on and approve files electronically;
- 3.1.8 The ability to maintain an audit trail pertaining to project file activity; and
- 3.1.9 Any other related and/or further functionality as developed for and implemented on the BCO Website and/or Application.
- 3.2 The additional functionality and features provided to a Registered User will be provided subject to an upfront fee payable upfront to BCO, the amount of which may be determined by the length of the subscription period chosen by the particular BCO User.
- 3.3 In addition to the features and functionality provided to a Registered User as part of their subscription, such a user is entitled to purchase Once-off Value-Added Services.

4 Subscription Periods and Payment

- 4.1 The usual prices of any and all subscription of once-off value-added services, along with any discount which may be applicable, will be advertised to BCO Users through the BCO Application or Website.
- 4.2 Any advertisement containing prices of subscription or once-off value-added services does not constitute an offer from BCO to any BCO User, and is to be considered as only an invitation to treat. A binding agreement will only be formed subsequent to BCO providing full details of the final amount payable by an BCO User for their chosen services along with the BCO User indicating assent to both the amount payable and the terms found in both the Terms of Use and these Additional Terms.
- 4.3 For the subscription services referred to in Clause 3, Registered Users are currently able to subscribe in on a monthly basis which may automatically recur

unless stated otherwise by a Registered User. BCO reserves the right to allow for subscription over a longer fixed period at a reduced rate.

- 4.4 Any services provided by BCO to an BCO User are payable in advance prior to the particular services commencing.
- 4.6 A Registered User of Preferred Service Provider is entitled to terminate their subscription, provided it is done in accordance with these Additional Terms, with particular reference to the Refund Policy in Clause 5.

5 Cancellation and Refund Policy

- 5.1 Any BCO User opting into a subscription service is entitled to a cooling-off period of 7 (seven) calendar days which will apply at the commencement date of any such subscription services being rendered by BCO for the first time to that particular BCO User.
- 5.2 During the above cooling-off period, the particular BCO User is entitled to cancel their subscription services without reason or penalty.
- 5.3 If a particular BCO User opts to cancel their subscription during the cooling-off period, they will be entitled to a full refund which will be paid to them within 30 calendar days into their designated bank account.
- 5.4 Subsequent to the cooling off period provided for in 5.2 above, BCO will not provide a refund for any subscription service lasting only 1 (one) month.
- 5.5 Subsequent to the cooling-off period coming to an end, an BCO User may cancel any subscription period longer than 1 month by providing written notice to BCO of no less than 30 calendar days. Any premature cancellation of a subscription service may be subject to a reasonable administration fee which will be deducted by BCO and the balance will be refunded to the relevant BCO User within 30 calendar days.
- 5.6 During the notice period provided in terms of Clause 5.5 above, the BCO user will have the full rights of use and access afforded to them in accordance with the subscription service they have chosen, and such rights of use and access will only terminate after the notice period has come to an end.
- 5.7 In the instance where a value-added service is terminated prior to its commencement, any refund payable in relation to such value-added services rendered to an BCO User will be at the sole discretion of BCO. Additionally, any charges incurred by BCO in relation to the rendering of the value-added service will be deducted from any refund determined to be payable.

- 5.8 For the purposes of clarity, any notice given must coincide with the start of a calendar month. If notice is given during a calendar month, the notice period will be deemed to start at the commencement of the subsequent calendar month. Accordingly, a User will be liable for payment of the service of the subsequent month, and their access to the Services will only terminate at the end of that particular month.

8 General

Further descriptions of the features, functions, prices and discounts in relation to the various services governed by these Additional Terms may be found on the BCO Website and/or Application. We reserve the right to provide further explanation and clarification related to the above terms by means of a Frequently Asked Questions ("FAQ") section posted on our website. Insofar as they do not contradict or materially alter the provision of this document, the relevant answers found in the FAQ section are hereby incorporated by reference.

Date of last revision of these Additional Terms: **[01.08.2020]**

Business Control Online (“BCO”)Terms of Use

Important Notice

- We are Business Control Online (Pty) Ltd trading as Business Control Online. We are a private company incorporated in accordance with the company laws of the Republic of South Africa with registration number 2019/237222/07 and usual place of business at 29 Third Avenue, Wellington, Western Cape.
- Please read our Terms of Use carefully. Your use of our services will be subject to the then current version of these terms published on our web site or mobile application at the time of your use. If you do not accept our Terms of Use, you may not use our services.
- Insofar as it relates to website use, these Terms apply to you whenever you visit the Business Control Online website (“BCO”) whether or not you have chosen to register with us, so please read them carefully. By accessing, using, registering for or receiving services offered on BCO you are expressly accepting and agreeing to be bound by the Terms.
- Our terms contain specific provisions to limit our liability, allocate risk or liability to you or constitute acknowledgement of facts by you. These terms have been set out in capital letters. You should pay particular attention to these terms since they limit your ability to recover losses that you may incur in connection with your use of our services.
- If you are not yet 18, you must obtain your parents' or legal guardians' advance authorisation, permission and consent to be bound by our Terms of Use prior to you using any of our services or participating in any of the activities offered. If you are under 18 and fail to obtain such consent you may not use the services or participate in the activities. The use of some of our services may require that you are over 18 and of full legal capacity. In such event you should ask your parent or legal guardian to perform the transaction for you.
- We may change our Terms of Use from time to time. Such changes will take effect as and when published. Therefore, you should keep up-to-date with their content and read these Terms of Use at all times prior to using our services since the then current version of the terms will apply to your use.

1 Definitions

- 1.1 In these Terms of Use the following words shall have the meanings given to them:
- 1.1.1 "Additional Terms" means any additional guidelines, rules and/or policies applicable to your use of the BCO Application, BCO Websites, and related goods and/or Services that may be published on the BCO Websites from time to time, which will apply in addition to these Terms of Use;
- 1.1.2 "Content" means various forms of content supported by the BCO Application from time to time, including but not limited to, images, sound clips, video clips and news;
- 1.1.3 "Intellectual Property" means all intellectual property rights, howsoever arising and in whatever tangible or intangible media including (without limitation) patents, rights to inventions, utility models, copyright, trademarks, service marks, trade, business and domain names, rights in trade dress or get-up, rights in goodwill or to sue for passing off, unfair competition rights, rights in designs, rights in computer software, database rights, domain names, topography rights, moral rights, business processes, rights in confidential information (including trade secrets and know-how) and any other intellectual property rights, in each case whether registered or unregistered and including all applications for and renewals or extensions of such rights, and all similar or equivalent rights or forms of protection in any part of the word;
- 1.1.4 "Business Control Online" and "BCO" means Business Control Online (Pty) Ltd, a private company incorporated in accordance with the company laws of the Republic of South Africa with registration number 2019/237222/07 and usual place of business at 29 Derde Laan, Wellington, Western Cape.
- 1.1.5 "BCO Application" means the software and/or web application under the trade name 'BCO' made available by BCO for installation and/or use on supported mobile devices or personal computers to use the Services;
- 1.1.6 "BCO User" means a user of the BCO Application, and includes Guests and Registered Users. For purposes of greater clarity:
- 1.1.6.1 "Registered Users" refers to a BCO User that is registered on the BCO Website or Application as such;
- 1.1.6.2 "Guest" refers to a BCO User that is not registered on the BCO Website or Application, and which accordingly have limited rights of usage and access;
- 1.1.7 "BCO Websites" refers to desktop or mobile websites related to either BCO or the BCO Application;

1.1.8 "Paid Value-added Services" refer to Services provided by BCO. For the purpose of clarity, these include, but are not limited to:

1.1.8.1 Once-off value-added services which are paid to BCO as and when purchased by a BCO User; as well as

1.1.8.2 Subscription-based services which are provided to certain categories of BCO Users affording such users additional functionality on the BCO Website or Application, and which is subject to a recurring fee;

1.1.9 "Services" means the services provided by BCO from time to time, including, but not limited to, services provided via the BCO Application and BCO Websites, the general nature of which relates to the sale of online listing space, advertising space as well as related value-added services to buyers and sellers of secondary market artistic works;

1.1.10 "Terms of Use" means these terms and conditions, which regulate your use of the BCO Application, the BCO Websites and the Services;

1.1.12 "Upload" means the electronic transfer of information or data by you to the Services; and

1.1.13 "User Account" refers to the account (or 'profile') you create with BCO to enable you to use the Services.

1.2 In these Terms of Use any reference to:-

1.2.1 the singular includes the plural and vice versa;

1.2.2 natural persons includes juristic persons and vice versa;

1.2.3 any one sex or gender includes the other sexes or genders, as the case may be;

1.2.4 "including" (or words of similar meaning) means to include without limitation and "include" shall have a corresponding meaning;

1.2.5 "law" means any law of general application and includes the common law and any statute, constitution, decree, treaty, regulation, directive, ordinance, by-law, order or any other enactment of legislative measure of government (including local and provincial government) statutory or regulatory body which has force of law;

1.2.6 "person" means any person, company, close corporation, trust, partnership or other entity whether or not having separate legal personality;

1.2.7 a "Party" includes a reference to that Party's successors in title and assignees allowed at law.

- 1.3 The words “shall” and “will” and “must,” used in the context of any obligation or restriction imposed on a person in these Terms of Use, has the same meaning.
- 1.4 Except insofar as these Terms of Use state otherwise, the relevant definitions of the Electronic Communications and Transactions Act, No. 25 of 2002 (hereafter simply ‘ECTA’), Consumer Protection Act, No. 68 of 2008, and the Protection of Personal Information Act, No. 4 of 2013, will apply herein.
- 1.5 The clause headings in this document have been inserted for convenience only and will not be taken into consideration in the interpretation of this document.
- 1.6 Reference to months or years shall be construed as calendar months or years.
- 1.7 No provision herein shall be construed against or interpreted to the disadvantage of any party hereto by reason of such party having or being deemed to have structured, drafted or introduced such provision.
- 1.8 Whenever the term “including” is used followed by specific examples, such examples shall not be construed so as to limit the meaning of that term.

2 Terms of Use

- 2.1 Your use of the BCO Application, the BCO Websites and of our Services shall at all times be subject to these Terms of Use and any Additional Terms which may be applicable from time to time.
- 2.2 BCO reserves the right to amend these Terms of Use and to publish or amend any Additional Terms at any time, with the new or amended terms coming into force on the date of publication on the BCO Website. While BCO will take reasonable steps to bring these to your attention, it is your responsibility to continually stay abreast of changes to the Terms of Use, and any Additional Terms which apply to you that may be published from time to time.
- 2.3 If there is any conflict between the Additional Terms and these Terms of Use, these Terms of Use will prevail, unless otherwise stated in the relevant Additional Terms and provided that any terms of BCO will prevail against any conflicting third-party terms.
- 2.4 The date of publication at the end of these Terms of Use shall be *prima facie* proof of the date of publication and contents of the particular version of the Terms of Use.

3 Eligible Persons

- 3.1 Unless otherwise stated by BCO in writing, you must be at least 18 (eighteen) years old to make use of the BCO Application, the BCO Websites and the

Services. If you are 17 (seventeen) years and younger, but older than 13 (thirteen), you will inform your parents or guardians that you have registered for and are using the Services of BCO and upon request provide reasonable proof that you have complied with this prerequisite for access to the BCO Application and the Services.

3.2 BCO reserves the right to place an age restriction on any Services at any time.

4 Use and licence

4.1 The Intellectual Property rights in the BCO Application, the BCO Websites and the Services are either owned by BCO or licensed to BCO and include any applications or renewals of such rights and are protected by intellectual property laws. This includes (without limitation) any compilation of such Intellectual Property rights which is likewise the property of BCO and protected by applicable law.

4.2 The trade names 'BCO' and 'Business Control Online' are related to the goodwill of BCO and its affiliated companies and may not be used in any manner without BCO's prior written permission. All other Intellectual Property not owned by BCO that appear on the BCO Application, the BCO Websites or the Services are the property of their respective owners.

4.3 Your use of the BCO Application, the BCO Websites and the Services is for lawful use only, and you agree not to use the BCO Application, the BCO Websites or Services to operate any commercial activities or to promote any products or services, other than expressly authorised by BCO in writing.

4.4 If applicable, BCO grants you a non-exclusive, non-transferable, revocable licence to download and install the BCO Application on a mobile device, personal computer or other supported device for the sole purpose of using the Services provided by BCO.

4.5 You may not do anything in respect of the BCO Application, BCO Websites or the Services unless these Terms of Use expressly permit you to do so. Without limiting the general nature of this prohibition, you may not distribute, sell, grant sub-licences or grant any rights to another person, nor render any services in respect of the BCO Application, BCO Websites or the Services and you may not modify, reverse engineer, decompile, hack or create a derivative work from it.

4.6 Unless otherwise specifically agreed thereto in writing, BCO is under no obligation to release new versions of the BCO Application, nor to support any older version of the BCO Application.

- 4.7 It is specifically recorded that BCO may secure revenue from other sources such as advertising, sponsorship of content or Services and promotional activities. Such activities are regulated in terms of BCO's Privacy Policy, an up to date version of which may be found on our website.
- 4.8 BCO may communicate with you and/or send you information messages via the BCO Application, BCO Websites and the Services or to your email address from time to time, provided that this is done in accordance with BCO's Privacy Policy as referred to above.
- 4.9 You should not choose brand names or trademarks as your username and/or display name since the Intellectual Property rights in such names do not belong to you. BCO reserves the right, using its reasonable discretion, to take over any BCO User's username and/or display name at any time (without compensation), should it require such username and/or display name for any reason whatsoever, including should BCO be requested to do so by the owner of a brand name or trade mark. In such event BCO will contact the BCO User and notify the BCO User that it requires the username and/or display name in question. In such event, BCO shall move the BCO User's account to a mutually agreed replacement username and/or link same to a mutually agreed replacement display name.
- 4.10 All rights not expressly granted to you in these Terms of Use shall remain reserved in favour of BCO.

5 Registration for and Use of Services

- 5.1 In order to make use of some of the Services provided through the BCO Application and/or BCO Websites, you must register an account to become a BCO User.
- 5.2 It is free to register an account, though some categories of BCO Users will receive Paid Value-Added Services through the BCO Application and/or BCO Website, and these additional services will be subject to a subscription fee payable to BCO.
- 5.3 Through registration, you warrant and represent that:
- 5.3.1 any and all information you submit as part of the process to become a BCO User is true and correct and that you are the legitimate owner of such information, including (but not limited to) your date of birth, sex, location, first & last name, cell phone number and contact details;

- 5.3.2 you are the legitimate owner of (or that have obtained the necessary license or permission in respect of) any content or images that you Upload via the BCO Application;
- 5.3.3 you have the right, authority and capacity to enter into and be bound by the Terms and that by using the BCO Website or Application you will not be violating any law or regulation of the country in which you are resident. You are solely responsible for your compliance with all applicable local laws and regulations;
- 5.4 You hereby agree that:
 - 5.4.1 The onus is on a User to complete the relevant Health and Safety documentation prior to commencement of a particular project, and any downtime or aspects affecting availability of the BCO Application or BCO Website will not be a cause of or excuse for non-compliance with relevant laws;
 - 5.4.2 Use of the BCO Application or Website does not constitute legal advice;
 - 5.4.3 The responsibility to comply with relevant laws remains the sole responsibility of the User and its stakeholders as stipulated by such laws;
 - 5.4.4 A User may make use of templates provided via the BCO Application or BCO Website or make use of their own, and the according choice will not affect BCO's liability as governed in terms of this document;
 - 5.4.5 The BCO Application or Website is not able to verify the correctness (or lack thereof) of any information entered into the system by a user; and
 - 5.4.6 that BCO has the right to disclose aspects of your identity to any third party who is able to show on a *prima facie* basis that any Content posted or uploaded by you to the BCO Website or Application constitutes a violation of their intellectual property rights, their right to privacy or any other law.
- 5.5 It is your responsibility to ensure the secrecy of your User Account's registration details, including but not limited to your username and/or display name, password and contact details.
- 5.6 Any activity on the BCO Application, the BCO Websites or the Services authenticated with your login credentials shall be deemed binding on and attributable to you personally.
- 5.7 We reserve the right to revoke any privilege or access to the BCO Application, the BCO Websites and/or the Services granted to you without prior notice to you if BCO has determined that you are in breach of these Terms of Use.

- 5.8 You may not give your username and password to someone else to log on to your User Account or to access the Services using your User Account or authorise another person to do so.
- 5.9 You agree that you are responsible for the security of your mobile device or any other device used to access the BCO Application, BCO Websites and/or the Services.
- 5.10 Messages sent to Users on the BCO Application may contain links to third party websites that are not owned or controlled by BCO. BCO has no control over, and assumes no responsibility for, the content, privacy policies, or practices of any third-party websites. In addition, BCO will not and cannot censor or edit the content of any third-party site. By using the Service, you expressly acknowledge and agree that BCO shall not be responsible for any damages, claims or other liability arising from or related to your use of any third-party website or services.
- 5.11 You agree to notify BCO immediately in writing to support@businesscontrol.co.za when you become aware of any unauthorised use of your User Account or other breach of security or attempted breach of security.
- 5.12 If your use of the Services is dependent on using a mobile device, personal computer or bandwidth of another person, you hereby represent that you have received that person's permission.

6 Nature of Services Provided through the BCO Application and/or Websites

- 6.1 BCO provides Users with the opportunity to generate and manage Health and Safety documentation files via online means in order to facilitate ease of compliance with the relevant provisions of the Occupation Health and Safety Act, 1993 (as amended).
- 6.2 Paid Value-added Services are subject to Additional Terms, the up to date version of which may be found on our website.

7 Payment

- 7.1 We are committed to providing secure online payment facilities. All transactions are encrypted using appropriate encryption technology.
- 7.2 Payment for BCO Services are usually made through the PayCycle payment platform.
- 7.3 Notwithstanding the above mentioned, BCO reserves the right to allow payment to be made via -

- 7.3.1 debit card;
- 7.3.2 credit card: where payment is made by credit card, we may require additional information in order to authorise and/or verify the validity of payment. In such cases we are entitled to withhold delivery until such time as the additional information is received by us and authorisation is obtained by us for the amounts. If we do not receive authorisation your order for the Services will be cancelled. You warrant that you are fully authorised to use the credit card supplied for purposes of paying the Services. You also warrant that your credit card has sufficient available funds to cover all the costs incurred as a result of the services used on the Website;
- 7.3.3 Electronic Funds Transfer or related system; and/or
- 7.3.4 A digital wallet service such as Masterpass
- 7.4 You may contact us to obtain a full record of your payment. We will also send you electronic communications about your order and payment.
- 7.5 Once you have selected your payment method, you will be directed to a link to a secure site for payment of the applicable purchase price for the Services.
- 7.6 Payment for Paid Value-Added Services will be made upfront. Except insofar as is otherwise stated in the Additional Terms, in the case of Paid Value-Added Services which are subscription-based, payments will be automatically recurring unless otherwise stated.
- 7.7 It is hereby recorded that the prices for Paid Value-Added Services and subscription services are subject to change at BCO's discretion. Reasonable notice of a change in prices will be given by information provided through the BCO Application or Website.
- 7.8 It is specifically recorded that Paid Value-Added Services may be subject to the payment of Value-Added Tax which may be chargeable in addition at the applicable rate current from time to time.

8 Errors

We shall take all reasonable efforts to accurately reflect the description, availability, and purchase price of services listed on the BCO Application or Website. However, should there be any errors of whatsoever nature on the Application or Website (which are not due to our gross negligence), we shall not be liable for any loss, claim or expense relating to a transaction based on any error.

9 Returns and Refund

- 9.1 Because of the nature of the Services, the provision of Services by BCO is subject to availability, which a BCO User hereby accepts and agrees to.
- 9.2 Certain Paid-Value Added Services may be subject to a cooling off-period and Users may be entitled to a full or partial refund under certain circumstances. Further details of this are set out in the particular Additional Terms for the specific Paid Value-Added Service.
- 9.3 In the instance where a BCO User opts to terminate a Paid-Value Added Service prior to its conclusion, notice must be given, and any refund payable may be subject to an early termination administration fee. Due to the nature of certain Paid Value-Added Services, a refund may not be possible. Further details of this are set out in the particular Additional Terms for the specific Paid Value-Added Service.

10 Management of Content

- 10.1 Unless otherwise agreed in writing, by an Upload of any content to the BCO Application, BCO Websites and/or related Services, you grant BCO and its affiliated companies a non-exclusive, royalty-free, worldwide and perpetual licence to use the said Content, inclusive of the right to amend the said Content.
- 10.2 BCO has the right, but not the obligation (unless expressly required by applicable law), to monitor postings and uploaded content, and also has the right, but not the obligation, to exercise editorial control over any material which may be made publicly available.
- 10.3 BCO, without derogation to the general provision in clause 11.2 above, has the right, but not the obligation, to appoint a moderator to manage any postings or uploaded content, and such person may edit or remove any Content that was posted by you that may contravene any Additional Terms which may apply to the use of the BCO Application, BCO Websites and/or related Services.
- 10.4 You agree that BCO has no control over any Content or communication you receive from any person other than BCO or its employees. You may therefore be exposed to unwanted Content and it is your duty to report any undesirable Content to BCO.
- 10.5 You agree to that you will not use the BCO Application or Services to transmit, disseminate or upload:
 - 10.5.1 unsolicited commercial communications;
 - 10.5.2 Content that:

- 10.5.2.1 Is Unlawful, harassing, abusive, threatening, or obscene communications of any kind;
 - 10.5.2.2 Could infringe or violate any third party's copyright, trademark, trade secret, privacy or other proprietary or property right;
 - 10.5.2.3 could constitute a criminal offense, give rise to civil liability or otherwise violate any applicable law or regulation;
 - 10.5.2.4 Is Objectionable, including but not limited to, content that contains blatant bigotry, racism, or hatred or that promotes illegal activities or physical harm against anyone;
 - 10.5.2.5 Any other type of communications, be they of a commercial nature or not, to people or entities who have not agreed to be part of such broadcast;
 - 10.5.2.6 Amounts to any harmful, disruptive or destructive files or software;
 - 10.5.2.7 Is adult or pornographic in nature; or
 - 10.5.2.8 is generally unacceptable in the view of the public at large.
- 10.6 You accept the risk that, due to the interactive nature of the Services, you may be exposed to Content that contravenes these Terms of Use. In such event, you are required to immediately report the infringing Content to BCO so that appropriate action can be taken.

11 Availability of Services

- 11.1 You hereby acknowledge and agree that your use of the BCO Application, BCO Websites and the Services are entirely at your own risk.
- 11.2 BCO does not warrant that you will always be able to have access to the Services and Content.
- 11.3 Whilst we endeavour to ensure that the BCO Application, the BCO Websites and the Services are always accessible and messages delivered, we make no warranties or representations as to the accuracy and correctness thereof, level of uptime, the speed of access that can be expected or that messages and communications will be posted and/or delivered.

- 11.4 It is your responsibility to acquire the hardware and Internet connectivity necessary to access the Services and you are responsible for paying all fees that are due in respect of the hardware, mobile and the Internet connectivity and bandwidth consumed while accessing the BCO Application, the BCO Websites and the related Services.
- 11.5 The capabilities of your mobile device may limit the availability of some features and Services to you or may mean that certain Content cannot be played or displayed on your mobile device.
- 11.6 BCO may suspend the Services for any reason, including for repairs or upgrades to any of BCO's systems and BCO may suspend your account pending any investigation into a possible breach by you of these Terms of Use.
- 11.7 BCO may decide to change the features and technical aspects of the BCO Application, BCO Websites or the Services. Such changes may cause interruptions to the Services and may require you to make changes to the settings on your mobile device or to your personal computer, including but not limited to the downloading of an updated version of the BCO Application.
- 11.8 Whilst we endeavour to ensure that information on the BCO Website or Application is accurate and complete, we make no warranties about the accuracy, reliability, completeness or timeliness of information published or provided.
- 11.9 Where we provide third party Content, feedback or publish advertisements as part of your use of the BCO Application or a Service we do not:
 - 11.9.1 warrant or represent that the third-party Content or advertisements are suitable, accurate, correct, complete, reliable, appropriate, or lawful; or
 - 11.9.2 endorse the third-party Content or advertisements.
- 11.10 Your correspondence or dealings with, or participation in promotions and/or competitions of advertisers through the BCO Application, BCO Websites and related Services, and any other terms, conditions, warranties or representations associated arising therefrom, lie between you and the relevant advertisers. You agree that BCO shall not be liable for any loss or damage of any nature incurred as a result of any such interactions between you and the advertisers, or as the result of the presence of such advertisers on the BCO Application or BCO Websites.
- 11.11 TO THE EXTENT PERMITTED BY LAW, YOU HEREBY AGREE TO RELEASE BCO FROM LIABILITY RELATED TO ANY CLAIM, LOSS, INJURY OR DAMAGE ARISING OUT OF OR IN CONNECTION WITH THE USE OF INFORMATION AND/OR GOODS AND/OR SERVICES AVAILABLE FROM OR THROUGH THE BCO APPLICATION, THE BCO WEBSITES OR**

THE SERVICES, WHETHER DIRECT OR INDIRECT INCLUDING, WITHOUT LIMITATION, ANY LIABILITY RELATING TO ANY LOSS OF USE, INTERRUPTION OF BUSINESS, LOST PROFITS OR LOST DATA, OR INCIDENTAL, SPECIAL OR CONSEQUENTIAL DAMAGES OF ANY KIND.

11.12 TO THE EXTENT PERMITTED BY LAW, YOU HEREBY AGREE TO INDEMNIFY, DEFEND AND HOLD BCO, ITS AFFILIATES, RELATED COMPANIES, PARENT COMPANIES, SUBSIDIARIES, OFFICERS, DIRECTORS, AGENTS, LICENSORS AND ANY OTHER PARTNERS AND EMPLOYEES HARMLESS FROM ANY AND ALL CLAIMS, LOSSES, EXPENSES, DAMAGES, ACTIONS, DEMANDS, LIABILITIES OR COSTS, RESULTING OUT OF OR YOUR USE OF THE BCO APPLICATION, THE BCO WEBSITES OR THE SERVICES.

12 Unauthorised Conduct

- 12.1 You may not monitor, intercept or modify any communication that is not addressed to you or to your User Account.
- 12.2 You may not use any harmful or malicious code, including (without limitation) viruses, Trojan horses, worms or spiders, to interfere with or access any data, communications or software associated with the Services, the BCO Application, BCO Websites or any Services/Content otherwise owned by BCO.
- 12.3 You may not send any unsolicited communication to BCO or to any BCO User, whether such unsolicited communication is sent to the BCO User's User Account or to any other address of such BCO User.
- 12.4 You may not use the Services in such a manner as to threaten, harass, embarrass or invade the privacy of any person or to contravene any applicable law or regulation.
- 12.5 You may not impersonate any other BCO User or any other person, and you may not use another person's BCO username and password to access another BCO User's account, nor may you access or assume another BCO User's profile. You may not use or distribute the images taken by and/or belonging to any other person via the BCO Application in any manner without such person's consent.
- 12.6 Other than as may be authorised by BCO in writing and bona fide public search engines generally, you may not programmatically access any Services using an electronic or other automated means used independently to initiate an action or respond to data messages or performances in whole or in part, including (without limitation) any web spiders, crawlers or similar technologies.

- 12.7 You are notified that it is a criminal offence to gain unauthorised access to any restricted areas of the BCO Websites or to otherwise interfere with the proper functioning thereof.

13 Breach and termination

- 13.1 If you are found or are believed to violate any of your obligations as described in these Terms of Use as determined by BCO in its sole and absolute discretion, BCO may, without limiting or prejudice to any other right, warranty or indemnification that may be granted to it under these Terms of Use, cancel any right, privilege or entitlement you may have hereunder immediately and without prior notice to you, suspend your access to the Services, remove any Content Uploaded by you and/or ban you for such period as BCO may deem fit from using the Services and/or take such other steps as BCO may (in its sole and absolute discretion) deem reasonable under the circumstances.
- 13.2 If BCO terminates your User Account as provided for in these Terms of Use, any licence(s) granted to you hereunder will also terminate at the same time and you will immediately stop using the BCO Application, the BCO Websites and the Services and, in the case of the BCO Application, remove it from the mobile device and personal computer and/or other devices on which it has been installed and destroy all other copies of the BCO Application in your possession.

14 Privacy

- 14.1 In circumstances where data generated from the use of the Services (which does not constitute 'personal information' as defined in terms of the Protection of Personal Information Act, 2013) will be stored in a data centre outside of South Africa, you hereby consent for such data to be stored abroad.
- 14.2 **IN THE INSTANCE WHERE A USER PROVIDES PERSONAL INFORMATION OF THIRD PARTIES, THE USER WARRANTS THAT THE NECESSARY CONSENT HAS BEEN SECURED FOR THE PURPOSES OF CAPTURING, PROCESSING AND RETAINING THE RELEVANT INFORMATION. IN THE INSTANCE WHERE THE USER HAS NOT OBTAINED THE NECESSARY CONSENT, THEY HEREBY INDEMNIFY BCO FROM ANY AND ALL CLAIMS ARISING FROM SUCH A BREACH.**
- 14.3 In relation to data which does constitute 'personal information' as defined in terms of the Protection of Personal Information Act, 2013, the terms of BCO's Privacy Policy will apply and are hereby incorporated into this Document by reference. An up to date version of our Privacy Policy may be found on our website.

15 Jurisdiction, Enforceability and Limitation of Liability

- 15.1 Should any dispute (other than a dispute in respect of which urgent relief may be obtained from a court of competent jurisdiction) arise in connection with these Terms of Use or which relates in any way to any matter affecting the interests of the a party in terms of these Terms of Use, the parties will forthwith meet to attempt to settle such dispute or difference in good faith, whether by means of negotiation or mediation.
- 15.2 In the event where the Parties are unable to settle the above dispute within a period of 14 (fourteen) days, then the client consents to the jurisdiction of the Wellington Magistrate's Court (in the Western Cape of South Africa) in regard to any legal proceedings instituted in connection with this agreement.
- 15.3 Notwithstanding Clause 15.2 above, BCO reserves the right to, in its sole discretion, institute proceedings in the Western Cape Division, Cape Town of the High Court of South Africa. or have the matter be referred to arbitration.
- 15.4 In the event where BCO elects to refer the dispute for arbitration, then the arbitration shall be held:-
- 15.4.1 In Wellington, Western Cape;
- 15.4.2 with only the representatives and legal representatives of the parties to the dispute present thereat;
- 15.4.3 in accordance with the rules elected by BCO;
- 15.4.4 otherwise in terms of the Arbitration Act, No. 42 of 1965, it being the intention that the arbitration shall be held and completed as soon as reasonably possible after it was demanded; and
- 15.4.5 The arbitrator for such arbitration proceedings will be a legal practitioner with at least 10 years' relevant experience agreed upon by the Parties and failing agreement, nominated by the chairperson for the time being of the Cape Bar Council.
- 15.5 The arbitrator:-
- 15.5.1 will have regard to the desire of the Parties to dispose of such dispute expeditiously, economically and confidentially;
- 15.5.2 will determine the Party liable for their costs and the costs of an expert they consult and such Party will pay their costs;
- 15.5.3 may, in addition to any other award they may be able to make:-
- 15.5.3.1 award interest with effect from any date, and on any other basis, they considers appropriate in the circumstances;

- 15.5.3.2 shall make such order as to cost as they deem just.
- 15.5.4 The Parties irrevocably agree that the decision in any proceedings hereunder:-
- 15.5.4.1 will be final and binding on all of them;
- 15.5.4.2 will forthwith be carried into effect;
- 15.5.4.3 may be made an order of any court of competent jurisdiction; and
- 15.5.4.4 Will have the power to give Default Judgment if any Party fails to make submissions on due date and/or fails to appear at the hearing.
- 15.6 The provisions of this clause 15 are severable from the rest of this document and shall remain in effect even if the agreement contained in this document is terminated for any reason. The parties shall keep the evidence in the proceedings and any order made by the arbitrator confidential, unless otherwise contemplated herein.
- 15.7 No clause herein which refers to mediation, conciliation or arbitration shall mean or be deemed to mean or interpreted to mean that either of the parties shall be precluded from obtaining interim relief on an urgent basis from a court of competent jurisdiction pending the outcome of mediation, conciliation or decision of the arbitrator.
- 15.8 Should BCO have to take any legal action against the client to enforce its obligations in terms of this Document, the client shall pay all legal costs incurred by BCO on attorney and own client scale which includes collection commission, VAT and tracing costs, and administration charges or any other collection commission charged by its attorneys.
- 15.9 YOU HEREBY AGREE THAT, IN THE INSTANCE WHERE BCO IS LIABLE TO YOU, THE CUMULATIVE MAXIMUM LIABILITY OF BCO FOR ALL CLAIMS, ACTIONS, DEMANDS AND PROCEEDINGS OF WHATEVER NATURE AND HOWEVER ARISING (INCLUDING, WITHOUT LIMITATION, FOR BREACH OF CONTRACT, IN DELICT, FOR ALL ACTS AND OMISSIONS, AND FOR NEGLIGENCE) SHALL IN TOTAL BE LIMITED TO THE TOTAL VALUE OF PAYMENTS ACTUALLY MADE TO BCO BY YOU.**
- 15.10 Each provision of these Terms of Use shall be severable from the other provisions. Should any provision be found by a Court of competent jurisdiction to be invalid or unenforceable for any reason, the remaining provisions of these Terms of Use shall nevertheless remain binding and continue with full force and effect.

16 Notices

- 16.1 BCO hereby selects **29 Derde Laan, Wellington, Western Cape, 7655** as its address for the service of all formal notices and legal processes in connection with these Terms and Conditions (“legal address”). BCO may change this address from time to time by updating these Terms and Conditions.
- 16.2 You hereby select the delivery address specified with your order for Paid Value-Added Services as your legal address, but you may change it to any other physical address by giving BCO not less than 7 days’ notice in writing.
- 16.3 Notices must be sent either by hand, prepaid registered post, telefax or email and must be in English. All notices sent -
- 16.3.1 by hand will be deemed to have been received on the date of delivery;
- 16.3.2 by prepaid registered post, will be deemed to have been received 10 days after the date of posting;
- 16.3.3 **by email will be deemed to have been on the date indicated in the “Read Receipt” notification. All email communications between you and BCO must make use of the ‘Read Receipt’ function to serve as proof that an email has been received.**

17 General

- 17.1 You may not cede, assign, delegate or in any other way alienate or dispose of any or all of your rights and obligations under and in terms of these Terms of Use without the prior written approval of BCO.
- 17.2 Any failure on the part of you or BCO to enforce any right in terms hereof shall not constitute a waiver of that right.
- 17.3 If any term or condition contained herein is declared invalid, the remaining terms and conditions will remain in full force and effect.
- 17.4 These Terms of Use constitute the whole agreement between you and BCO relating to the matters dealt with herein and, save to the extent otherwise provided herein, no undertaking, representation, term or condition relating to the subject matter of these Terms of Use not incorporated in these Terms of Use shall be binding on any of the parties.
- 17.5 No indulgence, leniency or extension of a right, which may be granted or shown to you shall in any way prejudice BCO or preclude BCO from exercising any of the rights that it has derived from these Terms of Use or be construed as a waiver by the BCO.

17.6 We reserve the right to provide further explanation and clarification related to the above terms by means of a Frequently Asked Questions (“FAQ”) section posted on our website. Insofar as they do not contradict or materially alter the provision of this document, the relevant answers found in the FAQ section are hereby incorporated by reference.

18 Information

For the purposes of ECTA, BCO’s information is as follows, which should be read in conjunction with its product descriptions and other terms and conditions contained on the BCO Website or BCO Application:

- Full name: Business Control Online (Pty) Ltd
- Main business: Online Health and Safety File Generation and retention
- Physical address for receipt of legal service (also postal and street address): 29 Third Avenue, Wellington, Western Cape, 7655
- Phone number: 084 667 7144
- Email address: support@businesscontrol.co.za
- PAIA: BCO currently has no manual published in terms of section 51 of the Promotion of Access to Information Act 2 of 2000. A copy of the Act may be downloaded from http://www.polity.org.za/attachment.php?aa_id=3569

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