

TERMS AND CONDITIONS OF AGREEMENT

NOW IT IS AGREED AS FOLLOWS

These terms and conditions along with your application constitute your e-tag Customer Agreement made and entered into between Bakwena and the Applicant.

1. AGREEMENT DOCUMENTS

The Applicant acknowledges that this agreement may be microfilmed or placed on microfiche and that such microfilm or microfiche, or a print of such, shall be deemed to be primary evidence of the terms of this agreement. Bakwena shall be under no obligation to produce the original agreement for the purpose of any legal proceedings or any other purpose.

2. COMMENCEMENT AND DURATION

This agreement commences on date of signature and continues indefinitely thereafter until terminated by either party in terms hereof.

3. SERVICES

Subject to other terms of this agreement, Bakwena undertakes that the e-tag will allow solely the vehicle for which the application was made for, to use at the ETC lanes (consisting of dynamic or manual and dynamic lanes) at the toll gates on the highway if said lanes are available.

The Applicant acknowledges and accepts that the ETC lanes may not be available at all times and has no claim against Bakwena if this happens, irrespective of the length of time that the lanes are not available.

Bakwena may make such rules and regulations as are consistent with the terms of this agreement governing the use of the e-tag and the Applicant shall be bound hereby.

4. APPLICANT'S GENERAL OBLIGATIONS

4.1 The Applicant shall; -

4.1.1 use the e-tag to obtain passage on the highway solely through ETC lanes;

4.1.2 install, display and use the e-tag in accordance with the installation instructions and, if the e-tag is not properly installed, Bakwena has no responsibility or liability to the Applicant for any loss or other relief;

4.1.3 not be entitled to a receipt when proceeding through a tollgate in an ETC lane;

4.1.4 not use, or permit the use, of the e-tag on any other vehicle than was applied for. Passage will be refused to such other vehicles in an ETC lane and the full toll will have to be paid by other means;

4.1.5 be responsible for all the legal costs of Bakwena, on an attorney and own client basis, including any collection commission charged in respect of amounts recovered if legal action is taken against an Applicant in terms of this agreement.

5. OWNERSHIP AND RISK

5.1 Ownership of the e-tag remains vested in Bakwena.

5.2 The risk of loss of or damage to the e-tag passes to the Applicant on delivery of the e-tag to the Applicant.

5.3 Bakwena will replace any e-tag which is or becomes defective (otherwise than through misuse, abuse or use contrary to instructions).

5.4 At any time when the Applicant is in breach of any of its obligations in terms of this agreement Bakwena shall be entitled forthwith and without notice to the Applicant to disable the e-tag and, if Bakwena does so, this shall not give rise to any claim by the Applicant whether to re-instatement of the e-tag or any other relief or liability for any loss suffered.

5.5 The registration fee paid by the Applicant on delivery of the e-tag is not refundable under any circumstances. The fee is in addition to any toll payment fee required by Bakwena, whether at inception or thereafter.

5.6 If the e-tag is lost or stolen the Applicant remains responsible for all tolls due arising from the use of the e-tag until the loss has been reported to Bakwena in writing.

6. PAYMENT OPTION

Payment

6.1 Bakwena shall be entitled to recover from the Applicant by means of a daily, weekly or monthly debit at the sole discretion of Bakwena, the following charges.

6.1.1 The aggregate amount of all tolls incurred by the use of the e-tags (calculated according to the applicable tariff in force from time to time) as recorded by the ETC equipment.

6.1.2 Fees for such other services as Bakwena may provide to the Applicant and which the Applicant has agreed to take, if any.

6.1.3 A reconnection fee in accordance with the then prevailing fees of Bakwena, if the e-tag is disabled at any time due to an act or omission of the Applicant or due to the loss or theft of the e-tag and is thereafter, in the discretion of Bakwena, enabled.

6.1.4 A replacement fee in accordance with the then prevailing fees of Bakwena if the e-tag is stolen or damaged due to the misuse, abuse or use contrary to instructions.

6.1.5 The Applicant undertakes to sign all and any documents necessary to enable Bakwena to recover the amounts due to it by the Applicant from the card or in such other manner as has been agreed to by Bakwena. If the Applicant fails to do so, on request, Bakwena may forthwith and without notice disable the e-tag.

Post payment Option

6.2.1 The aggregate amount of the tolls calculated in the manner set out here above shall be debited by Bakwena on a daily, weekly or monthly basis to the card. Bakwena reserves the right to debit the amount of tolls incurred to the card to the extent that tolls and fees remain unpaid.

6.2.2 The Applicant undertakes to ensure that the card has sufficient funds or credit available to meet the debits for tolls and fees incurred when Bakwena raises the debit to the issuer of the card or the bankers of the account holder.

6.2.3 If any amount due to Bakwena by the Applicant is not paid on due date as per clause 6.3.1, whether due to insufficient funds or credit on the card or otherwise, in addition to any other rights of Bakwena arising from such non-payment, the Applicant shall be liable for interest on the amount unpaid at the rate of prime plus two percent per annum.

6.2.4 All payments due by the Applicant to Bakwena shall be made free of deduction, demand, charges commissions or set-off promptly on due date, time for payment being of the essence of this agreement the Applicant is not entitled to withhold any payment or to set-off against or reduce any payment by reason of any claim which the Applicant may contend to have against Bakwena. Any failure to make payment on due date as per clause 6.3.1 will entitle Bakwena forthwith and without notice to disable the e-tag.

6.2.5 Bakwena may at any time in its discretion require the Applicant to pay a fee, the amount of which from time to time shall be determined by Bakwena in its discretion. Such deposit shall be held by Bakwena free of interest and shall only be refunded to the Applicant on termination of this agreement, return of the e-tag to Bakwena and then only after deduction therefrom, of all amounts due to Bakwena by the Applicant.

6.2.6 A certificate by any manager of Bakwena reflecting any amount owing by the Applicant shall be deemed to be correct and the onus of disproving the correctness of such certificate shall rest on the Applicant.

6.2.7 It is recorded that although the Applicant may be entitled in terms of its agreement with the issuer of the card to dispute the validity of transactions debited to the card including debits raised by Bakwena for tolls recorded by the ETC equipment, the Applicant waives and abandons its rights to dispute the validity of tolls recorded by the ETC equipment unless the Applicant has, prior to notifying the issuer of the card that it disputes the validity of the tolls recorded by the ETC equipment, established by court action against Bakwena that Bakwena was not entitled to levy the tolls concerned.

6.2.8 It may be a requirement of any agreement between Bakwena and the issuer of the card that, unless Bakwena can produce a voucher signed by the Applicant each time a toll is incurred by the Applicant using ETC, the Applicant is entitled to dispute the transaction and have the debit reversed, however this agreement, as signed by the Applicant, shall be sufficient written authority for Bakwena to debit the card all tolls calculated and recorded by the ETC

equipment as being attributable to the e-tag and the Applicant waives and abandons any right to require the issuer of the card to reverse any debit to the card and credit to Bakwena on the grounds that no written record of the transaction exists.

6.2.9 If Bakwena is advised that the card has been listed as stolen or invalid or blocked or the Applicant fails to make payment of any amounts due, Bakwena shall be entitled forthwith and without notice to the Applicant to disable the e-tag until alternative arrangements are made with Bakwena for payment, but the Applicant shall remain liable for any tolls and fees incurred until the loss has been reported to Bakwena in writing and the e-tag is disabled.

6.2.10 Bakwena may by written notice to the Applicant impose and, from time to time, amend a credit limit.

6.2.11 The Applicant may apply to Bakwena in writing for a statement of charges raised against the card and Bakwena will furnish the Applicant with such information as is available provided that Bakwena shall be entitled to raise a reasonable charge to be debited to the card before making the information available. The charge raised shall be deemed to be reasonable.

6.3 Provisions applicable to pre and post payment options

6.3.1 The aggregate and individual amount for the tolls, services and fees calculated in terms of clause 6.1 shall be deemed to be correct and the onus shall be on the Applicant to prove any error in the calculation of the amount due and payable or paid for tolls, services and fees.

6.3.2 The Applicant acknowledges that the tolls are calculated when a vehicle fitted with or displaying the e-tag passes a point in an ETC lane at which the information on the e-tag is read by the ETC equipment, whether:

6.3.2.1 the e-tag is being used by the Applicant or anyone else; and

6.3.2.2 the e-tag is mounted on a vehicle of the toll tariff class for which it was intended and acquired or another vehicle from another toll tariff class Bakwena has no responsibility to ensure or check that the e-tag is mounted on the vehicle of the toll tariff class for which it was intended and acquired, or that the use of the e-tag for a vehicle to pass through a toll gate is permitted or authorised by the Applicant. Subject only to clause 5.6 all use of the e-tag including use in a manner not authorised or permitted by the Applicant or fraudulent use of the e-tag is nevertheless the responsibility of the Applicant who is liable for all charges arising from any use of the e-tag.

6.3.3 The Applicant acknowledges that the toll tariffs will, from time to time, increase and that Bakwena will impose such increased toll tariffs with effect from the date on which they come into operation without any notice to the Applicant in terms of this agreement, it being recorded that the toll tariffs from time to time will be displayed on tariff boards at the tollgates.

6.3.4 If the Applicant has more than one e-tag issued to it, whether in terms of this agreement or other agreements and Bakwena is entitled to disable the e-tag issued in terms of this agreement, Bakwena shall be entitled to disable all e-tags issued to the Applicant whether or not the Applicant is in default under such other agreements or not.

7. LIMITATION OF LIABILITY AND INDEMNITY

7.1 Bakwena shall not be liable to the Applicant whether in terms of any indemnity or otherwise for any loss or damage arising in whole or in part from any act or omission of the Applicant or those for whom the Applicant is vicariously liable.

7.2 Bakwena shall not be liable to the Applicant for any indirect or consequential damages, whether within the contemplation of the parties or not and howsoever arising. Notwithstanding anything contained in this agreement the aggregate liability of Bakwena to the Applicant from any cause of action whatsoever shall not exceed R100.00.

7.3 Insofar as the performance of any obligation or duty by Bakwena in terms of this agreement is performed or assumed by any of its directors, employees, agents or subcontractors, clauses limiting and/or excluding or indemnifying the liability of Bakwena are stipulated for their benefit as well as that of Bakwena and their liability shall be limited and/or excluded and they shall be indemnified accordingly.

8. TERMINATION

8.1 Termination without cause:

8.1.1 Either party may terminate this agreement in writing on not less than three calendar months notice expiring at the end of a calendar month.

8.2 Termination with cause:

8.3 Bakwena shall be entitled to terminate this agreement if the Applicant:

8.3.1 breaches any term of this agreement;

8.3.2 fails to pay any amount when due;

8.3.3 exceeds any credit limit notified to the Applicant by Bakwena or fails to deposit a payment deposit with Bakwena when required by Bakwena to do so;

8.3.4 fails to abide by the rules of Bakwena governing ETC, the use of the e-tag or the use of the ETC lanes at the toll plazas on the highway by written notice to the Applicant at its address chosen on the front of this agreement.

9. CONFIDENTIALITY

9.1 For so long as this agreement is in force and, after its termination, for so long as the Applicant is indebted to Bakwena in any amount from any cause, the Applicant irrevocably authorises Bakwena to obtain from:

9.1.1 any bank where the Applicant has or may in the future have an account; or

9.1.2 the issuer of any card which the Applicant has authorised or may in the future authorise Bakwena to debit with tolls incurred through the use of the e-tag all and any information concerning the Applicant held by such bank or issuer.

9.2 The provisions of clause 9.1 constitute an irrevocable written instruction by the Applicant to each such bank and issuer to furnish such information to Bakwena on request by Bakwena. The Applicant waives and abandons all and any rights the Applicant may otherwise have had against any such bank or issuer arising from any disclosure of such information.

10. NOTICES AND COMMUNICATIONS

10.1 The parties choose as their domicilium citandi et executandi for all purposes under this agreement, whether in respect of court process, notices or other documents or communications of whatsoever nature (including the exercise of any option), the following addresses:

10.1.1 in the case of Bakwena:

Southdowns Ridge Office Park, Unit 1A, 2nd Floor,
Cnr John Vorster & Nellmapius Drive,
Irene, Centurion
Postnet Suite 234, Private Bag X32, Highveld Park, 0169
Fax No +27 11 519 0414 / 0411

10.1.2 in the case of the Applicant, the address provided by the Applicant on the obverse hereof.

10.2 Any notice to a party:

10.2.1 sent by Pre-paid registered post (by airmail if applicable) in a correctly addressed envelope to it at an address chosen as its domicilium citandi et executandi to which post is delivered shall be deemed to have been received on the 14th business day after posting (unless the contrary is proved);

10.2.2 delivered by hand to a responsible person during ordinary business hours at the physical address chosen as its domicilium citandi et executandi shall be deemed to have been received on the day of delivery; or

10.2.3 sent by telefax to its chosen telefax number stipulated in clause 11.1, shall be deemed to have been received on the date of despatch (unless the contrary is proved).

10.3 The Applicant undertakes to notify Bakwena before the effective date of any changes to the details of the Applicant, provided in terms of this agreement.

11. MISCELLANEOUS

The rights and remedies of Bakwena whether arising under this agreement or in law shall not be capable of being waived or varied otherwise than by an express waiver or variation in writing duly executed by an authorised representative of Bakwena.