



TERMS AND CONDITIONS OF USE

Last Updated: 6 June 2019

Introduction

This agreement, including all terms, policies and guidelines incorporated herein by reference, governs your access to and use of the BEE123 Portal, including all its components and sections and the Services (“this Agreement”).

You should read this Agreement carefully before using the BEE123 Portal or subscribing to access and use any of its relevant components or Services. By accessing or using the BEE123 Portal and/or the Services, you agree to be bound by this Agreement. If you do not agree to all of the terms of this Agreement, you must not use the BEE123 Portal or the Services.

Changes to this Agreement

We reserve the right to change any of the terms and conditions of this Agreement, at any time and in our sole discretion. When we make changes, we will revise the “Last Updated” date at the top of this Agreement. Any changes will be effective immediately upon posting on the BEE123 Portal. You are responsible for reviewing this Agreement on each occasion that you revisit the BEE123 Portal and if you continue to access and/or use the BEE123 Portal or the Services after changes are made you are deemed to have accepted them. If at any time, you indicate that you do not accept the terms of this Agreement, as updated and amended in accordance herewith, you will not be permitted to access and/or use the BEE123 Portal or the Services.

For the avoidance of doubt, in the event that we have entered into a written Agreement with you, as set out below, the foregoing does not apply and the terms of such Agreement can only be amended if and to the extent recorded in writing and agreed to by both parties.

Acceptance of Agreement

In the event that we agree to any amendment to the terms and conditions of this Agreement, such amendments shall only be binding if and to the extent recorded and agreed to in writing, and signed by or on behalf of our authorised representative(s). In such an event, such amended Agreement shall take effect from the date of such signature and shall continue in force unless and until terminated in accordance with the terms of this Agreement, amended as aforesaid. In all other cases, this Agreement shall take effect on the earliest of (i) the date of your acceptance of this Agreement, as indicated by you ticking the appropriate box and/or clicking the “I Accept” button online at the web site where you register for the BEE123 Portal, or

subscribe to and/or purchases the Services, or (ii) the date that you first accesses and/or use the BEE123 Portal or a Service, as the case may be.

By accepting this Agreement, you represent, warrant and agree that, to the extent applicable:

- You are authorised to accept it on behalf of the business entity which you represent, and that such entity agrees to indemnify us for violations of this Agreement;
- This Agreement governs the access to and use by you and the business entity which you represent of the BEE123 Portal and the Services, and all matters relating thereto, and that you are authorised to use the BEE123 Portal and the Services on such entity's behalf;
- You, and the business entity which you represent, will comply with all of its terms; and
- You are over the age of 18 (or the age of majority in your country) and are lawfully able to accept this Agreement.

We reserve the right to suspend or cancel your account at any time or to refuse your access to and use of the BEE123 Portal and the Services for any reason that we, in our sole and absolute discretion, deem appropriate, including: (i) providing false, inaccurate, outdated, incomplete or inappropriate information and User Details, (ii) defaulting on the payment of any amount due to us under this Agreement, (iii) it coming to our attention that you are a minor or are otherwise not permitted or authorised to use the BEE123 Portal or to register thereon, (iv) any attempt to defraud BEE123 or other users or accountholders or to make untrue, defamatory or malicious comments about BEE123 or other users or accountholders, and (v) any violation of this Agreement or any applicable laws or regulations.

Parties

This Agreement is entered into between BEE123 (Pty) Ltd (Registration Number 2016/150254/07, VAT number 4030273983) whose registered office is at Sage Technology Park, 102 Western Services Road, Gallo Manor Ext 6, Johannesburg, 2191, South Africa ("BEE123", "we" or "us") on the one hand, and you, the legal or natural person who, on accessing and using the BEE123 Portal and/or the Services, accepts this Agreement, on the other hand ("you").

This Agreement is made in consideration of the obligations entered into (including for you to pay fees timeously and in full to BEE123 and to permit you to use the BEE123 Portal and the Services) and the rights granted by each of the parties.

You and BEE123 agree as follows:

1. Definitions

In this Agreement, references to a "person" include an individual, sole trader, partnership, body corporate, an unincorporated association of persons and any other legal entity; technical expressions shall have the

relevant meaning commonly attributed to them in the computer software business sector in South Africa; the use of the word "including" and similar expressions will be construed as illustrative and not exhaustive; and, in addition to the terms defined elsewhere in this Agreement, the following defined terms shall have the following meanings:

- 1.1. "Affiliate" means, in relation to a legal entity, any person which Controls that entity, is under that entity's Control or is Controlled by the same person which Controls that entity, where "Control" means possessing, directly or indirectly, the ability to direct or cause the direction of the management, policies or operations of an entity, whether through ownership of voting securities, by contract or otherwise, and "Controlled" shall have a corresponding meaning;
- 1.2. "BEE" means Black Economic Empowerment. Reference to the term BEE shall also mean Broad-Based Black Economic Empowerment ("B-BBEE") as defined and utilised in the in the B-BBEE Act 53 of 2003 and the BEE Codes and all subsequent and related Codes, guidelines and regulations thereto from time to time;
- 1.3. "BEE Codes" means the Broad-Based Black Economic Empowerment Codes of Good Practice, including all revisions, updates and subsequent and related Codes, guidelines and regulations thereto from time to time;
- 1.4. "BEE123 Portal" means the web site owned or operated by us from time to time through which the Services are made available to you, currently at www.bee123.co.za, including any and all pages, components and sections thereof or thereon from time to time, including, inter alia, the information and news sections, and the content contained therein.
- 1.5. "Business Partner" means a third party, independent of BEE123, which is an authorised provider of the Service;
- 1.6. "Company Data" means any financial, BEE-related or other data inputted by you or on your behalf into the BEE123 Portal;
- 1.7. "Contractors" means any third party/ies appointed by us to perform our obligations on our behalf under this Agreement;
- 1.8. "End User" means any individual permitted by you to use the BEE123 Portal via your subscription/account;
- 1.9. "Fees and Charges" means the fees and charges payable by you to us in respect of your access to and use of the BEE123 Portal and the Services, including the Licence Fee, as determined by us from time to time;
- 1.10. "Intellectual Property Right" means any patent, trade mark, service mark, copyright, moral right, right in a design, know-how and any other intellectual or industrial property rights, anywhere in the world whether or not registered;
- 1.11. "Licence Fee" means the fees payable by you in respect of your access to and/or use of the Services, if any, in accordance with the Fees and Charges;
- 1.12. "page" means a web site page on the BEE123 Portal, unless specified otherwise;

- 1.13. "POPI" means the Protection of Personal Information Act, 4 of 2013;
- 1.14. "Proposal" means the proposal signed by you and accepted by BEE123, which sets out the commercial terms of your initial subscription to the BEE123 Portal and Services, including the initial Fees and Charges, Services, Service Levels and initial subscription period, as applicable;
- 1.15. "Scorecard Software" means the BEE123 proprietary scorecard software made available through the BEE123 Portal, including all variations thereof from time to time;
- 1.16. "Service Levels" means the levels at which the Services shall be provided, as set out in this Agreement and, to the extent applicable, the Proposal;
- 1.17. "Services" means the products and services, including any licence to access and use software, made available by BEE123 through the BEE123 Portal, which may be purchased or subscribed for by you in accordance with this Agreement, including the Scorecard Software, all as set out in the Proposal;
- 1.18. "User Details" means all information of the End User, including the contact, personal and similar information of such End User, as provided by you or on your behalf through the BEE123 Portal for the purposes of registering on the BEE123 Portal or purchasing or subscribing to a Service;

2. Registration and Use of the BEE123 Portal

- 2.1. Registration on the BEE123 Portal is required to make use of certain features thereof, in particular access to and use of the Services.
- 2.2. When you register, you:
 - 2.2.1. agree to provide, true, accurate, up to date and complete User Details; and
 - 2.2.2. consent to our use of such User Details for the purpose of providing the Services and in accordance with this Agreement.
- 2.3. Your use of the BEE123 Portal shall be strictly in accordance with and subject to the terms and conditions of this Agreement.
- 2.4. You undertake to conduct all dealings with BEE123 and with other users of the BEE123 Portal with the utmost good faith and in accordance with all applicable laws.
- 2.5. You agree to:
 - 2.5.1. ensure that your User Details and other information given in relation to your use of the BEE123 Portal are true and accurate;
 - 2.5.2. inform us immediately of any change to your User Details by updating it on the BEE123 Portal or by informing us by e-mail if this fails. You indemnify and hold harmless BEE123, our Affiliates, licensors, employees, agents and Contractors against any loss or damage that may arise from the reliance by BEE123 or any other third party on your User Details;
 - 2.5.3. comply with your contractual obligations to your Business Partner, if and to the extent applicable;

- 2.5.4. maintain the security and confidentiality of your End Users' user names and passwords and to notify us if at any time you become aware of any unauthorised use of the user names and/or passwords of your End Users, or any other security issue and to co-operate with us to the extent reasonably necessary to rectify that situation. In such instances it shall be your obligation to immediately reset your password and to maintain security. You accept all risks of unauthorised access to the User Details and any other information you provide, and hereby indemnify and hold BEE123 harmless from any liability or damage that may arise as a result of the compromise of your account's security;
 - 2.5.5. accept all responsibility for any and all activities that occur under your account and ensure that the End Users who access the BEE123 Portal on your account comply with the terms of this Agreement;
 - 2.5.6. use the BEE123 Portal and the Services for your own lawful internal business purposes, in accordance with this Agreement and any notice sent or published by BEE123 or other condition posted on the BEE123 Portal;
 - 2.5.7. only store the maximum amount of data, if any, as may be prescribed from time to time on the BEE123 Portal. If at any time you exceed the amount of any specified limit, for so long as you do so, you agree to pay for such additional storage at BEE123's then standard rates; and
 - 2.5.8. only use such web browsers (and versions thereof) to access the BEE123 Portal and Services that are supported by BEE123. BEE123 may at any time in its discretion amend the list of web browsers (and versions thereof) that it supports. You shall bear the responsibility of updating your current browser if it is not supported by BEE123.
- 2.6. Except as expressly permitted by another clause of this Agreement or by separate written arrangement with us, you agree not to and agree to ensure that no End Users or other parties:
- 2.6.1. permit any other person, directly or indirectly, to access, use or otherwise exploit the right and ability to use the BEE123 Portal or any Services in any way, including by permitting the BEE123 Portal or Services to be either (a) re-sold, distributed, sublicensed, loaned or provided to others in a similar way; or (b) used as a hosted, bureau, outsourcing, or similar service;
 - 2.6.2. use or copy (irrespective of the extent of copying) the whole or any part of the graphic user interface or content of the BEE123 Portal or Services for incorporation into or the development of any software or other product or technology.
- 2.7. When accessing and using the BEE123 Portal, you must:
- 2.7.1. not attempt to undermine the security or integrity of our computing systems or networks or, where the BEE123 Portal is hosted by a third party, that third party's computing systems and networks;
 - 2.7.2. not use, or misuse, the BEE123 Portal in any way which may impair the functionality of the BEE123 Portal, or impair the ability of any other user to use the BEE123 Portal;

- 2.7.3. not attempt to gain unauthorised access to any materials other than those to which you have been given express permission to access or to the computer system on which the BEE123 Portal is hosted;
 - 2.7.4. not transmit, or input into the BEE123 Portal any files that may damage any other person's computing devices or software, content that may be offensive, or material, User Details or Company information in violation of any law or third-party rights (including data or other material protected by copyright or trade secrets which you do not have the right to use);
 - 2.7.5. not modify, copy, adapt, reproduce, disassemble, decompile or reverse engineer the BEE123 Portal, the Services or any part thereof, nor permit any third party to do so; and
 - 2.7.6. not merge or combine the whole or any part of the BEE123 Portal or the Services, with any other software or documentation without the prior written consent of BEE123.
- 2.8. It is deemed good practice to regularly reset your password to maintain data security, and we advise you and your End Users, as the case may be, to follow this practice.

3. Services and Service Levels

- 3.1. You can purchase a subscription to access and use a Service by following the relevant steps on the BEE123 Portal. Should you subscribe to use a Service, you will be bound for the full duration of the subscription period indicated on the Proposal or otherwise selected. Unless otherwise agreed to by us in writing, subscriptions to Services shall be for a 12 (twelve) month period commencing on the date of payment of the applicable Licence Fee.
- 3.2. Upon acceptance of a Proposal, and subject to payment of the applicable Fees and Charges, BEE123 grants you the right to access and use the corresponding Service(s) via the BEE123 Portal only with the user roles according to your subscription type for the relevant subscription period. This right is non-exclusive and non-transferable and limited by this Agreement.
- 3.3. By purchasing a subscription, you:
 - 3.3.1. accept the licence granted to you in terms hereof;
 - 3.3.2. acknowledge that you will only use the Services in accordance with this Agreement;
 - 3.3.3. are authorised only to use the Services for your own business purposes;
 - 3.3.4. acknowledge and agree that you shall not, whether directly or indirectly, provide access to the BEE123 Portal or the Services to any third party who is a competitor of BEE123, or who provides services or solutions which are similar to or the same as the BEE123 Portal or the Services; and
 - 3.3.5. acknowledge that you obtain no rights of ownership of the Services or any part thereof whatsoever.
- 3.4. For so long as you pay the applicable charges and have an active subscription to a Service, you may permit the agreed number of End Users to access and use the relevant subscription for such Service. You agree to ensure that those End Users comply with this Agreement.

- 3.5. We will use our commercially reasonable endeavours to ensure that the Services are:
- 3.5.1. made available to you 24 (twenty-four) hours per day, 7 (seven) days per week and 365 (three hundred and sixty-five) days of each year; and
 - 3.5.2. provided to you in accordance with the Service Levels.
- 3.6. From time to time you may change the identity of the individuals who are End Users. We reserve the right to limit the number of times, or the frequency with which, you can do this. We may notify you thereof before exercising this right.
- 3.7. If you are a natural person, we will notify you of the date on which your subscription to any Service expires by no later than 40 (forty) business days of its expiration date, and advise you of the Licence Fees payable in respect of its renewal. Should you elect to (i) renew your subscription, your subscription will be renewed for a further period of 12 (twelve) months and the applicable Licence Fees, will be payable on the same terms as your initial subscription, or (ii) cancel the subscription, your subscription will automatically terminate on its expiry date. If you fail to make an election as aforesaid, your subscription will automatically be renewed on a month-by-month basis, subject to payment of the appropriate Licence Fees. If you are a juristic person, your subscription to the Services will, upon expiry of the then-current subscription period, automatically be renewed for a further period of 12 (twelve) months at the then-current Licence Fees, unless you notify us in writing of your intention to terminate your subscription by no later than 30 (thirty) days prior to the expiry of the then-current subscription period.

4. Scorecard Software

- 4.1. If applicable, those End Users must only use the relevant subscription for the Scorecard Software as follows for their own (or their employer's) BEE related purposes:
- 4.1.1. as permitted by and subject to the terms of this Agreement;
 - 4.1.2. in the course of their (or their employer's) own business only; and
 - 4.1.3. with their own (or their employer's) Company Data only.
- 4.2. Regardless of whether an End User is an employee of the subscriber of the Scorecard Software, the relevant subscriber must ensure that such End User (a) complies with this Agreement and (b) uses the relevant data in the Scorecard Software in accordance with that subscriber's instructions. We accept no liability of any nature whatsoever for any acts or omissions of any End Users.
- 4.3. You are responsible for determining whether you are subject to a Sector Charter or Code or other variant Scorecard, as determined by the BEE Codes or other applicable laws and regulations, and which variation of the Scorecard Software is applicable to your business. Kindly consult your Verification Agency for any guidance you may require in this regard prior to subscribing. We shall not be liable for any refunds, expenses incurred, loss or damages of any nature whatsoever resulting from or relating to your failure or inability to select the correct or appropriate variation of the Scorecard Software or matters related thereto.

- 4.4. In the event of legislative or regulatory changes, which in our sole discretion requires the Scorecard Software to be updated or amended, we shall use our reasonable endeavours to update the Scorecard Software within a reasonable period. We shall, however, not be liable for any loss, damage, penalties or harm or any nature whatsoever and howsoever arising resulting from or relating to a delay of the release of such Scorecard Software update for use by you and/or your End Users.
- 4.5. The BEE Codes is legislation that requires practical implementation. Some of the information, calculations, templates, spreadsheets and methodology contained in the Scorecard Software and BEE123 Portal, as well as any implementation, training, advice or consulting provided are based on BEE123's interpretation and opinion. BEE123 accordingly shall have no liability whatsoever and howsoever in relation to same, including your decision to act or refrain from acting thereon, or for reliance on same, which may result in any varying status levels, loss, damage or harm. Further, BEE123 do not guarantee that any verification file or other deliverable produced by the Scorecard Software will be accepted by your verification agency. You are required to check with your verification agency as to their interpretation of the BEE legislation and BEE Codes and their acceptance of your verification file produced by the Scorecard Software.
- 4.6. You indemnify and hold harmless BEE123, our subsidiaries, affiliates, licensors, employees and agents against any loss or damage (including any indirect or consequential damages) that may arise from the use of the BEE123 Portal or the Services, and specifically the Scorecard Software, or any implementation, advice or consulting provided by or on behalf of BEE123.

5. **Payment**

- 5.1. Payment of all amounts due and owing to BEE123 under this Agreement shall, unless otherwise indicated in a Proposal, be made:
 - 5.1.1. timeously and in full, without set-off or deduction for any reason whatsoever;
 - 5.1.2. upon presentation of BEE123's invoice; and
 - 5.1.3. in advance for the entire subscription period indicated on the Proposal or otherwise selected.
- 5.2. The Fees and Charges exclude all taxes, duties, tariffs, rates, levies and other governmental charges or expenses (including value-added tax, stamp duty and other taxes levied in any jurisdiction), all of which shall be payable by you in addition to the Fees and Charges.
- 5.3. Where payment of any amount due is not made on the due date, we shall be entitled to—
 - 5.3.1. charge interest on the outstanding amount at a rate of 2% (two percent) above the prime overdraft rate (percent, per annum) charged by BEE123's then-current bankers from time to time, as evidenced by any manager of the bank, whose authority it shall not be necessary to prove. Interest shall be calculated from the due date of payment to the date of actual payment,

both days inclusive, compounded calendar monthly in arrears and you agree and undertake to pay, on demand, the penalty interest, which you hereby accept as fair and reasonable; and 5.3.2. without prejudice to any other right or remedy we may have, suspend your access to and use of the BEE123 Portal and the Services as we (in our sole discretion) choose until all payments in arrears have been paid in full.

- 5.4. To the extent permitted by applicable law, fees and charges paid in advance for subscriptions are not refundable.
- 5.5. If you pay your subscription charges to an entity separate from us (e.g. if you obtained access via an accountant or Business Partner), you agree to nonetheless remain bound by the terms of this Agreement, specifically you agree that you shall remain liable for payment to us of all fees and charges due to us in terms of this Agreement. You agree not to take any steps to circumvent your liability for payment of any such fees or charges.
- 5.6. Fees and Charges, are subject to change upon 30 (thirty) days' notice from us. Such notice may be provided at any time by posting the changes to the BEE123 Portal.
- 5.7. We may not automatically provide you with invoices in respect of any amounts paid to us, however, if you require a record of your transaction(s) made on through the BEE123 Portal, you can contact us within 7 (seven) days of such transaction and request a copy of such record.

6. Collection, usage, storage and treatment of Company Data and User Information

- 6.1. We collect, and you supply to us, Company Data and User Details as we request from you via the BEE123 Portal, and such other information as we may from time to time reasonably request. You warrant that this information is, and will remain for the duration of this Agreement, true, accurate and up to date.
- 6.2. You agree to our use, storage and disclosure of your information, Company Data and User Details as follows:
 - 6.2.1. We will use such information, for exercising our rights and performing our obligations under this Agreement and for performing our legal obligations hereunder. We may also use it to contact you, via your relevant or nominated personnel, about our other products and services, to conduct research about our customers and to track and record the manner in which you and your End Users use the BEE123 Portal and/or Services. That contact may be made via our Contractors or Affiliates. You acknowledge that, for these purposes, there is certain information that we must use, including names and email addresses of your End Users. If for any reason we are not permitted to use such information, we may not be able to perform our obligations under this Agreement. You acknowledge that in such circumstances you will still be obliged to pay our charges, in accordance with clause 5.

6.2.2. The information which you submit and store via the BEE123 Portal may be stored on our computer servers which servers may be controlled, hosted and managed by our Affiliate or Contractors.

6.2.3. We will disclose your information (including User Details of your End Users, if necessary) to our Affiliates and Contractors who assist us (and our Affiliates) to exercise our rights and perform our obligations under this Agreement, including providing the BEE123 Portal and/or Services.

6.2.4. You agree to bring this Agreement to the attention of your End Users, to help ensure that they understand and consent to our use of their information, including User Details. This is so that we may provide the BEE123 Portal to them on your behalf. By providing any information to us (including information of any End User), you warrant that you have obtained the necessary consent to do so.

6.3. You warrant that:

6.3.1. you have obtained and will obtain all legally required consents and permissions from relevant parties (including data subjects) for the use, processing and transfer of your information, Company Data and User Details as described in this Agreement; and

6.3.2. you shall, for the duration of this Agreement, to the extent that the information provided to us as envisaged in this clause 6 comprises personal information, ensure that such information is and remains accurate, relevant, up-to-date, not misleading and complete.

6.4. We are each responsible for complying with our respective obligations under applicable laws governing Company Data and User Details, including POPI, and we shall each take reasonable precautions (having regard to the nature of our obligations under this Agreement), to preserve the integrity of Company Data and User Details, and to prevent any unauthorised access, corruption or loss thereof. Without derogating from the generality of the foregoing, BEE123 shall implement appropriate technical and organisational measures to protect Company Data and User Details against accidental or unlawful destruction or accidental loss, alteration, unauthorised disclosure or access and against other unlawful forms of processing. You acknowledge that you have the right to access, at your own cost, Company Data and User Details upon written notice and have any agreed errors therein rectified.

6.5. You, as the controller of the Company Data and User Details, are solely responsible for ensuring that no Company Data or User Details provided to BEE123 shall be in violation of any applicable law, and that the subsequent use, processing, storage and transfer thereof shall not be rendered, determined or otherwise deemed to be unlawful or non-compliant under applicable laws, including POPI and any other applicable privacy and protection of personal information laws.

6.6. You hereby indemnify and hold us harmless from any claim, damages, costs penalty or fine as a result of your failure to comply with your obligations under this clause 6.

7. Intellectual Property Rights

- 7.1. All right title, ownership, benefit and interest, including all Intellectual Property Rights, in and to the BEE123 Portal and the Services, the design and content thereof and any documentation relating thereto remain the property of BEE123. The exclusive right to authorise or prohibit the direct or indirect, temporary or permanent reproduction of the Intellectual Property Rights by any means and in any form, in whole or in part, to make the Intellectual Property Rights available to the public, and to distribute any copyright protected material in, on or accessed through the BEE123 Portal shall remain with BEE123. You agree not to copy, adapt, alter or create any derivative work from any material on the BEE123 Portal, or to restrict or inhibit the use or enjoyment thereof by any third party. You shall not question or dispute the ownership of any of the Intellectual Property Rights at any time.
- 7.2. You may not use the Intellectual Property Rights or any third-party trademarks that appear on the BEE123 Portal or the Services, other than as permitted by express written licence from BEE123, its licensors, or Contractors, or as otherwise permitted by applicable law. In particular, but without limitation, you may not use the marks as metatags nor may you sponsor them in search engines. All goodwill in your lawful and authorised use of the marks shall accrue to BEE123. Please notify us immediately if you become aware of any infringement of the Intellectual Property Rights.
- 7.3. All elements of the BEE123 Portal, including the services provided thereon, are protected by copyright, trade dress, moral rights, trademark and other laws relating to the protection of intellectual property..
- 7.4. the BEE123 Portal may incorporate technical and other protective measures designed to prevent unauthorised and/or illegal access to and use of the BEE123 Portal or the Services. You agree to the incorporation of any such measures in the BEE123 Portal.
- 7.5. If in our reasonable opinion the BEE123 Portal or the Services, or any part thereof, is likely to become or do become the subject of a claim of infringement of a third party's intellectual property rights, we may, subject to your compliance with clause 7.6 below, elect to either:
- 7.5.1.obtain the right for you to continue using the infringing item as permitted under this Agreement; or
 - 7.5.2.modify or replace the infringing item so as to avoid the infringement or alleged infringement, without materially reducing the functionality or performance of the BEE123 Portal or the Services, as applicable; or
 - 7.5.3.failing the above, withdraw the infringing item and refund to you all fees and charges paid under this Agreement with regard to the infringing item in the preceding 12 (twelve) calendar month period.

- 7.6. In the circumstances set out in clause 7.5 above you must:
- 7.6.1. promptly notify us of any claim or threatened claim concerning the use of the BEE123 Portal or the Services;
 - 7.6.2. not independently defend or respond to such claim or threatened claim; and
 - 7.6.3. co-operate with us in the defence of any such claim or threatened claim, subject to our payment of your reasonable third-party costs incurred in providing such cooperation.
- 7.7. This clause 7 states your exclusive remedy in connection with any claim or threatened claim in relation to the intellectual property rights of a third party.

7. Disclaimers and Liabilities

- 7.1. This BEE123 Portal is provided on an "as is" basis, and we and our directors, members, employees, content providers, agents, Affiliates and Contractors exclude, to the fullest extent permitted by applicable law, any warranty of any kind whether express or implied, including warranties of satisfactory quality, fitness for a particular purpose, non-infringement, title, security and compatibility. It is your sole responsibility to satisfy yourself prior to entering into this Agreement that the Services and the BEE123 Portal will meet your individual requirements and be compatible with your hardware and/or software. The functions embodied on or in the materials of the BEE123 Portal or the Services are not warranted to be uninterrupted or without error, and we do not warrant that any results of use will be correct, accurate or reliable, or that any defects in the BEE123 Portal or Services can or will be corrected. You, not us, assume the entire cost of all necessary servicing, repair or correction due to your use of the BEE123 Portal or the Services.
- 7.2. Subject to clauses 3, 4, 7 and 8 and your compliance with the terms of this Agreement, we will use reasonable endeavours to ensure that the BEE123 Portal will give the functionality and levels of service as described on the BEE123 Portal, when used in accordance with this Agreement and our requirements and directions (as made available on the BEE123 Portal or notified to you in writing) from time to time.
- 7.3. We will use reasonable endeavours to keep the BEE123 Portal and Services available at all times, however, we do not warrant that the BEE123 Portal will be continuously available, or that your use of BEE123 Portal or the Services will be uninterrupted or error-free, or that our server will be free from attack.
- 7.4. While we will use reasonable efforts to ensure that all information we provide on the BEE123 Portal and/or Services is correct and complete at the time of the last update to the relevant page, we make no representations or warranties as to such information's accuracy, adequacy, correctness, quality or reliability. You bear all risks from any use or results of using any information or the Services and are solely responsible for validating the integrity of any information received from the BEE123 Portal and the Services.

- 7.5. We do not warrant, whether express or implied, that the BEE123 Portal, the Services or any applications, downloads or files available via the BEE123 Portal or Services are free of viruses, worms, trojans, bombs, time locks or any other data or code which has the ability to corrupt or affect the operation of the user's system.
- 7.6. No advice or opinion expressed on the BEE123 Portal should be regarded as professional advice and users are advised to seek professional advice before placing reliance on any opinion given in the BEE123 Portal or through the Services.
- 7.7. We, our Affiliates and/or Contractors will not, under any circumstances, be liable for any damages of any kind arising from:
- 7.7.1.our use of or reliance on any information or documentation provided by you or on your behalf, including any BEE certificates or other verification. You hereby warrant that any such information or documentation provided by you or on your behalf is accurate, correct and has been lawfully obtained; or
- 7.7.2.any data capture errors.
- 7.8. We shall not be liable for and shall be excused from any failure to perform our obligations in this Agreement due to causes beyond our reasonable control, including acts of God, communications failure, theft, destruction or unauthorised access to BEE123's records, programs or services. Any undertakings or warranties provided in this clause 7 shall be unenforceable and shall not apply to any non-compliance which does not have a material effect on functionality and/or levels of service, nor shall it be enforceable or apply to the extent that any non-compliance arose or was exacerbated by any:
- 7.8.1.use the BEE123 Portal or the Services other than in accordance with this Agreement; or
- 7.8.2.circumstances beyond our control, including any interruption to or failure of any web site, computer, telecommunications services and/or electric service not provided by us, including the Internet.
- 7.9. If you believe our provision of the BEE123 Portal does not conform to the undertakings above, you should notify us by email at support@bee123.co.za.
- 7.10. The remedies provided under this clause 7 are your sole and exclusive remedies in the event of a breach of the undertakings or our obligations under this Agreement.
- 7.11. You acknowledge that, no oral or written communications by or on our behalf shall create a warranty or in any way increase the scope of the undertakings set out in this Agreement.
- 7.12. We, our Affiliates and/or Contractors will not, under any circumstances, be liable for any damages of any kind arising from the use of the BEE123 Portal or the Services, or any part thereof, or the unavailability of the same, including:
- 7.12.1. lost income, lost profits or lost business, wasted time, anticipated savings, lost goodwill, third party costs and charges, loss of business information, loss of data or any business interruption, in each case whether caused directly or indirectly; or

7.12.2. any circumstances arising out of or in connection with the Internet, any third party or your telecommunication service, third party or your computer system, and/or associated or supporting systems not provided by us and used by you to use or otherwise access the BEE123 Portal and/or the Services, including any third-party middleware, systems, platforms or the like into which the BEE123 Portal and/or the Services have been integrated or with which the BEE123 Portal and/or the Services have been combined;

7.12.3. any indirect, consequential, incidental, punitive or special damage, however caused and whether arising under contract, delict including negligence, statute or otherwise, even if we knew or ought to have known of such potential liability.

7.13. Subject to the limitation and exclusions set out in this clause 7, our (and any Affiliate's and Contractor's) total aggregated liability, whether in contract, warranty, delict/tort (including negligence, whether active, passive or imputed), product liability, strict liability or other theory, shall not exceed the amount of charges actually paid by you to use the BEE123 Portal in the 12 (twelve) month period prior to the date the circumstances causing such liability first arose. The limitation of liability in this clause 7 has been calculated to be proportionate to the charges paid by you to use the BEE123 Portal and/or the Services and takes into account the fact that it is not within our control how and for what purposes you use the BEE123 Portal and/or the Services.

7.14. You agree to defend, indemnify and hold us harmless, as well as our Affiliates, licensors, employees, agents, sponsors, third-party information providers and Contractors, against any and all claims, damages, costs, liabilities and expenses (including reasonable attorneys' fees) arising out of or related to your registration or use of the BEE123 Portal and/or the Services (including any information you disclose in any dealings you have with any other user of the BEE123 Portal), any information provided thereon on which you may rely, your conduct, your use of or inability to use the BEE123 Portal and/or the Services, your failure to perform any of your obligations in terms of this Agreement, your breach or alleged breach of this Agreement or of any representation or warranty contained herein, your unauthorised use of the BEE123 Portal, any reliance on any BEE certificate or other document or information provided by you or on your behalf, any fraudulent or criminal acts on your part (including the falsification of any documents), or your violation of any rights of another.

7.15. In no event shall we, our directors, members, employees or agents be liable for any direct, special, indirect or consequential damages, or any other damages of any kind, including loss of use, loss of profits or loss of data, whether in an action in contract, delict/tort (including negligence) or otherwise, arising out of or in any way connected with the use of the BEE123 Portal, the Services, information or materials contained in or accessed through the BEE123 Portal or the Services, including any damages caused by or resulting from your reliance on any information

obtained from us, or that result from mistakes, omissions, interruptions, deletion of files or e-mail, errors, defects, viruses, delays in operation or transmission or any failure of performance.

7.16. We shall not be liable to you or to any other person in respect of any loss or damage of whatsoever nature caused by or arising from any of the following circumstances, and you hereby expressly indemnify BEE123 against any claims in respect of such loss or damage resulting from or related to your use of or inability to use the BEE123 Portal, the Services, information or materials contained in or accessed through the BEE123 Portal or the Services: (i) any fact or circumstance beyond our reasonable control; (ii) any breakdown in the service provided by any Internet service provider (including a line failure); (iii) the performance or unavailability of the BEE123 Portal or the Services (including any system errors or errors in calculation resulting from or relating to the BEE123 Portal or the Services), or any other web site or database to which it is connected; (iv) any suspension or interruption in the provision of access to the BEE123 Portal or the Services; (v) any breach of privacy or security by any person or entity; (vi) the loss, damage, destruction, theft, contamination or corruption of any data, User Details or content accessible by means of the BEE123 Portal or the Services; (vii) the preservation and integrity of any text or any other form of data, User Details or information or material which is contained on or accessible from the BEE23 Portal or the Services; (viii) any publication or use of any User Details or information or material which is contained on or accessible from the BEE23 Portal or the Services; or (ix) your access to the Internet, the BEE123 Portal or the Services.

8. Termination

8.1. This Agreement (including your right to use the BEE123 Portal and Services) will automatically and immediately terminate if you are unable to pay your debts or you become insolvent, bankrupt or cease to trade or exist, or an order is made or a resolution passed for your liquidation, administration, winding-up or dissolution, or an administrative or other receiver, manager, liquidator, administrator, trustee or similar officer is appointed over all or any substantial part of your assets, or you enter into or propose any composition or arrangement with your creditors generally, or any person seeks a moratorium in respect of you or commit an act of insolvency under the Insolvency Act No 24 of 1936, or similar circumstances occur to you in any jurisdiction.

8.2. We may terminate this Agreement at any time by written notice, effective immediately, if you:

8.2.1. materially breach any term of this Agreement and either that breach is incapable of remedy or you have not remedied that breach within 7 (seven) days after receiving written notice requiring you to remedy it; or

8.2.2. fail to pay any charges payable to us timeously and in full.

8.3. Subject to clause 8.4 and clause 8.5, upon termination of this Agreement, however caused, we will stop your ability to access the BEE123 Portal and Services, so that you will no longer be able

to access and use the BEE123 Portal. You acknowledge that you may no longer be able to access your Company Data via the BEE123 Portal from this time.

- 8.4. Except in the circumstances described in clauses 8.1 to 8.2, if this Agreement is terminated and you notify us at the time of notice of termination that you require further access to your Company Data, we may provide you with access to the BEE123 Portal for a period of 5 (five) calendar days in order that you may access, copy and/or print out your Company Data, subject to the following: (a) it is possible that we may have deleted your Company Data, in which case we will not be able to provide it to you; (b) we may charge you for providing you with access to your Company Data; and (c) if your account remains in arrears for 90 (ninety) days we may delete and may have deleted your Company Data. It is therefore your responsibility to ensure that you make regular backups of your Company Data, as we will not be liable for any loss to or destruction of Company Data stored on the BEE123 Portal.
- 8.5. If we terminate this Agreement in accordance with clause 8.1 or 8.2 we may irretrievably delete your Company Data from the effective date of termination.
- 8.6. Any termination of this Agreement will not affect any accrued rights or liabilities of either party, nor shall it affect the coming into force, or the continuance in force, of any provision of this Agreement which is expressly or by implication intended to come into force or continue in force on or after termination.

9. Communication Tools and Conditions

- 9.1. Your communication with us must be by email, sent to the appropriate email address provided on the BEE123 Portal.
- 9.2. Our communication with you must be via those details provided by you or on your behalf when you register as a user of the BEE123 Portal (or any new details which you subsequently notify to us).
- 9.3. All formal notices given under this Agreement shall be in writing. Communication of formal notices under this Agreement addressed specifically to either of us at the addresses indicated by you upon registration and by us on the BEE123 Portal, will be deemed to have been served, in respect of: (i) prepaid registered post to a physical address, fourteen (14) days after such posting; (ii) facsimile transmission, on the first (1st) business day following the date of successful transmission; (iii) delivery by hand, on the date of delivery to a responsible person during business hours; and (iv) e-mail, on the first (1st) business day following the date of successful delivery to the recipient, provided that, if a notice or communication is actually received by a Party, adequate notice or communication shall have been given.
- 9.4. As a condition of this Agreement, if you use any communication tools available through the BEE123 Portal, you agree only to use such communication tools for lawful and legitimate purposes and accept that you are solely responsible for your use of such communication tools, which shall

be at your own risk. You must not use any such communication tool for posting or disseminating any material unrelated to the use of the BEE123 Portal including: offers of goods or services for sale, files that may damage any other person's computing devices or software, content that may be offensive or harmful to any of our other users, or material or content in violation of any law (including material that is protected by copyright, trade secrets or other intellectual property or contract right, and which you do not have the right to use) or rights of others or otherwise objectionable or that you know or have reason to believe is incorrect, inaccurate, misleading or outdated.

- 9.5. When you make any communication on the BEE123 Portal, you represent and warrant that you own the content of the communication or that you have the lawful right to transmit, distribute and reproduce such content or material.
- 9.6. We take no responsibility and assume no liability for any content or material posted, stored or uploaded by you or any third party, or for any loss or damage thereto, nor are we liable for any mistakes, defamation, slander, libel, omissions, falsehoods, obscenity, pornography or profanity you may encounter. As a provider of interactive services, we are not liable for any statements, representations or content or material provided by its users in any public forum or through any communication tool.
- 9.7. Although we have no obligation to screen, edit or monitor any of the content or material posted in or disseminated through any communication tool, and no such content or material is endorsed, reviewed or approved by us, we reserve the right, and have absolute discretion, to remove, screen or edit any content or material posted or stored on the BEE123 Portal or through the communication tools at any time and for any reason without notice.
- 9.8. Any use of the communication tools or other portions of the BEE123 Portal in violation of the foregoing violates this Agreement and may result in, among other things, termination or suspension of your rights to use communication tools and/or the BEE123 Portal. You acknowledge and agree that we may access, use or disclose any information about you or your use of the BEE123 Portal, including any content or material posted thereon to comply with the law or any legal process; protect and defend our rights or property; or to protect the safety of our company, employees, customers or the public.

10. Cookies

“Cookies” are small files placed on your hard drive that assist us in providing the Services and access to and use of the BEE123 Portal, that contain information, including personal information, that can later be read by a web server in the domain that issued the cookie to you. We use cookies to, inter alia, allow you to enter your password less frequently during a session, and we use data collection devices including cookies, on certain pages of the BEE123 Portal to help analyse our web page flow, measure promotional effectiveness, and promote trust and safety, to offer certain features that are only available through the use

of a cookie and to allow us to provide information that is targeted to your interests. You have the ability to accept or decline cookies. Most browsers automatically accept cookies, but you can usually modify your browser setting to decline cookies. If you choose to decline cookies, you may not be able to sign in or use other features of the BEE123 Portal or Services that depend on cookies..

11. Links and Third Party information

- 11.1. Links to the BEE123 Portal are permitted, subject to our prior written consent, which may be conditional, and we reserve the right to withdraw such consent at any time and for any reason whatsoever. You are not entitled (nor shall you assist others) to set up links from your own webpage or portal to the BEE123 Portal by deep-linking, framing or otherwise, without our prior written consent. Such consent may be withheld at our absolute discretion, and without the need to provide a reason.
- 11.2. The BEE123 Portal may include links that allow you to leave the BEE123 Portal and visit third party sites. We have no control over and are not responsible for the content, access or use by you or availability of those third party sites, for any products or services you buy through those sites or for the treatment of any personal information you provide to any third party on or through such sites. The products, services and web sites of third party providers made available via this BEE123 Portal may be owned and operated by independent suppliers. While we may co-brand these products or services with our own, we do not endorse those products or services or warrant the accuracy or reliability of any information provided to you by such third parties. In particular, we do not warrant or guarantee that you will be satisfied with the products and/or services supplied by third parties and you should make whatever enquiries you feel are necessary before proceeding with any such transactions. When you leave the BEE123 Portal, you should be aware that our terms and policies (including this Agreement) no longer govern your use of the relevant third-party sites. You should review the applicable terms and policies, including privacy and data gathering practices, of any site to which you navigate from the BEE123 Portal.
- 11.3. Your participation, correspondence or business dealings with any third party found on or through the BEE123 Portal, regarding the payment and delivery of related goods or services, and any other terms, conditions, warranties or representations associated with such dealings, are solely between you and such third party. You agree that we will not be responsible or liable for any loss, damage or other matters of any sort incurred as the result of any such dealings.
- 11.4. Some information within the BEE123 Portal and Services (and components thereof) is provided to us by third parties. We therefore do not confirm the accuracy or the veracity of such information. We shall accordingly not be liable for the inaccuracy of such information or your reliance on such information.

12. Acceptable use of the BEE123 Portal

- 12.1. It is impossible to provide an exhaustive list of exactly what constitutes acceptable and unacceptable use of the BEE123 Portal. In general, but without derogating from the generality of the foregoing, we will not tolerate any use of the BEE123 Portal which damages or is likely to damage our reputation, the availability or integrity of BEE123 or the BEE123 Portal or which causes us or threatens to cause us to incur any legal, tax or regulatory liability.
- 12.2. We therefore require you to treat our BEE123 Portal and the Services with respect, and not to use same for any illegal purpose, or in such a way as to infringe or breach other's rights or to cause or threaten to cause us damage. We require you to comply with any relevant notices, policies and terms imposed by third parties whose web sites, products or services you access through the BEE123 Portal.
- 12.3. We reserve the right to suspend the use of the BEE123 Portal and generally or block your access to any part thereof and/or to suspend or terminate your rights to use same or any part of it if we suspect misuse or any breach of this Agreement. We shall then report any misuse of the BEE123 Portal to the relevant enforcement or other authorities and to our advisers. We further reserve the right to disclose any evidence we have which relates directly or indirectly to misuse.
- 12.4. Any user that delivers or attempts to deliver any damaging code to or attempts to gain unauthorised access to the BEE123 Portal shall be criminally prosecuted. BEE123 may also, at its sole discretion, institute civil action for damages suffered as a result of such conduct.

13. Statutory Rights and Disclosures

- 13.1. You may have additional rights under your local laws that this Agreement cannot change. In such event, this Agreement shall be interpreted in such a way so as not to negate those rights. By law, we are required to disclose the following information to you as a consumer:
- 13.1.1. BEE123 (Pty) Ltd. is a company registered in terms of the laws of the Republic of South Africa with registration number 2016/150254/07.
- 13.1.2. BEE123's physical address is Sage Technology Park, 102 Western Services Road, Gallo Manor Ext 6, Johannesburg, 2191, South Africa, at which address BEE123 will receive legal service of documents.
- 13.1.3. You may contact BEE123 through this web site www.bee123.co.za or via e-mail at support@bee123.co.za.

14. General Terms

- 14.1. If any provision of this Agreement is found by any court or administrative body of competent jurisdiction to be invalid or unenforceable, such invalidity or unenforceability will not affect the other provisions of this Agreement which will remain in full force and effect. If any provision of this Agreement is so found to be invalid or unenforceable but would cease to be invalid or unenforceable if some part of the provision were deleted without affecting the intent and purpose thereof, the provision in question will apply with such modification as may be necessary to make it valid and enforceable.
- 14.2. No failure or delay of either party to exercise any rights or remedies under this Agreement shall operate as a waiver of that failure or delay, nor shall any single or partial exercise of the same or other rights or remedies prevent any further or other exercise of the same or other rights or remedies, nor shall any waiver of any rights or remedies with respect to any circumstances be constructed as a waiver of those rights or remedies with respect to any other circumstances.
- 14.3. This Agreement constitutes the entire agreement between you and us with respect to your access and use of BEE123 Portal and the Services, and all other matters dealt with therein, and supersedes all documentation, information and other communications (in each case whether spoken or written) between the parties with respect thereto. You acknowledge that in entering into this Agreement you have not relied on any documentation, information, representation, warranty, collateral contract or other assurance (except those set out in this Agreement) made by us or on our behalf before the date you accepted this Agreement. You waive all rights and remedies which, but for this clause, might otherwise be available to you in respect of any such representation, warranty, collateral contract or other assurance.
- 14.4. We may cede, assign, transfer, sub-contract or otherwise part with this Agreement or any part thereof or any right or obligation under it, without obtaining your prior written consent thereto.
- 14.5. You may not assign, transfer, sub-contract or otherwise part with this agreement or any part thereof or any right or obligation under it, without obtaining BEE123's prior written consent thereto.
- 14.6. If you are a juristic entity, you hereby consent to our use of your name, company logo and a general description of the Services provided by us in terms of this Agreement in any proposals, presentations or other similar such documents which we may issue, employ, publish or submit from time to time.
- 14.7. Although we may refer you to certain third-party service providers for the provision of services which may be ancillary, complementary or related to the Services, we do not recommend or endorse any such third party, including any third parties who make the BEE123 Portal available to you. If you wish to engage with such an organisation, you should independently investigate its/their experience, skills and qualifications. No third party is appointed or authorised by us as our servant or agent, nor has any authority, either express or implied, to amend this Agreement, or to enter into any contract, provide any representation, warranty or guarantee with or to you on our

behalf, or otherwise make commitments for us in any way whatsoever. You agree that we will not be responsible for any act or omission of any third party including any services provided by such party in relation to the BEE123 Portal and/or the Services, including any administration thereof.

- 14.8. This Agreement is subject to and shall be interpreted in accordance with the laws of South Africa and the parties submit to the exclusive jurisdiction of the courts of South Africa.
- 14.9. Any dispute relating in any way to your use of the BEE123 Portal and the Services, will be submitted to confidential arbitration to be held in Sandton under the rules of the Arbitration Foundation of Southern Africa (or its successor in title), to which arbitration you hereby consent; except that, to the extent you have in any manner violated or threatened to violate our intellectual property rights, we may seek interdictory, injunctive or other appropriate relief in any applicable court in the Republic of South Africa, and you consent to exclusive jurisdiction and venue of such courts. The arbitrator's award will be binding and may be entered as a judgment in any court of competent jurisdiction. To the fullest extent permitted by applicable law, no arbitration under this Agreement may be joined to an arbitration involving any other party subject to this Agreement, whether through class arbitration proceedings or otherwise.
- 14.10. A person who is not a party to this Agreement has no right to benefit under or to enforce any term of this Agreement.
- 14.11. Any rights of BEE123 not expressly granted herein are reserved.
- 14.12. The client covenants and agrees that for a period of two (2) years following the Separation Date, they will not solicit or attempt to solicit, directly or by assisting others, any person who was an employee of the Company or any affiliate of the Company on, or within six (6) months before, the date of such solicitation or attempted solicitation, to leave the employment of the Company or such affiliate.