



Last Updated: 1 August 2020

Partnership Program Agreement

This Agreement is between:

BEE123 Proprietary Limited (Registration Number 2016/150254/07) ("**BEE123**")

and

the party accepting this Agreement for the appointment as BEE123's partner, as detailed on the Registration Page ("**Partner**").

This Agreement is binding and comes into full force and effect upon acceptance thereof by the Partner, either in writing or by means of electronic acceptance on the Registration Page during the registration process, subject always to BEE123's acceptance thereof in writing.

By accepting this Agreement, the Partner agrees that:

1. The person accepting this Agreement is authorised and lawfully able to accept it on behalf of the Partner;
2. This Agreement governs the relationship between BEE123 and the Partner regarding the Partnership Program and all matters relating thereto; and
3. The Partner has read, understood and agrees to be bound by the terms of this Agreement, which it will comply with at all times.

BEE123 reserves the right to change any of the terms and conditions of this Agreement at any time and in its sole discretion. When such changes are made, BEE123 will revise the "Last Updated" date at the top of this Agreement. Any changes will be effective immediately upon posting on the Partner Zone. The Partner is responsible for reviewing this Agreement on each occasion that it revisits the Partner Zone, and its continued engagement with BEE123, the Portal and Partner Clients for the purposes relating to this Agreement after changes are made shall be deemed to indicate its acceptance of the amended terms. If, at any time, the Partner indicates that it does not accept the terms of this Agreement, as updated and amended in accordance herewith, the Partner's appointment hereunder shall immediately cease and this Agreement shall be terminated subject to, *inter alia*, clause 17.

This Agreement shall apply to all partners who are members of the Partnership Programs, as follows:

- Part 1 of the Agreement shall apply to all members of the Partnership Program.
- Part 2 of the Agreement shall apply to members of the Referral Partner Program.
- Part 3 of the Agreement shall apply to members of the Advisory Partner Program.

In the event that the Partner has been admitted as a member to multiple Partnership Programs, (i) all relevant Parts of the Agreement will be applicable, and (ii) the most favourable of the applicable commercial benefits that accrue as a result of such multiple appointments shall apply.

PART 1

General Terms and Conditions

This Part 1 of the Agreement shall apply to all partners who are members of the Partnership Program.

1. DEFINITIONS

Unless the contrary is clearly indicated, the following words and/or phrases used in this Agreement shall have the following meaning: -

- 1.1 **“Agreement”** means the terms and conditions of this agreement (including the Registration Page, the Appointment Confirmation and any annexures hereto, all of which are incorporated herein by this reference);
- 1.2 **“Advisory Partner”** means a partner who has been appointed as a member of the Advisory Partner Program;
- 1.3 **“Advisory Partner Program”** means the program for Advisory Partners, the applicable terms of which are as set out in Part 3 of this Agreement;
- 1.4 **“Appointment Confirmation”** means the confirmation of Partner’s appointment to the relevant Partnership Program provided by BEE123 to the Partner upon successful application;
- 1.5 **“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 B-BBEE Codes of Good Practice and all subsequent and related amendments, Codes, guidelines and regulations thereto;

- 1.6 **“BEE123 Customers”** means customers that subscribe for and/or utilise BEE123’s Products and/or the Portal, from time to time;
- 1.7 **“Confidential Information”** means information or data, whether disclosed orally or in writing, that is identified as being confidential or proprietary at the time of disclosure or has the necessary quality of confidence about it and includes any information relating to BEE123’s business, business policies, business plans, pricing models, know-how, trade secrets, diagrams, blue prints, flow charts, potential customers, customer lists, sales, sales figures and products; and technical and mechanical information and computer programs of the disclosing Party;
- 1.8 **“Effective Date”** means the date upon which BEE123 notifies the Partner by means of the Appointment Confirmation that it has been accepted to the Partnership Program, on the terms and conditions set out in such Appointment Confirmation and this Agreement;
- 1.9 **“Intellectual Property Rights”** means all right, title and interest in and to any and all intellectual property that BEE123 has created, acquired or otherwise has rights in and may, in connection with the performance of its obligations under this Agreement, employ, provide, modify, create or otherwise acquire rights in and includes all concepts; ideas; methods; methodologies; procedures; processes; know-how; techniques; function, process, system and data models; templates; the generalised features of the structure, sequence and organisation of software, user interfaces and screen designs; general purpose consulting and software tools, utilities and routines; and logic, coherence and methods of operation of system, and specifically including the Trade Marks, designs and copyright in the Portal and the Products;
- 1.10 **“Net Revenue”** means net revenue of all invoices in relation to the Products actually received from a Partner Client by BEE123. For the avoidance of doubt, Net Revenue shall be net of other charges, including discounts, third-party rebates, VAT and other sales-related taxes;
- 1.11 **“Parties”** means BEE123 and the Partner collectively, and **“Party”** means either of them individually, as the context requires;
- 1.12 **“Partner Clients”** means the clients of the Partner;
- 1.13 **“Partner Zone”** means the dedicated partner zone within the Portal, which is accessible by partners who have been accepted or wish to apply for acceptance to the Partnership Program;

- 1.14 **“Partnership Program”** means the relevant partnership program for which the Partner applies and to which it may be appointed in terms of this Agreement, namely:
- 1.14.1 the Referral Partner Program; or
- 1.14.2 the Advisory Partner Program;
- 1.15 **“Partnership Program Logo”** means the logos of the relevant Partnership Program component to be utilised by members thereof in accordance with this Agreement, indicating their membership thereto;
- 1.16 **“Portal”** means the web-based portal, located at www.bee123.co.za or such other web sites as determined by BEE123 from time to time, including the Products and all future updates, enhancements and modifications thereto and such other products and services as may be added thereto by BEE123 from time to time;
- 1.17 **“Products”** means the products and services made available by BEE123 to its customers from time to time (whether or not specified herein), including all future versions, updates, enhancements and modifications thereto, which specifically includes licences to use the Scorecard Software;
- 1.18 **“Rebates”** means any rebates to be paid by BEE123 to the Partner as may be set out in the Appointment Confirmation and updated and amended from time to time at BEE123’s sole discretion. The standard Rebates are set out in Appendix A to this Agreement (as may be amended from time to time) for indicative purposes;
- 1.19 **“Referral Partner”** means a partner who is a member of the Referral Partner Program;
- 1.20 **“Referral Partner Clients”** means clients of the Referral Partner;
- 1.21 **“Referral Partner Program”** means the program for Referral Partners, the applicable terms of which are as set out in Part 2 of this Agreement;
- 1.22 **“Registration Page”** means the electronic webpage through which the details of the Partner are captured for purposes of applying for appointment to the Partnership Program, and in terms of which this Agreement is accepted by the Partner;
- 1.23 **“Scorecard Software”** means BEE123’s proprietary software application contained in the Portal that will be utilised by BEE123 Customers, *inter alia*, to calculate and manage their BEE Scorecards; and

1.24 "Trade Marks" means the means the trademarks, trade names, service marks, logos or other descriptive marks or designs used by BEE123 (or its licensors or suppliers) in respect of the Products.

2. INTERPRETATION

2.1 Any reference in this Agreement to natural persons includes legal persons. Words importing the singular include the plural and *vice versa* and words importing any one gender include the other genders.

2.2 Any statute, constitution, decree, treaty, regulation, directive, ordinance, by-law, order or any other enactment or legislative measure of government (including local or provincial government) statutory or regulatory body which has the force of law means the relevant enactment or legislative measure as at the Effective Date and as amended or re-enacted from time to time.

2.3 The headings of clauses in this Agreement are for reference purposes only and shall not be taken in account in construing the content of the clauses to which they relate.

2.4 Words and/or expressions defined in any particular clause in the body of this Agreement shall, unless the application of such word and/or expression is specifically limited to that clause, bear the meaning so assigned to it throughout this Agreement. Words and/or expressions defined in this Agreement shall bear the same meanings in any annexes hereto which do not contain their own defined words and/or expressions.

2.5 If figures are referred to in numerals and words, the words shall prevail in the event of any conflict between the two.

2.6 The word "including" (or words of similar meaning) means to include without limitation, and, if the expression is used with reference to specific examples, the *eiusdem generis* rule shall not apply;

2.7 Where a period consisting of a number of days is prescribed, it shall be determined by excluding the first and including the last day.

2.8 Where the day upon or by which any act is required to be performed is a Saturday, Sunday or public holiday in South Africa, the Parties shall be deemed to have intended such act to be performed upon or by the first day thereafter which is not a Saturday, Sunday or public holiday.

2.9 If any obligation or act is required to be performed on a particular day, it shall be performed (unless otherwise stipulated) by 17h00 on that day.

2.10 The expiration or termination of this Agreement shall not affect such of its provisions as expressly provide that they will continue to apply after such expiration or termination or which of necessity must continue to apply after such expiration or termination.

2.11 In the event of a conflict between the main body of this Agreement and the annexures hereto, the annexures will prevail, save where specifically provided to the contrary.

2.12 In the interpretation of this Agreement, the *contra proferentem* rule will not apply.

3. INTRODUCTION AND RECORDAL

It is recorded that –

- 3.1 the Partner wishes to join the Partnership Program; and
- 3.2 BEE123 is willing to appoint the Partner to the Partnership Program, subject to the terms and conditions hereinafter set out.

4. APPOINTMENT

- 4.1 The Partner's appointment is at all times subject to BEE123's acceptance and approval thereof, and to the Partner's continuing compliance with this Agreement. The specific Partnership Program in respect of which the Partner is appointed shall be as specified and confirmed by BEE123 in the Appointment Confirmation provided to the Partner following acceptance of this Agreement by the Partner on the Registration Page. The Partner acknowledges that any program it has specified on the Registration Page is merely an application for admission to such program and no expectation of membership has been created. BEE123 reserves the right, in its sole and absolute discretion, to admit the Partner into any specific program or reject its application, irrespective of whether any or all of the Program criteria have been met.
- 4.2 If, at any time, the Partner fails to (i) meet the requirements determined by BEE123 for acceptance to the relevant Partnership Program, or (ii) comply with any of the provisions of this Agreement, then, without prejudice to its rights, BEE123 may, at its election on 30 (thirty) days' written notice to the Partner, either terminate this Agreement or modify the Partner's appointment as it sees fit.
- 4.3 Notwithstanding anything to the contrary herein contained, if the Partner fails to meet the requirements determined by BEE123 for acceptance to the relevant Partnership Program, or to comply with its obligations hereunder to the reasonable satisfaction of BEE123 at any time during the currency of this Agreement, then BEE123 shall be entitled to amend or revoke the Partner's appointment with immediate effect, without prior written notice to the Partner and, at BEE123's sole discretion, terminate this Agreement without any liability to the Partner.
- 4.4 The Partner may not appoint, authorise or permit any other person, firm, company, partnership, association, agent or other legal entity of any nature whatsoever to perform its obligations under this Agreement, unless the prior written consent of BEE123 has been obtained.
- 4.5 The Partner hereby warrants that (i) all information provided by it to BEE123, both prior to and during the term of this Agreement, regardless of the form thereof, in connection with its appointment to the Partnership Program is true and accurate, and that (ii) it complies with, and will continue to comply with, the requirements of such appointment for the duration of this Agreement.
- 4.6 The Partner further acknowledges that BEE123 relies on the warranty provided above in entering into this Agreement and appointing the Partner to the relevant Partnership Program. Consequently, the Partner hereby indemnifies and holds harmless BEE123, its directors, officers and employees from and against any and all claims, damages, losses, liabilities, costs and expenses (including reasonable attorneys' fees and disbursements), of any nature whatsoever, whether arising in contract or delict (including strict liability and negligence), that any BEE123 Customer or any other third

party may have against BEE123, resulting from or related to the Partner's breach of such warranty or any failure or inability by the Partner to perform its obligations under this Agreement according to BEE123's reasonable satisfaction.

4.7 BEE123 shall be entitled, at its sole and absolute discretion, to amend the basis on which it makes appointments to the Partnership Program at any time during the currency of this Agreement. In the event of an amendment as aforesaid, BEE123 shall notify the Partner at least 30 (thirty) days prior to the effective date of such amendment, and, if applicable, the Partner's appointment shall automatically be adjusted in accordance therewith at the expiration of such notice period, unless otherwise agreed between the Parties in writing.

4.8 For the duration of the Agreement, the Partner shall perform its obligations and receive the membership benefits of the Partnership Program to which it has been admitted in terms of the Appointment Confirmation in accordance with the terms and conditions set out in such Appointment Confirmation and this Agreement on a non-exclusive and non-transferable basis. For the avoidance of doubt, the Partner shall, upon termination of this Agreement for any reason whatsoever, not be entitled to receive any further benefits under this Agreement, and all rights granted to it hereunder shall cease with effect from the effective date of such termination.

5. COMMENCEMENT AND DURATION

5.1 This Agreement shall commence on the Effective Date and shall endure until 31 December of the calendar year of its commencement. Thereafter, this Agreement shall automatically renew for periods of 12 (twelve) calendar months at a time, unless otherwise terminated in accordance with the terms of this Agreement.

5.2 In the event that either Party wishes to terminate this Agreement for any reason whatsoever, prior written notice of not less than 3 (three) months shall be given to the other Party.

6. REBATES

6.1 For the duration of this Agreement, and subject to the Partner's compliance with the terms of this Agreement, BEE123 shall pay to the Partner the applicable Rebates calculated on the Net Revenue generated by BEE123 in relation to direct sales by the Partner of the Products to the Partner Clients, only where such sales have been directly facilitated by the Partner.

6.2 All sales directly facilitated by the Partner as set out in clause 6.1 above shall be evidenced as follows:

6.2.1 where the Partner has invited a client to a sales workshop or similar event hosted by BEE123, pursuant to which a sale is concluded, it shall be the responsibility of the Partner to ensure that the client in question has recorded the Partner on the invitation RSVP or transaction documents as the party responsible for having invited it to such workshop and/or facilitating the sale;
or

6.2.2 by any other lead recording mechanisms that BEE123 may put in place or approve, at its sole and absolute discretion, from time to time.

6.3 In order to earn a Rebate on any sale, it shall be the responsibility of the Partner to ensure that the requirements of clause 6.2 are met, failing which no Rebate will be

payable on such sale, unless otherwise agreed by BEE123 in its sole and absolute discretion.

- 6.4 As per the table set out in Appendix A, where the Partner qualifies for a Rebate in respect of any Partner Client, a reduced Rebate may apply in respect of renewals or extensions by such Partner Client as provided for therein (including any reasonable customer satisfaction validation measures required by BEE123), subject to clause 6.5.2 below. For the avoidance of doubt, subsequent transactions with Partner Clients that do not constitute renewals, extensions or upsells shall count as new transactions for purposes of the Rebate for which the Partner may qualify in respect of such transactions. For the further avoidance of doubt, the Partner shall not qualify for any additional Rebate on upsells unless and to the extent that the Partner is directly instrumental in bringing about such upsell.
- 6.5 For purposes of qualifying for any Rebate, an end customer shall only qualify as a Partner Client where:
- 6.5.1 in the case of a prospective customer, the Partner actively registers all details pertaining to such prospective customer in BEE123's designated lead management facility (whether part of the Portal or a separate mechanism) and further complies with BEE123's procedural requirements relating to the management and conversion of sales leads, as furnished to the Partner from time to time;
- 6.5.2 the Partner remains in active contact with the prospective customer until conversion to an actual customer, in accordance with BEE123's procedural requirements, as aforesaid; and
- 6.5.3 in the case of a renewal by an existing customer, the Partner:
- 6.5.3.1 furnishes proof to the reasonable satisfaction of BEE123 that such customer is still actively doing business with the Partner up to 1 (one) month prior to such renewal, which BEE123 reserves the right to verify or audit;
- 6.5.3.2 has conducted feedback sessions with the customer regarding its satisfaction with the Products no less frequently than on a quarterly basis and has escalated to BEE123 any material feedback it may have received from the customer from time to time; and
- 6.5.3.3 has complied with such other customer satisfaction validation measures as BEE123 prescribes from time to time.
- 6.6 In the event of any dispute regarding the designation of any prospective or actual customer as a Partner Client, BEE123's decision shall be final and binding. Furthermore, if the Partner defaults on any of its obligations in terms of this Agreement regarding any Partner Client (including appropriating any payments from such Partner Client), in addition to any other remedies that BEE123 may have, such customer shall immediately cease to qualify as a Partner Client.
- 6.7 Any discounts given to a Partner Client shall be at the sole discretion of BEE123. Where the Partner offers or provides a discount to a Partner Client without BEE123's express written approval, the Partner shall be liable to BEE123 for the value of such discount, which BEE123 may deduct from any Rebate due to the Partner.
- 6.8 Each Partner Client who purchases any of the Products or requires access to the Portal shall be required to conclude an end user licence agreement directly with BEE123 and thereby licence the Products or gain access thereto directly from BEE123. It shall be the Partner's responsibility to ensure that each Partner Client agrees to BEE123's proposal, end user licence agreement and any other standard sales documents required by BEE123.

7. PAYMENT

- 7.1 Any monies due by either Party to the other shall exclude any taxes and/or levies due as a result of a requirement by any governmental organisation (which shall include any value-added tax, importation tax, withholding tax and general sales tax) and all these taxes and/or levies, shall be paid by the Party making payment to the other.
- 7.2 BEE123 shall roll up any Rebates due to the Partner in accordance with the provisions of clause 6 and shall pay the Partner any such aggregate amount on a quarterly basis, or such other period as BEE123 may advise the Partner from time to time.
- 7.3 Payments of all other amounts payable by each Party to the other under this Agreement shall be in accordance with a reconciliation report ("**Report**") to be issued by BEE123 on a regular basis on a frequency as determined by BEE123. These amounts shall be set off against each other, following which the Party to whom money is owed shall issue an invoice to the other in accordance with the Report, and payment shall be made within 30 (thirty) days following the date of such invoice.
- 7.4 Notwithstanding clause 7.3 above, payment to the Partner of amounts owing to it under this Agreement by BEE123 shall only become due and payable to the Partner upon receipt of payment in full by BEE123 of the corresponding payment from the BEE123 Customer in question.
- 7.5 In the event of the BEE123 Customer cancelling its subscription to any of the Products, BEE123 shall be entitled to deduct or reclaim from the Partner a proportional amount calculated on the same basis on which the BEE123 Customer is refunded (if at all), based on the Rebate paid to the Partner in relation to such sale.
- 7.6 Unless otherwise expressly agreed to by BEE123 in writing, BEE123 shall invoice all Partner Clients directly for any and all fees and charges relating to the Products. To the extent that BEE123 requests or permits the Partner to invoice a Partner Client on its behalf, BEE123 appoints the Partner as its duly authorised agent for purposes thereof and for collecting payment on its behalf and for its benefit and the Partner indemnifies and holds BEE123 harmless against any claims or losses arising in connection therewith to the extent caused by the Partner's negligence or wilful misconduct (or that of any of its employees, contractors, agents or other third parties for whom the Partner is responsible in law).

8. MARKETING

- 8.1 The Partner shall market the Products to actual and potential Partner Clients, including demonstrating the Scorecard Software and participating in joint workshops and marketing campaigns with BEE123, as required by BEE123, which shall include sending mailers to its Partner Clients, and participating in road-shows and events where the Products are marketed and showcased to Partner Clients, all as required and approved by BEE123.
- 8.2 The Partner shall conduct marketing activities to promote BEE123, the Products, and the Portal and shall display the relevant Partnership Program Logo on its website, in accordance with any marketing guidelines and directions issued by BEE123 from time to time. Should BEE123 amend, modify or revise the marketing guidelines, Trade Marks or Partnership Program Logos, the Partner shall immediately, but in any event within 30 (thirty) days of the notification received from BEE123 in respect thereof, utilise

the amended, modified or revised Trade Mark/s or Partnership Program Logos for any and all approved purposes under this Agreement.

- 8.3 For purposes of the foregoing, BEE123 hereby grants to the Partner a non-exclusive, non-transferable, royalty-free, personal sub-licence to use the Trade Marks or Partnership Program Logos only during the term of this Agreement, according to the following specifications and any other guidelines or instructions notified by BEE123 from time to time, and solely in connection with this Agreement:
- 8.3.1 The Trade Marks and Partnership Program Logo may be used solely on materials directly related to the Products. The Partner's name, trademarks and/or logo must also appear on any materials where the Trade Marks or Partnership Program Logo are used. The Trade Marks and Partnership Program Logo may not be used in any manner other than as contemplated by this Agreement.
- 8.3.2 The Trade Marks or Partnership Program Logo may not be included in any third-party trademarks, trade names, business names, domain names, product or service name, trade dress, design, slogan or other mark. The Trade Marks or Partnership Program Logo may not be combined with any other object, including, but not limited to, other trademarks, words, graphics, photos, slogans, numbers, design features, or symbols. A minimum amount of empty space must surround the Trade Marks or Partnership Program Logo separating them from any other object, such as type, photography, borders, edges, and so on. The required area of empty space around the Trade Marks or Partnership Program Logo must be at least 1 (one) centimetre. The Partner shall not use the Trade Marks or Partnership Program Logo in association with any third-party trademarks in a manner that suggests co-branding or otherwise creates potential confusion as to ownership of the Trade Marks or Partnership Program Logo.
- 8.3.3 The Trade Marks and Partnership Program Logo (including the size, proportions, colours, elements thereof) may not be altered in any manner. The Trade Marks and Partnership Program Logo may not be animated, morphed, or otherwise distorted in perspective or dimensional appearance.
- 8.4 All rights not expressly granted herein are reserved by BEE123. The Partner will not use the Trade Marks or Partnership Program Logos in any manner that will diminish or otherwise damage BEE123's goodwill therein. The Partner agrees to fully correct and remedy any deficiencies in its use of the Trade Marks or Partnership Program Logos, upon receipt of notice from BEE123. The Partner agrees that it will comply with any and all applicable laws and regulations, BEE123's marketing and other requirements and corporate identity controls pertaining to the Trade Marks and Partnership Program Logos. The Partner must not use the Trade Marks or Partnership Program Logos, or any marks similar to the Trade Marks or Partnership Program Logos, without the prior written approval from BEE123.
- 8.5 The Partner and its employees shall be required to attend such training sessions as reasonably required by BEE123. The training will be held at a location of BEE123's choosing within the Republic of South Africa. All travel and subsistence costs in respect of such training shall be for the Partner's account.
- 8.6 The Partner hereby consents to BEE123's use of its name, company logo and a general description of the services provided by it in terms of this Agreement in any marketing material or other similar material, regardless of the format thereof, which it may issue, employ, publish or otherwise use from time to time.

9. UNDERTAKINGS BY THE PARTNER

The Partner shall: -

- 9.1 not copy, translate, modify, adapt, decompile, disassemble or reverse engineer the Portal or the Products, nor permit any other party to do so, or attempt to do any of these;
- 9.2 not grant access to, or knowingly permit access to be granted to, any part of the Portal or Products to any person other than a duly authorised BEE123 Customer;
- 9.3 not merge or combine the whole or any part of the Portal or Products with any other computer software or materials;
- 9.4 not conclude any contract or order or sign any documentation on behalf of BEE123;
- 9.5 not form any company or business incorporating in its name the name "BEE123" (or any like or similar name) or any of the Intellectual Property Rights or Trade Marks or in any other way use the same without obtaining the prior written consent of BEE123;
- 9.6 not represent the Portal or the Products as having different characteristics from those described by BEE123 in its relevant literature, nor give any guarantee or warranty in respect of the Portal or the Products;
- 9.7 not provide quotations on BEE123's letterhead or in BEE123's name, in respect of any Products;
- 9.8 not hold itself out as being entitled to bind BEE123 in any way, nor pledge or purport to pledge BEE123's credit in any way, or bind BEE123 in any manner to any obligation or undertaking, including to any terms of a warranty (whether related to workmanship, materials, quality, durability or fitness for any purpose) without the prior written consent of BEE123;
- 9.9 notify BEE123 promptly in writing, of any complaint or claim made or brought against the Partner with respect to the Products or the Portal;
- 9.10 notify BEE123 promptly in writing of any actual or threatened infringements, imitations, illegal use or misuse, improper use or wrongful use of the Portal or the Products or of the patents, intellectual property rights, Trade Marks, emblems, designs, models or other proprietary rights of BEE123, its licensors or suppliers which come to the Partner's notice;
- 9.11 not do anything or cause anything to be done (including engaging in, publishing, causing to be published, encouraging or approving any advertisement or practice) that might mislead or deceive the public, or might reasonably be detrimental to the good name, Trade Mark, goodwill or reputation of BEE123, the Portal or the Products;

- 9.12 allow BEE123, upon reasonable notice, access to its premises to audit its compliance with this Agreement;
- 9.13 provide accurate information to BEE123 in relation to the Partner Clients, including for the purposes of calculating Product pricing. In the event that inaccurate information is provided by the Partner, BEE123 reserves the right to charge the Partner for any pricing differentials resulting therefrom;
- 9.14 conduct business in a manner that in BEE123's sole and absolute opinion and discretion reflects favourably at all times on the Products, the Portal and the goodwill and reputation of BEE123 and to follow such instructions as BEE123 may require in this regard. Examples of the foregoing conduct shall include the following:
- 9.14.1 using its best endeavours to preserve and promote BEE123's goodwill and reputation and to avoid any activity detrimental to BEE123's interests, reputation and goodwill;
- 9.14.2 avoiding deceptive, misleading, or unethical practices that are or might be detrimental to BEE123, the Products, the Portal, BEE123 Customers, Partner Clients or the public, including any disparagement of BEE123, the Products, the Portal, BEE123 Customers or Partner Clients; and
- 9.14.3 making no false or misleading representations with regard to BEE123, the Portal or the Products;
- 9.15 use its best efforts and facilities to establish, maintain and increase sales of the Products to the extent practicable by all usual, legal and ethical means, including personal solicitation and demonstration;
- 9.16 provide the services required in terms of its appointment (if any) to the BEE123 Customers on such terms and conditions and according to such service levels as are acceptable to BEE123, and at least in accordance with the requirements set out in the Appointment Confirmation, if any; and
- 9.17 promptly bring to the notice of BEE123 any information received by it which is likely to be of interest, use or benefit to BEE123 in relation to the marketing of the Products.

10. **LIABILITY AND INDEMNITY**

- 10.1 The BEE Codes is legislation that requires practical implementation. Some of the information, calculations, templates, spreadsheets and methodology contained in the Scorecard Software, Products and Portal, as well as any implementation, training, advice or consulting provided are based on BEE123's interpretation and opinion. BEE123 accordingly bears no liability in relation to same for reliance on same which may result in any varying status levels, loss, damage or harm of any nature and howsoever arising, to the Partner or Partner Clients.
- 10.2 The Portal and Products are provided on an "as is" basis, without any representation or endorsement made and without any warranty of any kind whether express or implied, including warranties of satisfactory quality, fitness for a particular purpose, merchantability, non-infringement, title, security and compatibility. It is the sole responsibility of the Partner to satisfy itself prior to entering into this Agreement that the Portal and Products will meet its requirements.
- 10.3 Should the Partner sell a Product to a client directly, the Partner shall be responsible for determining whether such client is subject to a Sector Charter or Code or other variant Scorecard, and which variation of the Scorecard Software is applicable to their

business. BEE123 shall not be liable for any refunds, expenses incurred, loss or damages in this regard whatsoever, and howsoever arising.

- 10.4 The liability of BEE123 for faults within Portal or Products or as well as all damages suffered by the Partner or Partner Clients, whether direct or indirect, as a result of the malfunctioning of the Portal or Products, shall be limited to BEE123 rectifying the malfunction, if possible, within a reasonable time and free of charge, provided that BEE123 is notified immediately of the damage or faulty execution of the Portal or Products. BEE123's liability is completely excluded if the Partner or BEE123 Customer attempts to correct or allows third parties to correct or attempt to correct same without the prior written approval of BEE123.
- 10.5 Notwithstanding anything to the contrary herein contained, BEE123 shall not be liable for any damages or loss whatsoever or howsoever arising or for any claims for indirect or consequential loss or damage, including loss of business, data, profits, revenue or anticipated savings howsoever arising which may be sustained by the Partner and/or the BEE123 Customer and/or for any claims made by any other person whatsoever against the Partner, in connection with this Agreement and/or the Products or Portal.
- 10.6 To the extent permitted by applicable law, BEE123 makes no representation, condition or warranty, express or implied, concerning the Portal or the Products or any other materials or services furnished or provided under this Agreement, including merchantability or fitness for a particular purpose and BEE123 shall in no circumstance have any liability to the Partner, or to any other person, as a result of any defect, failure, inadequacy, deficiency or other matter concerning any of same. All implied terms, conditions, undertakings, warranties or representations, whether statutory or otherwise, as to the state, condition, quality, merchantability or fitness for any purpose of the Products and the Portal are expressly excluded.
- 10.7 The Partner hereby indemnifies and holds BEE123 harmless against all actions, proceedings, losses, costs, damages, expenses, claims and demands which it may sustain in any way whatsoever and howsoever arising directly or indirectly resulting from or relating to this Agreement.
- 10.8 Subject to the remainder provisions of this clause 10, whatever the legal basis of a claim and notwithstanding anything to the contrary in this Agreement or the number or the basis of such claims, BEE123's maximum aggregate liability to the Partner under this Agreement and howsoever arising will be limited to direct damages up to the fees and charges actually paid by BEE123 to the Partner in the 12 (twelve) month period immediately preceding the date on which the direct damages arose.

11. INTELLECTUAL PROPERTY RIGHTS

- 11.1 The Partner acknowledges that any and all of the Intellectual Property Rights, including those used or embodied in or in connection with the Trade Marks, Partnership Program Logos, Products and Portal are and will remain the sole property of BEE123.
- 11.2 If the Partner effects any lawful and authorised modifications, variations and/or enhancements to the Products, the intellectual property rights therein are hereby ceded, assigned and transferred to BEE123, and the Partner shall forthwith do all such things as are necessary to give effect to the foregoing.

11.3 The Partner shall take all such steps as BEE123 may reasonably require to assist BEE123 in maintaining the validity and enforceability of the Intellectual Property Rights of BEE123 during the term of this Agreement. No expenses shall be incurred by the Partner without BEE123's prior written approval.

11.4 Upon termination of this Agreement, for any reason whatsoever, the Partner shall immediately cease to use the Intellectual Property Rights, including the Trade Marks and Partnership Program Logos.

12. CONFIDENTIALITY

12.1 The Parties shall hold in confidence all Confidential Information received from each other and not divulge the Confidential Information to any person, including any of its employees, save for employees directly involved with the execution of this Agreement, provided that the relevant Party shall ensure that such employees are bound by the same confidentiality undertakings as those contained in this clause 12.

12.2 The Parties shall prevent disclosure of the Confidential Information, except as may be required by law.

12.3 Upon termination of this Agreement, for whatever reason, the recipient of Confidential Information shall return same or at the discretion of the discloser thereof, destroy such Confidential Information, and shall not retain copies, samples or excerpts thereof.

12.4 It is recorded that the following information will not, for the purpose of this Agreement, be considered to be Confidential Information –

12.4.1 information known to the receiving Party prior to the date that it was received from the disclosing Party;

12.4.2 information known to the public or generally available to the public, prior to the date that it was disclosed by the disclosing Party to the receiving Party;

12.4.3 information that becomes known to the public, or becomes generally available to the public subsequent to the date that it was disclosed by the disclosing Party to the receiving Party, through no act or failure to act on the part of the receiving Party; and

12.4.4 information that the disclosing Party authorises the receiving Party in writing to disclose.

13. DATA PRIVACY AND PROTECTION

13.1 The Partner hereby warrants in favour of BEE123 that it shall at all times strictly comply with all applicable laws (including the Protection of Personal Information Act 4 of 2013 (“**POPI**”)) and with all the provisions and requirements of BEE123's data protection policies and procedures, as may be updated from time to time, and any further requirements of which BEE123 may, from time to time, advise the Partner in writing, or which may be required by legislation, regulation or any relevant industry body, whether within the Republic of South Africa or elsewhere in the world.

13.2 The Partner hereby warrants that it is authorised to disclose and allow the use and storage of any personal information as defined in POPI (“**Personal Information**”) provided by the Partner to BEE123 and in relation to this Agreement. The Partner hereby indemnifies BEE123 against any loss or damage of any nature whatsoever and howsoever arising which BEE123 may suffer as a result of a breach of this warranty.

13.3 The Parties shall not, at any time copy, compile, collect, collate, process, mine, store, transfer, alter, delete, interfere with or in any other manner use any Personal Information for any purpose other than for the purpose for which it was collected; provided that BEE123 shall be entitled to use any Personal Information for any purpose subject to the proviso that such information has been de-identified prior to its use.

13.4 The Parties further undertake that they shall take all commercially reasonable measures to ensure the security of the Personal Informal either of them are exposed to in relation to the performance of their obligations in terms of this Agreement or otherwise in relation to BEE123's business, customers and related information.

14. **FORCE MAJEURE**

14.1 Delay or failure to comply with or breach of any of the terms and conditions of this Agreement, if occasioned by or resulting from an act of God, or public enemy, fire, explosion, earthquake, flood, storm or other adverse weather conditions, war declared or undeclared, civil war, revolution, civil commotion or other civil strike, riot strikes, blockade, embargo, sanctions, epidemic, act of any government or other authority, compliance with government orders, demands or regulations or any circumstances of like or different nature beyond the reasonable control of the Party so failing ("*force majeure*"), will not be deemed to be in breach of this Agreement nor will it subject either Party to any liability to the other.

14.2 Should either Party be prevented from carrying out its contractual obligations by *force majeure* lasting continuously for a period of 15 (fifteen) days, the Parties will consult with each other regarding the future implementation of this Agreement. If no mutually acceptable arrangement is arrived at within a period of 15 (fifteen) days thereafter, either Party will be entitled to terminate this Agreement forthwith on written notice.

15. **RELATIONSHIP**

Except to the extent expressly provided herein, this Agreement does not constitute either of the Parties an agent or legal representative of the other for any purposes whatsoever and neither of the Parties shall be entitled to act on behalf of, or to represent the other unless duly authorised thereto in writing.

16. **BREACH AND TERMINATION**

16.1 BEE123 shall have the right to terminate this Agreement with immediate effect and without prejudice to any other rights and remedies which it may have under this Agreement or in law, upon the occurrence of any one or more of the following events (hereinafter called "**Default**"): -

16.1.1 if the Partner defaults in the performance of any of its obligations provided for in this Agreement or breaches any of the terms of this Agreement;

16.1.2 if the Partner fails to make any payment to BEE123 on the due date thereof;

16.1.3 if the Partner convenes any meeting to consider a resolution for its voluntary winding-up;

- 16.1.4 if the Partner commits any act which is an act of insolvency as defined in the Insolvency Act No 24 of 1936;
- 16.1.5 if the Partner is placed into liquidation or placed under judicial management, whether provisionally or finally;
- 16.1.6 if the Partner has a judgement granted against it and allows such judgement to remain unsatisfied for a period of 7 (seven) days; or
- 16.1.7 if the Partner commits any act or omits to do anything which, in the sole and absolute discretion of BEE123, prejudices or may prejudice any of the rights of BEE123 under this Agreement or in law.
- 16.2 In the event of a Default contemplated in clause 16.1, BEE123 shall in addition and without prejudice to any other remedies which it may have in terms of this Agreement or in law, including the right to claim damages, be entitled: -
- 16.2.1 forthwith and without notice, to claim payment of all amounts owing by the Partner to BEE123;
- 16.2.2 revoke the Partner's status and appointment under this Agreement, whether in its entirety or in respect of certain customer only; and/or
- 16.2.3 to cancel this Agreement in whole or in part.

17. **CONSEQUENCE OF TERMINATION**

Upon termination or expiry of this Agreement: -

- 17.1 the Partner shall immediately cease to be and to refer to itself as a member of the Partnership Program and shall remove from all signage and documentation, including its corporate stationery, any references to BEE123 and the Partnership Program;
- 17.2 the Partner shall cease to promote, market or advertise the Products and the Portal, or to make any use of the Trade Marks, and shall return all advertising and promotional matter, stationery, printed material or the like featuring any Trademark or description of any sort which it obtained from, or was authorised to use by BEE123, if any;
- 17.3 immediately remove any hyperlinks and/or references to the Portal, BEE123 or the Products on any of its web sites, stationery or marketing material;
- 17.4 the Partner shall have no claim against BEE123 for compensation for loss of distribution rights, loss of goodwill or any similar loss;
- 17.5 all unfulfilled orders will be furnished in writing to BEE123, who will be entitled, but not obliged, to fulfil such orders and BEE123 will not be required to pay any Rebates to the Partner in respect thereof, or in respect of any renewals pursuant to fulfilled orders;
- 17.6 the Partner shall have no claim against BEE123 in respect of any benefits that may or would have accrued to it following the date of such termination;

- 17.7 the Partner will forthwith deliver to BEE123 any software and materials that are the property of BEE123 and BEE123 may enter any premises and recover possession of and remove such software and materials;
- 17.8 the Partner shall not remove or interfere with any matter of BEE123, which is at the premises of a BEE123 Customer and shall by no act or omission do anything which could prejudice BEE123's name, image, business prospects or interest in any way with any BEE123 Customer; and
- 17.9 except as otherwise provided herein, and subject to any rights or obligations which have accrued prior to termination, neither Party shall have any further obligation to the other under this Agreement.

18. DETERMINATION OF DISPUTES

- 18.1 Any dispute relating in any way to or arising from this Agreement, 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 the Parties hereby consent.
- 18.2 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.
- 18.3 The provisions of this clause are severable from the rest of this Agreement and shall remain in effect even if this Agreement is terminated for any reason.
- 18.4 The provisions of this clause 18 shall not preclude any Party from approaching a Court of competent authority within the Republic of South Africa for an interdict or other injunctive relief of an urgent nature. With regard to the foregoing, the Parties agree that any such legal action or legal proceedings arising out of or in connection therewith shall be brought in the South Gauteng High Court or its successor, if any, and irrevocably submit to the non-exclusive jurisdiction of such court. The Parties irrevocably waive any objection which they may now or hereafter have that any such action or proceeding has been brought in an inconvenient forum. Nothing herein contained shall affect the right to service process in any manner permitted by law. The submission to such jurisdiction shall not (and shall not be construed so as to) limit the rights of BEE123 to take proceedings against the Partner in whatever other jurisdiction it shall consider appropriate nor shall the taking of proceedings in any one or more jurisdictions automatically preclude the taking of proceedings in any other jurisdiction whether concurrently or not.
- 18.5 Nothing herein contained shall preclude BEE123 from approaching a Court of competent authority within the Republic of South Africa for the purposes of collecting any payment due to it under this Agreement, and for such purposes it shall not be required to follow the arbitration procedure set out in this clause 18.

19. DOMICILIA AND NOTICES

19.1 The Parties choose as their *domicilia citandi et executandi* for all purposes under this Agreement, whether in respect of court process, notices or other documents or communications of whatsoever nature, the following addresses –

BEE123: Office & Co
134 River Rd
Kyalami Heights, 1630
Republic of South Africa
Email: channel@bee123.co.za

For the attention of: The Managing Director

The Partner: As provided on the Registration Page

19.2 Any notice or communication required or permitted to be given in terms of this Agreement shall be valid and effective only if in writing.

19.3 Either Party may by notice to the other Party change its *domicilium citandi et executandi* to another physical address, provided that the change shall become effective on the 14th (fourteenth) day after receipt of such notice.

19.4 Any notice to a Party -

19.4.1 contained in a correctly addressed envelope and sent by prepaid registered airmail post to it at its *domicilium citandi et executandi*;

19.4.2 contained in a correctly addressed envelope and delivered by hand to a responsible person during ordinary business hours at its *domicilium citandi et executandi*; or

19.4.3 sent by email to the email address provided in terms of this clause 19,

shall be deemed to have been received, in the case of clause 19.4.1, on the 10th (tenth) business day after posting (unless the contrary is proven), in the case of clause 19.4.2, on the day of delivery and the case of clause 19.4.3 within 4 (four) hours of transmission if it is transmitted during normal business hours of the receiving Party or within 4 (four) hours of the beginning of the next business day after it is transmitted, if it is transmitted outside those business hours and provided that administrator or mail server error message is received.

19.5 Any notice or other communication to be given to any of the Parties in terms of this Agreement shall be valid if it is given in writing, provided that any notice given by email shall be regarded for this purpose as having been given in writing.

19.6 Notwithstanding anything to the contrary herein contained a written notice or communication actually received by a Party shall be an adequate written notice or communication to it notwithstanding that it was not sent to or delivered at its chosen *domicilium citandi et executandi*.

20. ASSIGNMENT

- 20.1 BEE123 reserves the right to cede, assign and transfer this Agreement to any party, without the consent of the Partner being obtained or notice provided to it thereof.
- 20.2 The Partner shall not cede any of its rights or delegate any of its obligations under this Agreement, or assign this Agreement, or sub-contract any of its obligations under this Agreement without the prior written consent thereto of BEE123.

21. GENERAL

The Parties acknowledge and agree that: -

- 21.1 this Agreement constitutes the entire contract between them and that no provisions, terms, conditions, stipulations, warranties or representations of whatsoever nature, whether express or implied have been made by any of the Parties or on their behalf except as are recorded herein. This Agreement supersedes and replaces all prior commitments, undertakings or representations, whether oral or written, between the Parties in respect of the subject matter hereof;
- 21.2 no alteration, variation, amendment or purported consensual cancellation of this Agreement (including this clause 21.2) or any deletion therefrom shall be of any force or effect unless reduced to writing and signed by or on behalf of the Parties hereto;
- 21.3 in the event that any one or more of the provisions contained herein shall, for any reason, be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provisions of this Agreement, but this Agreement shall be construed as if such invalid, illegal or unenforceable provisions had never been contained herein, unless the deletion of such provision or provisions would result in such a material change so as to cause completion of the transactions contemplated herein to be unreasonable;
- 21.4 no relaxation, extension of time, latitude or indulgence which any Party ("**grantor**") may show, grant or allow to another ("**grantee**") shall in any way constitute a waiver by the grantor of any of the grantor's rights in terms of this Agreement and the grantor shall not thereby be prejudiced or stopped from exercising any of its rights against the grantee which may have then already arisen or which may arise thereafter;
- 21.5 they have undertaken to each other to do all such things, take all such steps and to procure the doing of all such things and the taking of all such steps as may be necessary, incidental or conducive to the implementation of the provisions, terms, conditions and import of this Agreement;
- 21.6 BEE123 shall be entitled to appropriate any payments received from or on behalf of the Partner to any indebtedness, howsoever arising, of the Partner to BEE123;
- 21.7 each Party shall bear their own legal fees and disbursements of and incidental to the preparation, drawing and conclusion of this Agreement; and

21.8

this Agreement shall be governed and interpreted by and according to the laws of the Republic of South Africa.

PART 2

Referral Partner Program

1. This Part 2 of the Agreement, to be read in conjunction with Part 1 of the Agreement and the Appointment Confirmation, shall apply to all members of the Referral Partner Program.
2. The Rebates payable to the Referral Partner shall be in accordance with the Appointment Confirmation.
3. In addition to any other conditions set out in the Appointment Confirmation, in order to qualify as a Referral Partner, the Partner must ensure that all employees who will be involved in promoting the Products (and any new employees thereafter who will, likewise, be so involved) attend a product workshop session given by BEE123 for the purposes of ensuring that such employees are conversant with the Products and have seen a practical demonstration thereof.
4. Any demonstrations of the Products to Partner Clients shall be conducted by BEE123 and Referral Partner shall be entitled to have representatives attend at such demonstrations.
5. Unless otherwise expressly agreed in writing by BEE123, any proposals and pricing for the Products to be provided to Partner Clients shall be given directly by BEE123 to such Partner Clients.
6. The awarding of Referral Partner status shall be at sole the discretion of BEE123, in accordance with its admission requirements in this regard from time to time. The awarding of Referral Partner status is non-exclusive and non-transferable and is subject to the terms and conditions set out in this Agreement and the Appointment Confirmation, if any.
7. For the avoidance of doubt, the Referral Partner shall not be permitted to provide any consulting, advisory or other services pursuant to its appointment as such under this Agreement. The Referral Partner hereby fully indemnifies and holds BEE123 harmless against any loss, damage or expense of any nature whatsoever and howsoever arising as a result of a breach of this clause 7.

PART 3

Advisory Partner Program

1. This Part 3 of the Agreement, to be read in conjunction with Part 1 of the Agreement and the Appointment Confirmation, shall apply to members of the Advisory Partner Program.
2. The Advisory Partner acknowledges and accepts that it is automatically granted the additional status of Referral Partner, and that the terms and conditions of Part 2, with the exception of clause 4 thereof, shall apply to it to the necessary extent.
3. In addition to any other conditions set out in the Appointment Confirmation, in order to qualify as an Advisory Partner, Partner must ensure that all employees who will be involved in promoting the Products or providing consulting services to Partner Clients (and any new employees thereafter who will, likewise, be so involved) attend a product training session given by BEE123 for the purposes of ensuring that such employees are well acquainted with the Products, have a good working understanding thereof and are able to operate same.
4. Any demonstrations of the Products to Partner Clients shall be conducted by BEE123 and Advisory Partner shall be entitled to have representatives attend at such demonstrations. In addition, Advisory Partner shall ensure that each of its employees who are involved in promoting the Products or providing consulting services to Partner Clients attend at least one implementation of the Products at a Partner Client (and may attend at further implementations should they so wish).
5. Unless otherwise expressly agreed in writing by BEE123, any proposals and pricing for the Products to be provided to Partner Clients shall be given directly by BEE123 to such Partner Clients but may, by agreement, be given on Advisory Partner's letterhead.
6. The awarding of Advisory Partner status shall be at sole the discretion of BEE123, in accordance with its admission requirements in this regard from time to time. The awarding of Advisory Partner status is non-exclusive and non-transferable and is subject to the terms and conditions set out in this Agreement and the Appointment Confirmation.
7. The Advisory Partner warrants that it has provided true and accurate information to BEE123, for the purposes of Advisory Partner status assessment.
8. The Advisory Partner shall attend all training courses as required by BEE123 in order to be awarded and maintain its Advisory Partner status.
9. The Advisory Partner status shall afford the Advisory Partner the right to conduct BEE-related advisory services and support in accordance with BEE123's reasonable requirements, instructions and guidelines, in relation to the Scorecard Software. In the event that Advisory Partner fails to conduct such services to BEE123's (or the relevant customer's) reasonable satisfaction, BEE123 shall be entitled to revoke the Advisory Partner's status and/or terminate this Agreement, whether in whole or in part, without any liability to the Advisory Partner.

10. The Advisory Partner undertakes to follow all such instructions, methodologies and interpretations of BEE123 from time to time in line with the Scorecard Software.
11. The Advisory Partner shall comply (and maintain compliance) with BEE123's Advisory Partner program admission requirements from time to time, including maintaining membership with specified professional bodies, professional qualifications, etc. Advisory Partner shall also accurately complete the Advisory Partner questionnaire provided by BEE123.
12. The Advisory Partner undertakes to keep up to date with the latest interpretations of and amendments to the B-BBEE Codes of Good Practice and related BEE legislation and regulations and employ same to the necessary extent required to discharge its obligations under the Agreement.
13. BEE123 reserves the right, at any time and in its discretion to withdraw the Advisory Partner status of the Advisory Partner.

APPENDIX A

Commercial Terms

To be reviewed every year at the end of September.

Referral Partner Rebates				
<i>Product</i>	<i>New Deal</i>	<i>Year 2</i>	<i>Year 3</i>	<i>Year 4 onwards</i>
Scorecard Software	20%	10%	10%	N/A

Advisory Partner Rebates				
<i>Product</i>	<i>New Deal</i>	<i>Year 2</i>	<i>Year 3</i>	<i>Year 4 onwards</i>
Scorecard Software	20%	10%	10%	10%