



TECHNOLOGY | PEOPLE | IMPACT

TERMS AND CONDITIONS OF USE

10 November 2023

TERMS AND CONDITIONS OF USE

This agreement, including all annexures hereto and all terms, policies and guidelines incorporated herein by reference ("**Agreement**"), governs the access to and use of the BEE123 Portal, including all its components and sections and the Services.

BEE123 reserves the right to suspend or cancel the Client's account at any time or to refuse any End User's access to and use of the BEE123 Portal and the Services for any reason that BEE123, in its sole and absolute discretion, deems appropriate, including: (i) providing false, inaccurate, outdated, incomplete or inappropriate information and User Details, (ii) defaulting on the payment of any amount due to BEE123 under this Agreement, (iii) any attempt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 (iv) any violation of this Agreement or any applicable laws or regulations.

The Client 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;
- 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 BEE123 from time to time through which the Services are made available to the Client and its End Users, currently at www.bee123.co.za, including any and all Pages, components and sections thereof or thereon from time to time and the content contained therein.
- 1.5. **“Business Partner”** means a third party, independent of BEE123, which is an authorised provider of Services;
- 1.6. **“Company Data”** means any financial, BEE-related or other data inputted into the BEE123 Portal by an End User or otherwise on behalf of the Client;
- 1.7. **“Contractors”** means any third parties appointed by BEE123 to perform its obligations on its behalf under this Agreement;
- 1.8. **“CPI”** means the average year-on-year percentage change in the Consumer Price Index for all urban areas as published in the Statistical News Release compiled by Statistics South Africa (or its successor in title) for the preceding 12 (twelve) months;
- 1.9. **“End User”** means any individual permitted by the Client to use the BEE123 Portal via its subscription/account;
- 1.10. **“Escalation Rate”** means CPI plus 3% (three percent);
- 1.11. **“Fees and Charges”** means the fees and charges payable by the Client to BEE123 in respect of the access to and use of the BEE123 Portal and the Services by its End Users, including the Licence Fee;
- 1.12. **“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;
- 1.13. **“Licence Fee”** means the fees payable by the Client in respect of the access to and/or use of the Services by its End Users, in accordance with the Fees and Charges;
- 1.14. **“Parties”** means BEE123 and the Client collectively, and **“Party”** means either of them individually, as the context requires;
- 1.15. **“Page”** means a web site page on the BEE123 Portal, unless specified otherwise;
- 1.16. **“POPI”** means the Protection of Personal Information Act, 4 of 2013;
- 1.17. **“Privacy Policy”** means BEE123’s policy in relation to data privacy and the limited, confidential use of Company Data as set out in the document referred to in clause 14.1.1 (as amended from time to time);
- 1.18. **“Proposal”** means the proposal signed on behalf of the Client and accepted by BEE123, which sets out the commercial terms of the Client’s subscription to the BEE123 Portal and Services, including the Fees and Charges, Services, Service Levels and Subscription Period, as applicable;
- 1.19. **“Scorecard Software”** means the BEE123 proprietary BEE scorecard software made available through the BEE123 Portal, including all variations thereof from time to time;
- 1.20. **“Service Levels”** means, where applicable, the levels at which the Services shall be provided, as may be set out in this Agreement and, to the extent applicable, the Proposal;
- 1.21. **“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 the Client in accordance with this Agreement, including the Scorecard Software, all as set out in the Proposal;
- 1.22. **“Subscription Period”** means the period of the initial and each renewal subscription period in terms of this Agreement, being a period of 36 (thirty-six) calendar months, unless otherwise indicated on the Proposal or otherwise recorded by the Parties in writing; and
- 1.23. **“User Details”** means all information of an End User, including the contact, personal and similar information of such End User, as provided by or otherwise on behalf of the Client 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 on behalf of the Client, it:
 - 2.2.1. agrees to provide, true, accurate, up to date and complete User Details; and
 - 2.2.2. consents to BEE123's use of such User Details for the purpose of providing the Services and in accordance with this Agreement.
- 2.3. The Client's use of the BEE123 Portal shall be strictly in accordance with and subject to the terms and conditions of this Agreement.
- 2.4. The Client undertakes 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. The Client agrees to:
 - 2.5.1. ensure that the User Details and other information given in relation to its End Users' use of the BEE123 Portal are true and accurate;
 - 2.5.2. inform BEE123 immediately of any change to any User Details by updating them on the BEE123 Portal or by informing BEE123 by e-mail if this fails. The Client indemnifies and holds harmless BEE123, its 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 any User Details;
 - 2.5.3. comply with its contractual obligations to its Business Partner, if and to the extent applicable;
 - 2.5.4. maintain the security and confidentiality of its End Users' user names and passwords and to notify BEE123 if at any time it becomes aware of any unauthorised use of the user names and/or passwords of its End Users or any other security issue, and to co-operate with BEE123 to the extent reasonably necessary to rectify that situation. In such instances, it shall be the Client's obligation to immediately have its End Users reset their respective passwords and to maintain the security of the Client's account. The Client accepts all risks of unauthorised access to any User Details and any other information provided, and hereby indemnifies and holds BEE123 harmless from any liability or damage that may arise as a result of the compromise of the security of the Client's account;
 - 2.5.5. accept all responsibility for any and all activities that occur under its account and ensure that the End Users who access the BEE123 Portal on its account comply with the terms of this Agreement;
 - 2.5.6. use the BEE123 Portal and the Services for its 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 the Client exceeds the amount of any specified limit, for so long as it does so, the Client agrees to pay for such additional storage at BEE123's then-current 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. The Client shall bear the responsibility of ensuring that its End Users update their current browser software if it is not supported by the BEE123 Portal.
- 2.6. Except as expressly permitted by another clause of this Agreement or by separate written arrangement with BEE123, the Client agrees not to and agrees to ensure that no End Users or other parties shall:
 - 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; or
 - 2.6.2. use or copy (irrespective of the extent of copying) the whole or any part of the graphical 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. The Client shall procure that its End Users, when accessing and using the BEE123 Portal, must not:
 - 2.7.1. attempt to undermine the security or integrity of BEE123's 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. 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. attempt to gain unauthorised access to any materials other than those to which such End Users have been given express permission to access or to the computer system on which the BEE123 Portal is hosted;
 - 2.7.4. 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 the Client does not have the right to use);

- 2.7.5. 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. 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 account passwords to maintain data security, and BEE123 advises the Client and its End Users to follow this practice.
 - 2.9. Neither BEE123 nor its employees, contractors or other personnel have the ability to access the Client's (or any End User's) account or any Company Data via such account(s). However, the option is made available to the Client, should it so wish, to create a generic End User account for use by BEE123 advisors specifically working with the Client for the sole purpose of enabling them to access and view the Client's Company Data in connection with providing advisory Services regarding the optimisation of the Client's BEE scorecard (subject always to BEE123's Privacy Policy). Should the Client at any time make use of this optional functionality, the BEE123 advisor account created by the Client shall, to all intents and purposes, be regarded as an End User account, and the Client shall, inter alia, be exclusively responsible for managing and regulating its use (and the integrity of its User Details), as provided for in this clause 2. The Client may at any time disable or permanently delete such BEE123 advisor account via the BEE123 Portal.
- 3. Services and Service Levels**
- 3.1. The Client can purchase a subscription to access and use a Service by following the relevant steps on the BEE123 Portal. Should the Client subscribe to use a Service, the Client will be bound for the full duration of the Subscription Period. Subscriptions to Services shall be for the Subscription 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 the Client and its End Users the right to access and use the corresponding Service(s) via the BEE123 Portal only with the user roles according to the Client's subscription type for the Subscription Period. This right is non-exclusive and non-transferable and limited by this Agreement.
 - 3.3. By purchasing a subscription, the Client:
 - 3.3.1. accepts the licence granted to it in terms hereof;
 - 3.3.2. acknowledges that it will only use the Services in accordance with this Agreement;
 - 3.3.3. is authorised only to use the Services for its own business purposes;
 - 3.3.4. acknowledges and agrees that it 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. acknowledges that it obtains no rights of ownership of the Services or any part thereof whatsoever.
 - 3.4. For so long as the Client pays the applicable Fees and Charges and has an active subscription to a Service, the Client may permit the agreed number of End Users to access and use the relevant subscription for such Service. The Client agrees to ensure that those End Users comply with this Agreement.
 - 3.5. BEE123 will use its commercially reasonable endeavours to ensure that the Services are:
 - 3.5.1. made available to the Client 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 the Client in accordance with the Service Levels.
 - 3.6. From time to time the Client may change the identity of the individuals who are End Users. BEE123 reserves the right to limit the number of times, or the frequency with which, the Client can do this. BEE123 may notify the Client thereof before exercising this right.
 - 3.7. Upon expiry of the then-current Subscription Period, the Client's subscription to the Services will automatically be renewed for a further Subscription Period at the then-current Licence Fee, escalated at the Escalation Rate, unless the Client notifies BEE123 in writing of its intention not to renew its subscription by no later than 60 (sixty) days prior to the expiry of the then-current Subscription Period.
- 4. Scorecard Software**
- 4.1. If applicable, End Users may 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 Client, it must ensure that such End User (a) complies with this Agreement, and (b) uses the relevant data in the Scorecard Software in accordance with the Client's instructions. BEE123 accepts no liability of any nature whatsoever for any acts or omissions of any End Users.
 - 4.3. The Client is responsible for determining whether it is 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 the Client's business. Kindly consult with a verification agency for

any guidance required in this regard prior to subscribing. BEE123 shall not be liable for any refunds, expenses incurred, losses or damages of any nature whatsoever resulting from or relating to the Client's 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 BEE123's sole discretion, require the Scorecard Software to be updated or amended, BEE123 shall use its reasonable endeavours to update the Scorecard Software within a reasonable period. BEE123 shall, however, not be liable for any loss, damage, penalties or harm of any nature whatsoever and howsoever arising resulting from or relating to a delay of the release of such Scorecard Software update for use by the Client and/or its End Users.
- 4.5. The BEE Codes comprise legislation that requires practical implementation. Some of the information, calculations, templates, spreadsheets and methodologies 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 the Client's decision to act or refrain from acting thereon, or for reliance on same, which may result in any varying BEE status levels, loss, damage or harm. Further, BEE123 does not guarantee that any verification file or other deliverable produced by the Scorecard Software will be accepted by the Client's verification agency. The Client is required to check with its verification agency as to their interpretation of the BEE legislation and BEE Codes and their acceptance of the Client's verification file produced by the Scorecard Software.
- 4.6. The Client indemnifies and holds harmless BEE123, its Affiliates, licensors, employees and agents against any loss or damage (including any indirect or consequential damages) that may arise from 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. annually in advance before the commencement of the Subscription Period and on each anniversary thereafter during its term.
- 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 the Client in addition to the Fees and Charges.

- 5.3. Payment of the Fees is a prerequisite to the Client being given access to the licence subscription and services. For the avoidance of doubt, no access to the software nor services will be granted until the Fees are paid as is customary for SaaS subscriptions.
- 5.4. The Fees and Charges shall automatically be escalated by the Escalation Rate on each anniversary of the then-current Subscription Period.
- 5.5. Where payment of any amount due is not made on the due date, BEE123 shall be entitled:
 - 5.5.1. to 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 the Client agrees and undertakes to pay, on demand, the penalty interest, which the Client hereby accept as fair and reasonable; and
 - 5.5.2. without prejudice to any other right or remedy BEE123 may have, to suspend the Client's access to and use of the BEE123 Portal and the Services as BEE123 (in its sole discretion) chooses until all payments in arrears have been paid in full.
- 5.6. Fees and Charges paid in advance for any Subscription Period (or part thereof) are not refundable.
- 5.7. If the Client pays its subscription charges to an entity separate from BEE123 (e.g., if the Client obtained access via an accountant or Business Partner), the Client agrees, nonetheless, to remain bound by the terms of this Agreement. Specifically, the Client agrees that it shall remain liable for payment to BEE123 of all Fees and Charges due to BEE123 in terms of this Agreement. The Client agrees not to take any steps to circumvent its liability for payment of any such Fees and Charges.
- 5.8. Fees and Charges for new or additional Services are subject to change upon 30 (thirty) days' notice from BEE123. Such notice may be provided at any time by posting the changes to the BEE123 Portal.

6. Company Data and User Details

- 6.1. BEE123 collects, and the Client supplies to it, Company Data and User Details, as BEE123 requests via the BEE123 Portal, and such other information as BEE123 may from time to time reasonably request. The Client warrants that this information is, and will remain for the duration of this Agreement, true, accurate and up to date.

- 6.2. The Client agrees to BEE123's use, storage and disclosure of the Client's information, Company Data and User Details as follows:
- 6.2.1. BEE123 will use such information for exercising its rights and performing its obligations under this Agreement and always in strict accordance with its Privacy Policy. BEE123 may also use it to contact the Client, via its relevant or nominated personnel, about its other products and services, to conduct research about its customers and to track and record the manner in which the Client and its End Users use the BEE123 Portal and/or Services. That contact may be made via BEE123's Contractors or Affiliates. The Client acknowledges that, for these purposes, there is certain information that BEE123 must use, including names and e-mail addresses of the Client's End Users. If, for any reason, BEE123 is not permitted to use such information, BEE123 may not be able to perform its obligations under this Agreement. The Client acknowledges that, in such circumstances, it will still be obliged to pay the Fees and Charges in accordance with clause 5.
- 6.2.2. BEE123 may also use anonymised, de-identified extracts of such information for purposes of observing trends across its entire client base and performing aggregated scorecard gap analyses for the benefit of all of its clients, including the Client.
- 6.2.3. The information which the Client submits and stores via the BEE123 Portal may be stored on BEE123's computer servers, which servers may be controlled, hosted and managed by its Affiliates or Contractors.
- 6.2.4. BEE123 will disclose the Client's information (including User Details of its End Users, if necessary) to its Affiliates and Contractors who assist BEE123 to exercise its rights and perform its obligations under this Agreement, including providing the BEE123 Portal and/or Services.
- 6.2.5. The Client agrees to bring this Agreement to the attention of its End Users, to help ensure that they understand and consent to BEE123's use of their information, including User Details. This is so that BEE123 may provide the BEE123 Portal and Services to them on the Client's behalf. By providing any information to BEE123 (including information of any End User), the Client warrants that it has obtained the necessary consent to do so.
- 6.3. Without limiting the generality of the foregoing, the Client warrants that:
- 6.3.1. it has obtained and will obtain all legally required consents and permissions from relevant parties (including data subjects) for the use, processing and transfer of the Client's information, Company Data and User Details as described in this Agreement; and
- 6.3.2. it shall, for the duration of this Agreement, to the extent that the information provided to BEE123 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. Each Party is responsible for complying with its respective obligations under applicable laws governing Company Data and User Details, including POPI, and each Party shall take reasonable precautions (having regard to the nature of its 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. The Client acknowledges that it has the right to access, at its own cost, Company Data and User Details upon written notice and have any agreed errors therein rectified.
- 6.5. The Client, as the controller of the Company Data and User Details, is 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 law, including POPI and any other applicable privacy and protection of personal information law.
- 6.6. The Client hereby indemnifies and holds BEE123 harmless from any claim, damages, costs penalty or fine as a result of its failure to comply with its 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. The Client agrees 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. The Client shall not question or dispute the ownership of any of the Intellectual Property Rights at any time.
- 7.2. The Client 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, the Client may

not use the marks as metatags nor may the Client sponsor them in search engines. All goodwill in the Client's lawful and authorised use of the marks shall accrue to BEE123. The Client shall notify BEE123 immediately if it becomes 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. The Client agrees to the incorporation of any such measures in the BEE123 Portal.
- 7.5. If, in BEE123's 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, BEE123 may, subject to the Client's compliance with clause 7.6 below, elect to either:
 - 7.5.1. obtain the right for the Client 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, failing the above,
 - 7.5.3. withdraw the infringing item and refund to the Client 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, the Client must:
 - 7.6.1. promptly notify BEE123 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 any such claim or threatened claim; and
 - 7.6.3. cooperate with BEE123 in the defence of any such claim or threatened claim, subject to BEE123's payment of the Client's reasonable third-party costs incurred in providing such cooperation.
- 7.7. This clause 7 states the Client's exclusive remedy in connection with any claim or threatened claim in relation to the Intellectual Property Rights of a third party.

8. Disclaimers and Liabilities

- 8.1. The BEE123 Portal is provided on an "as is" basis, and BEE123 and its 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 the Client's sole responsibility to satisfy itself prior to entering into this Agreement that the Services and the BEE123 Portal will meet its individual requirements and be compatible with its 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 BEE123 does 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. The Client, not BEE123, assumes the entire cost of all necessary servicing, repair or correction due to the use of the BEE123 Portal or the Services by the Client and its End Users.

- 8.2. Subject to clauses 3, 4, 8 and 9 and the Client's compliance with the terms of this Agreement, BEE123 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 BEE123's requirements and directions (as made available on the BEE123 Portal or notified to the Client in writing) from time to time.
- 8.3. BEE123 will use reasonable endeavours to keep the BEE123 Portal and Services available at all times, however, BEE123 does not warrant that the BEE123 Portal will be continuously available, or that the Client's use of BEE123 Portal or the Services will be uninterrupted or error-free, or that BEE123's server(s) will be free from attack.
- 8.4. While BEE123 will use reasonable efforts to ensure that all information it provides on the BEE123 Portal and/or Services is correct and complete at the time of the last update to the relevant Page, BEE123 makes no representations or warranties as to such information's accuracy, adequacy, correctness, quality or reliability. The Client bears 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.
- 8.5. BEE123 does not warrant, whether expressly or impliedly, 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.
- 8.6. 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.
- 8.7. BEE123, its Affiliates and/or Contractors will not, under any circumstances, be liable for any damages of any kind arising from:

- 8.7.1. BEE123's use of or reliance on any information or documentation provided by or on behalf of the Client, including any BEE certificates or other verification. The Client hereby warrants that any such information or documentation provided by or on behalf of the Client is accurate, correct and has been lawfully obtained; or
- 8.7.2. any data capture errors.
- 8.8. BEE123 shall not be liable for and shall be excused from any failure to perform its obligations under this Agreement due to causes beyond its 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 8 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:
- 8.8.1. use of the BEE123 Portal or the Services other than in accordance with this Agreement; or
- 8.8.2. circumstances beyond BEE123's reasonable control, including any interruption to or failure of any web site, computer or telecommunications or utilities services not provided by BEE123, including the Internet.
- 8.9. If the Client believes the provision of the BEE123 Portal does not conform to the undertakings above, it should notify BEE123 by e-mail at support@bee123.co.za.
- 8.10. The remedies provided under this clause 8 are the Client's sole and exclusive remedies in the event of a breach of BEE123's undertakings or obligations under this Agreement.
- 8.11. The Client acknowledges that no oral or written communications by or on behalf of BEE123 shall create a warranty or in any way increase the scope of the undertakings set out in this Agreement.
- 8.12. BEE123, its 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:
- 8.12.1. 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;
- 8.12.2. any circumstances arising out of or in connection with the Internet, any third party or the Client's telecommunication service(s) or computer system(s), and/or associated or supporting systems not provided by BEE123 and used by the Client or its End Users 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; or
- 8.12.3. any indirect, consequential, incidental, punitive or special damages, however caused and whether arising under contract, delict (including negligence), statute or otherwise, even if BEE123 knew or ought to have known of such potential liability.
- 8.13. Subject to the limitation and exclusions set out in this clause 8, BEE123's (and that of any Affiliates or Contractors) total aggregate 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 the Client 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 8 has been calculated to be proportionate to the charges paid by the Client to use the BEE123 Portal and/or the Services and takes into account the fact that it is not within BEE123's control how and for what purposes the Client uses the BEE123 Portal and/or the Services.
- 8.14. The Client agrees to defend, indemnify and hold BEE123 harmless, as well as its 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 registration or use of the BEE123 Portal and/or the Services by its End Users (including any information disclosed in any dealings they have with any other user of the BEE123 Portal), any information provided thereon on which the Client may rely, the Client's conduct, its use of or inability to use the BEE123 Portal and/or the Services, the Client's failure to perform any of its obligations in terms of this Agreement, the Client's breach or alleged breach of this Agreement or of any representation or warranty contained herein, the Client's unauthorised use of the BEE123 Portal, any reliance on any BEE certificate or other document or information provided by or on behalf of the Client, any fraudulent or criminal acts on the part of the Client or its End Users (including the falsification of any documents), or the Client's violation of any rights of another person.
- 8.15. In no event shall BEE123, its 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 the Client's reliance on any information obtained from BEE123, 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.

- 8.16. BEE123 shall not be liable to the Client 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 the Client hereby expressly indemnifies BEE123 against any claims in respect of such loss or damage resulting from or related to the Client's 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 BEE123's reasonable control; (ii) any breakdown in the service provided by any Internet service provider (including a communications link 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 BEE123 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 BEE123 Portal or the Services; or (ix) its access to the Internet, the BEE123 Portal or the Services.

9. Termination

- 9.1. This Agreement (including the right to use the BEE123 Portal and Services) will automatically and immediately terminate if the Client is unable to pay its debts or becomes insolvent, bankrupt or ceases to trade or exist, or an order is made or a resolution passed for its liquidation, administration, winding-up or dissolution, or a business rescue practitioner, an administrative or other receiver, manager, liquidator, administrator, trustee or similar officer is appointed over all or any substantial part of its assets, or it enters into or propose any composition or arrangement with its creditors generally, or any person seeks a moratorium in respect of the Client or it commits an act of insolvency under the Insolvency Act, 24 of 1936, or similar circumstances occur to the Client in any jurisdiction.
- 9.2. BEE123 may terminate this Agreement at any time by written notice, effective immediately, if the Client:
- 9.2.1. materially breaches any term of this Agreement and either that breach is incapable of remedy or the Client has not remedied that breach within 7 (seven) days after receiving written notice requiring the Client to remedy it; or

9.2.2. fails to pay any charges payable to BEE123 timeously and in full.

- 9.3. Subject to clause 9.4 and clause 9.5, upon termination of this Agreement, however caused, BEE123 will stop the Client's ability to access the BEE123 Portal and Services, so that the Client and its End Users will no longer be able to access and use the BEE123 Portal. The Client acknowledges that it may no longer be able to access its Company Data via the BEE123 Portal from this time.
- 9.4. Except in the circumstances described in clauses 9.1 to 9.2, if this Agreement is terminated and the Client notifies BEE123 at the time of notice of termination that it requires further access to its Company Data, BEE123 may provide the Client with access to the BEE123 Portal for a period of 5 (five) calendar days in order that it may access, copy and/or print out its Company Data, subject to the following: (a) it is possible that BEE123 may have deleted the Client's Company Data, in which case it will not be able to provide such data to the Client; (b) BEE123 may charge the Client a reasonable fee for providing it with access to its Company Data; and (c) if the Client's account remains in arrears for 90 (ninety) days, BEE123 may have deleted it and the Client's Company Data along with it. It is, therefore, the Client's responsibility to ensure that it makes regular backups of its Company Data, as BEE123 will not be liable for any loss to or destruction of Company Data stored on the BEE123 Portal.
- 9.5. If BEE123 terminates this Agreement in accordance with clause 9.1 or 9.2, it may irretrievably delete the Client's Company Data from the effective date of termination.
- 9.6. 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.

10. Communication Tools

- 10.1. The Client's communication with BEE123 must be by e-mail, sent to the appropriate e-mail address(es) provided on the BEE123 Portal.
- 10.2. BEE123's communication with the Client must be via those details provided by or on behalf of the Client when it registered as a user of the BEE123 Portal (or any new details which it subsequently notifies to BEE123).
- 10.3. All formal notices given under this Agreement shall be in writing. Communication of formal notices under this Agreement addressed specifically to either Party at the addresses indicated by the Client upon registration and by BEE123 on the BEE123 Portal, will be deemed to have been served, in respect of: (i) prepaid registered post to a physical address, 14 (fourteen) days after such posting; (ii) delivery by hand, on the date of delivery to a responsible person during business hours; or (iii) e-mail,

on the 1st (first) 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.

- 10.4. As a condition of this Agreement, if the Client's End Users use any communication tools available through the BEE123 Portal, the Client shall procure that they agree only to use such communication tools for lawful and legitimate purposes and to accept that they are solely responsible for their use of such communication tools, which shall be at the Client's own risk. The Client must ensure that any such communication tool is not used 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 BEE123's 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 the Client does not have the right to use) or rights of others or otherwise objectionable or that the Client knows or has reason to believe is incorrect, inaccurate, misleading or outdated.
- 10.5. When an End User makes any communication on the BEE123 Portal, the Client represents and warrants that it owns the content of the communication or that it has the lawful right to transmit, distribute and reproduce such content or material.
- 10.6. BEE123 takes no responsibility and assumes no liability for any content or material posted, stored or uploaded by an End User or any third party, or for any loss or damage thereto, nor is BEE123 liable for any mistakes, defamation, slander, libel, omissions, falsehoods, obscenity, pornography or profanity an End User may encounter. As a provider of interactive services, BEE123 is not liable for any statements, representations or content or material provided by its users in any public forum or through any communication tool.
- 10.7. Although BEE123 has 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 BEE123, it reserves the right, and has 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.
- 10.8. Any use of the communication tools or other portions of the BEE123 Portal not in compliance with the foregoing violates this Agreement and may result in, among other things, termination or suspension of the Client's rights to use communication tools and/or the BEE123 Portal. The Client acknowledges and agrees that BEE123 may access, use or disclose any information about the Client and its End Users or their use of the BEE123 Portal, including any content or material posted thereon, to

comply with the law or any legal process, to protect and defend its rights or property, or to protect the safety of its company, employees, customers or the public.

11. Cookies

"Cookies" are small files placed on a user's hard drive that assist BEE123 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. BEE123 uses cookies to, *inter alia*, allow End Users to enter their password less frequently during a session, and BEE123 uses data collection devices, including cookies, on certain Pages of the BEE123 Portal to help analyse 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 BEE123 to provide information that is targeted to an End User's interests. End Users have the ability to accept or decline cookies. Most browsers automatically accept cookies, but this browser setting can usually be modified to decline cookies. If an End User chooses to decline cookies, they may not be able to sign in or use other features of the BEE123 Portal or Services that depend on cookies.

12. Links and Third Party Information

- 12.1. Links to the BEE123 Portal are permitted, subject to BEE123's prior written consent, which may be conditional, and BEE123 reserves the right to withdraw such consent at any time and for any reason whatsoever. The Client is not entitled (nor shall it assist others) to set up links from its own web page or portal to the BEE123 Portal by deep-linking, framing or otherwise, without BEE123's prior written consent. Such consent may be withheld at BEE123's absolute discretion, and without the need to provide a reason.
- 12.2. The BEE123 Portal may include links that allow End Users to leave the BEE123 Portal and visit third-party sites. BEE123 has no control over and is not responsible for the content, access, use or availability of those third-party sites, for any products or services bought through those sites or for the treatment of any personal information provided to any third party on or through such sites. The products, services and web sites of third-party providers made available via the BEE123 Portal may be owned and operated by independent suppliers. While BEE123 may co-brand these products or services with its own, it does not endorse those products or services or warrant the accuracy or reliability of any information provided by such third parties. In particular, BEE123 does not warrant or guarantee that the Client will be satisfied with the products and/or services supplied by third parties and the Client should make whatever enquiries it feels are necessary before proceeding with any such transactions. When an End User leaves the BEE123 Portal, the Client should be aware that BEE123's terms and policies (including this Agreement) no longer govern

their use of the relevant third-party sites. End Users should review the applicable terms and policies, including privacy and data gathering practices, of any site to which they navigate from the BEE123 Portal.

- 12.3. The Client's participation, correspondence or business dealings with any third party found on or through the BEE123 Portal, regarding the payment and delivery of any goods or services, and any other terms, conditions, warranties or representations associated with such dealings, are solely between the Client and such third party. The Client agrees that BEE123 will not be responsible or liable for any loss, damage or other matters of any sort incurred as the result of any such dealings.
- 12.4. Some information within the BEE123 Portal and Services (and components thereof) is provided to BEE123 by third parties. BEE123, therefore, does not confirm the accuracy or the veracity of such information. BEE123 shall, accordingly, not be liable for the inaccuracy of such information or the Client's reliance on such information.

13. Acceptable Use of the BEE123 Portal

- 13.1. 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, BEE123 will not tolerate any use of the BEE123 Portal which damages or is likely to damage its reputation, the availability or integrity of BEE123 or the BEE123 Portal or which causes threatens to cause BEE123 to incur any legal, tax or regulatory liability.
- 13.2. BEE123, therefore, requires the Client and its End Users to treat the 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 others' rights or to cause or threaten to cause BEE123 damage. BEE123 requires the Client and its End Users to comply with any relevant notices, policies and terms imposed by third parties whose web sites, products or services they access through the BEE123 Portal.
- 13.3. BEE123 reserves the right to suspend the use of the BEE123 Portal generally or block the Client's access to any part thereof and/or to suspend or terminate its rights to use same or any part of it if it suspects misuse or any breach of this Agreement. BEE123 shall then report any misuse of the BEE123 Portal to the relevant enforcement or other authorities and to its advisers. BEE123 further reserves the right to disclose any evidence it has which relates directly or indirectly to misuse.
- 13.4. 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.

14. Policies and Guidelines

- 14.1. This Agreement is subject to the following policies, guidelines and documents published by BEE123 (as amended from time to time), which are incorporated herein by reference:

- 14.1.1. Promotion of Access to Information Manual; [PAIA Manual](#) and Privacy Policy [Data Privacy Policy](#).

15. Statutory Rights and Disclosures

- 15.1. The Client may have additional rights under its 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, BEE123 is required to disclose the following information:

- 15.1.1. BEE 123 (Pty) Ltd. is a company registered in terms of the laws of the Republic of South Africa with registration number 2016/150254/07;
- 15.1.2. BEE123's physical address is Building 2, Waverley Office Park, 15 Forest Road, Bramley, Johannesburg, 2090, South Africa, at which address BEE123 will receive legal service of documents; and
- 15.1.3. BEE123 may be contacted through its web site www.bee123.co.za or via e-mail at support@bee123.co.za.

16. General Terms

- 16.1. 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.
- 16.2. 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.
- 16.3. This Agreement constitutes the entire agreement between the Client and BEE123 with respect to the access and use of BEE123 Portal and the Services by the Client and its End Users, 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. The Client acknowledges that in entering into this Agreement it has not relied on any documentation, information, representation, warranty, collateral

contract or other assurance (except those set out in this Agreement) made by or on behalf of BEE123 before the date on which the Client accepted this Agreement. The Client waives all rights and remedies which, but for this clause 16.3, might otherwise be available to it in respect of any such representation, warranty, collateral contract or other assurance.

- 16.4. BEE123 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 the Client's prior written consent thereto.
- 16.5. The Client may not assign, transfer, sub-contract or otherwise part with this Agreement or any part hereof or any right or obligation under it, without obtaining BEE123's prior written consent thereto.
- 16.6. The Client agrees that, during the currency of this Agreement and for a period of 2 (two) years following its termination for any reason, it will not solicit or attempt to solicit, directly or by assisting others, any person who was an employee of the BEE123 or any Affiliate on, or within 6 (six) months before, the date of such solicitation or attempted solicitation, to leave the employment of BEE123 or such Affiliate. In the event of a breach of this clause, the Client shall automatically be liable to pay to BEE123, as liquidated damages, a sum equal to the gross annual cost-to-company remuneration (inclusive of any bonuses, commission and incentives, and annualised if necessary) paid or payable by BEE123 to the employee in question applicable as at the date of termination of such employee's employment with BEE123. This remedy is in addition to any other remedies available to BEE123.
- 16.7. The Client hereby consents to BEE123's use of its name, company logo and a general description of the Services provided by BEE123 in terms of this Agreement in any proposals, presentations or other similar such documents which BEE123 may issue, employ, publish or submit from time to time.
- 16.8. Although BEE123 may refer the Client to certain third-party service providers for the provision of services which may be ancillary, complementary or related to the Services, BEE123 does not recommend or endorse any

such third party, including any third parties who make the BEE123 Portal available to the Client. If the Client wishes to engage with such an organisation, it should independently investigate its experience, skills and qualifications. No third party is appointed or authorised by BEE123 as its 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 the Client on BEE123's behalf, or otherwise make commitments for BEE123 in any way whatsoever. The Client agrees that BEE123 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.

- 16.9. 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.
- 16.10. Any dispute relating in any way to the Client's 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 the Client hereby consents; except that, to the extent the Client has in any manner violated or threatened to violate BEE123's intellectual property rights, BEE123 may seek interdictory, injunctive or other appropriate relief in any applicable court in the Republic of South Africa, and the Client consents to the 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.
- 16.11. A person who is not a party to this Agreement has no right to benefit under or to enforce any term of this Agreement.
- 16.12. Any rights of BEE123 not expressly granted herein are reserved.