



Terms of Service

general terms for providing Services between **Client**
and

BEE123	
Company Name	BEE 123 (Proprietary) Limited
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BEE123 helps its clients comply with transformation or empowerment regulatory requirements in South Africa by providing:

- software as a service (**SaaS**) through the BEE123 Portal at www.bee123.co.za (**BEE123 SaaS**), and
- consulting or advisory services (**Consulting Services**).

These terms, read together with the corresponding proposal, make up the agreement between the parties. These terms are the general terms of the relationship between BEE123 and Client. The terms cover any transactions where BEE123 provides Services to Client and BEE123 drafted them specifically for BEE123's Services. BEE123 will charge an additional fee if Client wishes:

- to substantially change these terms,
- other terms to apply, or
- to enter into an agreement based on Client's template.

The commercial terms of any transaction will be contained in a proposal that incorporates these terms. Nothing in the terms obliges a party to enter into any proposal or agreement.

Client acknowledges that it has read, understood, accepted and agreed to be bound by the proposal and these terms. If Client does not agree, Client must stop using the Services.

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1. Definitions and interpretation

1.1 **Definitions.** In the agreement:

BEE123 advisor means BEE123 personnel who assist BEE123 in delivering the Consulting Services to Client;

affiliate means, in relation to a legal entity, any person that controls that entity, is under that entity's control or is controlled by the same person that 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;

agreement means the agreement between BEE123 and Client, consisting of these terms, applicable annexures, and any proposals the parties enter into;

applicable data protection law means the data protection law that applies to the Services, including POPIA;

BEE123 means BEE123 (Pty) Ltd that makes proposals and, if specified in the proposal, its related persons or persons under common control as defined by applicable company law;

BEE123 Portal means the BEE123 proprietary management solution that BEE123 owns, operates and makes available to Client (and its end users) through BEE123's website (currently at www.bee123.co.za) including:

- all current and future modules Client has subscribed to, including the BEE123 and EE123 module,
- all webpages, components or sections,
- the content in it;

business day means any day within business hours, other than a Saturday, a Sunday, or a holiday (including a public or bank holiday) in South Africa, and any other reference to a **day** means a calendar day;

business hours means BEE123's normal business hours from time to time on business days (currently 8am to 5pm Monday to Thursday and 8am to 4pm on Fridays);

Channel Partner means a third party, independent of BEE123, which is a member of the BEE123 Partner Programme;

Client Data means all data and information (including information about an identifiable person) that Client (or any third party on Client's behalf including an end user) provides to BEE123 or inputs into the BEE123 Portal and all data and information that BEE123 generates, processes, or supplies to Client in providing the Services; but excludes any:

- derived data that BEE123 creates for its own internal purposes as described in clause 15.1,
- data that BEE123 can obtain from another source,
- BEE certificates or affidavits, or
- data that is proprietary or confidential to BEE123 or its personnel;

Client means any client of BEE123 that accepts these terms, enters into an agreement with BEE123 or accepts a proposal from BEE123 and, if specified in the proposal, those related to it;

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 calendar months;

deliverables means the deliverables as defined in each proposal or related material;

effective date means the effective date of the Services as agreed between the parties in writing or the date on which BEE123 starts providing the Services (whichever happens first);

end user means any natural person Client provides user details to for the purposes of accessing or using the BEE123 Portal via Client's account. This may include Client's personnel, BEE123's personnel, or any other third party;

escalation rate means CPI plus three percent;

existing material means any code, forms, algorithms or materials developed by or for either party independently and outside of the agreement and provided during the course of the agreement;

fees means the fees, charges, or price Client will pay to BEE123 in respect of goods or services BEE123 provides to Client, including where applicable, any licence fees;

intellectual property rights means any patent, trademark, 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;

licence fee means the fees payable by Client in respect of the access to or use of the Services by its end users, in accordance with the fees;

parties means the parties to this agreement being Client and BEE123, and **party** refers to either of them individually, as the context requires;

personnel means any representative, including any director, employee, agent, affiliate, consultant, or contractor;

POPIA means the Protection of Personal Information Act 4 of 2013;

privacy policy means BEE123's policy regulating its use and protection of personal information, accessible at <https://www.bee123.co.za/privacy-policy-2/>;

proposal means a separate document or form (including a written contract, agreement, estimate, quote, proposal, engagement letter, statement of work, email, form or invoice) that contains the commercial terms of each specific transaction and incorporates these terms;

related and related persons means natural and juristic persons who are connected to one another in the manner contemplated in applicable law;

service levels means the levels according to which BEE123 will provide each service as set out in this agreement;

Services means any services BEE123 provides to its clients, which may include a software as a service (**SaaS**) that BEE123 provides through the BEE123 Portal (**BEE123 SaaS**), consulting or advisory services (**Consulting Services**), implementation services, training, advice, or support;

sign, signed or signing means the handwritten signature, an advanced electronic signature, or an electronic signature that the parties agree to use, of a party's duly authorised representatives;

subscription period means the period of the initial and each renewal subscription period in terms of this agreement, being a period of 36 calendar months, unless the parties indicate otherwise in a proposal;

tax means any tax (including value added tax, income taxes, pay-as-you-earn tax or other taxes levied in any jurisdiction), duty, tariff, rate, levy, or any other governmental charge or expense payable;

terms means these terms, consisting of:

- these terms of service; and

- any other identified specific terms, policies, disclaimers, rules and notices that the parties agree on in writing, (including any that may be applicable to any specific Services);

third party contractor means any contractor, supplier, vendor, service provider or licensor any of the Services, which is not a party to the agreement;

third party software means all third party software owned by a third party but legally licensed to BEE123 for use in providing the Services;

user details means all information, including personal information, Client has provided, whether directly or indirectly, to BEE123 through the BEE123 Portal for the purposes of:

- registering Client and its end users on the BEE123 Portal,
- purchasing, or
- subscribing to a service.

writing or written means the reproduction of information or data in physical form (includes handwritten documents, hard copy printouts and fax transmissions) or any mode of reproducing information or data in electronic form that the parties agree to use (like pdf files), but excludes information or data in the form of email, text message or instant message;

1.2 **Definitions in the proposal.** Words defined (or assigned a meaning) in a proposal will have that meaning in the terms, unless the context clearly indicates otherwise.

1.3 **Interpretation.** The following rules apply to the interpretation of the agreement:

- **reference headings** – all headings are for reference purposes only and do not affect the interpretation of the agreement;
- **non-exhaustive lists** – the use of the word “including” and similar expressions will be construed as illustrative and not exhaustive
- **undefined words or phrases** – all words or phrases that the agreement does not define have their ordinary English meanings;
- **references to enactments and laws** – references to any law or enactment will include the enactment as re-enacted, amended, or extended;
- **person references** – references to a person includes a natural and juristic person;
- **technical expressions** - technical expressions will have the relevant meaning commonly attributed to them in the computer software business sector in the agreement’s jurisdiction;
- **party references** – references to a party includes their successors or permitted assigns;
- **number of days** – when any number of days is prescribed, the first day will be excluded and the last day included;
- **no interpretation against the draftsman** – the rule of construction that an agreement must be interpreted against the party responsible for its drafting or preparation does not apply; and
- **time calculations** – the parties will use South African Standard Time (**SAST**), which is GMT +2 to calculate any times.

1.4 **Departure.** These terms apply to all BEE123’s clients and are not generally open to negotiation for reasons of consistency and pricing. Should the parties negotiate and agree any departure from these terms, they will record that departure in writing in the relevant proposal.

1.5 **Conflict.** If there is a conflict of meaning between these terms and any written word or phrase in the proposal or other specific terms, the meaning in the proposal or specific terms will prevail in respect of the relevant Services. This clause is subject to the limitations of liability clause below.

2. Duration

2.1 **Commencement.** These terms start whenever Client accepts them by:

- **doing so explicitly** – such as by agreeing to a proposal that incorporates them by reference;
- **using the Services in any way** – such as by accessing them; or
- **exercising any rights** granted to Client under the agreement;

and continue until terminated according to the terms.

2.2 **Automatic renewal.** If a proposal involves a subscription period, then upon expiry of the then-current subscription period, Client’s subscription to the Services will be automatically renewed for a further subscription period at the then-current fees, escalated at the escalation rate.

2.3 **Renewal termination.** Either party may terminate the agreement at the end of the expiry of the then-current subscription period by giving the other party at least 60 days prior written notice. Client may not terminate the agreement early during the subscription period.

3. Proposals

3.1 **Capacity.** Client represents and warrants that client (and any person who accepts a proposal):

- possess the legal right, capability, full power, and authority to enter into the agreement; and
- will submit true, accurate and correct information to BEE123.

3.2 **Valid and binding agreement.** The parties only conclude a valid and binding agreement when Client accepts the offer BEE123 makes.

3.3 **Time and place.** The parties conclude any agreement between each other at the date of the last signature of the parties and at the place where BEE123 has its head office.

3.4 **Proposals.** Each proposal will create a separate agreement. Despite that, BEE123 may consider Client’s breach of any one proposal to constitute a breach of any or all agreements.

4. Services and service levels

4.1 **Service levels.** BEE123 provides the Services according to the service levels in these terms. There is no need to sign a separate service level agreement or SLA.

4.2 **BEE123 Portal availability.** BEE123 will use its commercially reasonable endeavours to ensure that the BEE123 Portal is:

- available 99% of the time; and
- provided to Client in accordance with the service levels.

4.3 **Subscription purchases.** Client may purchase a subscription to access and use the Services by following the relevant steps on the BEE123 Portal. If Client subscribes to use a Service, Client will be bound for the full duration of the subscription period. Subscriptions to Services will be for the subscription period commencing on the effective date.

4.4 **Right to access and use BEE123 Portal.** Upon acceptance of a proposal, and subject to payment of the applicable fees, BEE123 grants Client and its end users the right to access and use the corresponding Services via the BEE123 Portal only with the user roles according to Client’s subscription type for the subscription period. This right is non-exclusive and non-transferable and limited by this agreement.

4.5 **Communication in respect of the Services.** Client must communicate with BEE123 by email, sent to the appropriate email address BEE123 provides in the proposal, or on its website or BEE123 Portal from time to time.

- 4.6 **BEE123's communication with Client.** BEE123 will communicate with Client using the details Client provides to BEE123.
- 4.7 **Right.** BEE123 grants Client a right to use the Services subject to the following limitations:
- **duration of agreement** – Client may only use the Services for the duration of the agreement;
 - **limited to terms** – Client may only use the Services in accordance with this agreement;
 - **non-exclusive** – BEE123 may allow anyone else to use the Services;
 - **non-transferable** – Client may not transfer the right to anyone else; and
 - **specified purposes** – Client may only use the Services for its own business purposes and the specified purposes that BEE123 has communicated to Client in writing from time to time.
- 4.8 **Unauthorised access to Services.** Client acknowledges and agrees that it will not, whether directly or indirectly, provide access to 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 Services.
- 4.9 **Backups.** It is Client's responsibility to ensure that it makes regular backups of Client Data, as BEE123 will not be liable for any loss to or destruction of any data stored on the BEE123 Portal.
- 4.10 **Breach.** BEE123 may suspend or cancel Client's right if Client breaches the agreement.
- 4.11 **Third party interactions.** Client's dealings with any third party found on or through the BEE123 Portal or Services, including payment, delivery, and associated terms, are solely between Client and that third party. BEE123 is not liable for any loss or damage arising from such dealings.
- 4.12 **Third-Party Links.** BEE123's website or the BEE123 Portal may contain links to third-party websites. BEE123 is not responsible for the content, use, or availability of these websites, or for any products, Services, or personal information provided to them. Client should review the terms and policies of any third-party website accessed through the Services or BEE123 Portal.
- 4.13 **Third party terms.** Client must ensure it complies with the terms of any third party websites, products, or services it accesses through BEE123's Services.
- 4.14 **Referral to third party service providers.** BEE123 may refer Client to third party service providers. BEE123's referral does not endorse or recommend these providers. Client must independently verify them. No third party is BEE123's agent or servant and has no authority to amend this agreement, contract on BEE123's behalf, or make any representation, warranty, or commitment for BEE123. BEE123 is not liable for any act or omission of any third party Client chooses to engage with, including services provided in relation to the BEE123 Portal.
- 4.15 **Compliance with Client's policies.** Where appropriate BEE123 will take all reasonable steps to comply, and ensure that its personnel comply, with Client's policies that are relevant to the Services. Client must notify BEE123 of all of Client's applicable policies prior to the effective date and give BEE123 and the relevant personnel reasonable written notice of any change in Client's existing policies or the implementation of Client's new policies. Where Client policies require BEE123 to incur costs or significant time (especially of the BEE123 development team), client will bear the cost.

5. Access to Client and end user accounts

- 5.1 **Registration.** Client must register an account on the BEE123 Portal to make use of and access the BEE123 Portal and Services.
- 5.2 **Client's sole control over account access and end users.** BEE123 and its personnel do not have direct access to Client's account, end user accounts, or user details. Client is responsible for determining user details and appointing the end users.
- 5.3 **Advisors.** Client may create an end user account for an advisor. The advisor end user account would be for the purpose of enabling the advisor to view Client Data to assist Client. BEE123 is not responsible for any third party advisor. BEE123 Advisors help BEE123 to deliver the BEE123 Consulting Services.
- 5.4 **Client responsible for advisor end user.** If Client chooses to create an advisor end user account, the advisor's account will be treated as a standard end user account, and Client will be solely responsible for its management, including the security of its user details. Client retains the right to disable or permanently delete the advisor end user account at any time through the BEE123 Portal.
- 5.5 **Client's responsibilities.** Client is responsible for and accepts all liability for:
- **Client's account** – all activities that occur under its account;
 - **end users** – any acts or omissions of end users regardless of whether an end user is personnel of Client or not;
- except where such liability arose as a direct result of BEE123's gross negligence or wilful misconduct.
- 5.6 **Changes to end users.** From time to time 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, Client can do this. BEE123 may notify Client before exercising this right.
- 5.7 **Unauthorised access to user details.** Client accepts all risks of unauthorised access to any of its user details and any other information Client provides for the purposes of accessing the BEE123 Portal. Client acknowledges that unauthorised access of user details may compromise the security of Client's account.

6. Client's and end users' responsibilities and restrictions

- 6.1 **Responsibilities.** Client agrees to and must ensure that its end users:
- 6.1.1 **Use of the BEE123 Portal** – only use the Services and BEE123 Portal:
- **Client's purposes** – for Client's transformation or empowerment-related and lawful internal business purposes;
 - **complies with these terms** – in accordance with and subject to the terms in this agreement and any reasonable notice or other condition BEE123 sends via email or publishes or posts on the BEE123 Portal; and
 - **Client Data** – only with Client Data and in accordance with Client's instructions.
- 6.1.2 **True and accurate** – ensure, as far as reasonably possible, that the user details, Client Data, and other information it gives in relation to the use of the BEE123 will remain for the duration of this agreement, true, accurate, up to date and complete;
- 6.1.3 **Change to user details** – inform BEE123 as soon as reasonably possible, but no later than 48 hours, of any change to any user details by updating them on the BEE123 Portal or by informing BEE123 by email if this fails;
- 6.1.4 **Change to client data** - inform BEE123 as soon as reasonably possible, but no later than five business days, of any change to any Client Data by updating them on the BEE123 Portal or by informing BEE123 by email if this fails;
- 6.1.5 **Behaviour towards others** – undertake to conduct all dealings with other users of the BEE123 Portal with the utmost good faith and in accordance with all applicable law;
- 6.1.6 **Client is responsible for user details** – maintain the security and confidentiality of its usernames and passwords and to notify BEE123 as soon as reasonably possible if it becomes aware of any unauthorised use of its usernames or passwords or any other security issue, and to co-operate with BEE123 to the extent reasonably necessary to rectify that situation. In such instances, it will be Client's obligation to have its end users reset their respective passwords as soon as reasonably possible and to maintain the security of Client's account;

- 6.1.7 **Passwords and account security** – reset account passwords regularly to maintain data security and must keep up-to-date security software on any systems used to access the Services;
- 6.1.8 **Supported web browsers** – only use BEE123's supported web browsers (and versions) to access the Services. The list of supported web browsers is available to Client on request. BEE123 may amend the list of web browsers (and versions) that it supports on at least 30 days notice, which notice will be posted on the BEE123 Portal. Client will bear the responsibility of ensuring that its end users update their current browser software if it is not a BEE123 supported web browser.
- 6.2 **Single sign on (SSO)**: BEE123 may charge Client for any time the BEE123 development teams spends on SSO.
- 6.3 **Restrictions**. Client must ensure that Client and its end users, when accessing or using the BEE123 Portal, do not:
- 6.3.1 **Undermine security or integrity** – 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;
- 6.3.2 **Prohibited use** – use, or misuse, the BEE123 Portal in any way that:
- may impair the functionality of the BEE123 Portal or impair the ability of any other user to use the BEE123 Portal;
 - damages BEE123's reputation, the availability, or integrity of the BEE123 Portal; or
 - causes BEE123 to incur any legal, tax, or regulatory liability;
- 6.3.3 **Input damaging code or attempt unauthorised access** – attempt to deliver damaging code or gain unauthorised access to the BEE123 Portal or any materials other than those to which Client has given such end users express permission to access or to the computer system on which the BEE123 Portal is hosted. Any proven attempt will result in criminal prosecution and may result in civil action for damages;
- 6.3.4 **Input damaging or offensive material** – 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 Client Data in violation of any law or third-party rights (including data or other material protected by copyright or trade secrets that Client does not have the right to use);
- 6.3.5 **Link to the BEE123 Portal** – link, including deep-linking or framing, to the BEE123 Portal without BEE123's prior written consent, which BEE123 may withdraw at any time; or
- 6.3.6 **Conduct illegal use** – use the BEE123 Portal for any illegal purpose or to infringe the rights of others.

7. Communication tools

- 7.1 **End user conduct**. Client must ensure its end users only use the communication tools on the BEE123 Portal for lawful purposes and accept sole responsibility for their use, at their own risk.
- 7.2 **Prohibited content**. Client must prevent end users from using communication tools to post or disseminate:
- offers of goods or services for sale, unrelated to the BEE123 Portal;
 - files that may damage computing devices or software;
 - offensive or harmful content;
 - material violating any law, including intellectual property rights; or
 - incorrect, inaccurate, misleading, or outdated information.
- 7.3 **Content ownership**. When an end user communicates on the BEE123 Portal, Client warrants that it owns the content or has the lawful right to transmit, distribute, and reproduce it.
- 7.4 **BEE123's right to remove content**. Although BEE123 has no obligation to screen, edit, or monitor content, it reserves the right, which right it will exercise using its reasonable discretion, to remove, screen, or edit any content posted or stored on the BEE123 Portal or through communication tools, at any time without notice, if BEE123 decides the content is breaching any of these terms.
- 7.5 **Indemnification**. Client indemnifies and holds BEE123 and its personnel harmless from any liability or damage that may arise as a result of:
- **unauthorised access to user details** – the unauthorised access to any of its user details and any other information Client provides for the purposes of accessing the BEE123 Portal;
 - **reliance on any user details** – BEE123's or any other third party's reliance on any user details.
- 7.6 **BEE123 not responsible for content**. BEE123 is not responsible or liable for any content posted, stored, or uploaded by end users or third parties, including loss or damage. BEE123 is not liable for mistakes, defamation, or other objectionable material. As a provider of interactive Services, BEE123 is not liable for user statements, representations, or content in any public forum or communication tool.
- 7.7 **Gross negligence or wilful misconduct**. Clauses 7.1 and 7.2 above do not apply if the liability or damages arose as a direct result of BEE123's gross negligence or wilful misconduct.

8. Fees and payment

- 8.1 **Fees**. The parties agree the fees for any Services in the relevant proposal.
- 8.2 **Payments due**. Payment of all amounts due and owing to BEE123 under this agreement will, unless otherwise indicated in a proposal, be made:
- timeously and in full, without any deduction, set off or demand and free of exchange and bank charges in the currency specified in the proposal;
 - upon presentation of BEE123's invoice; and
 - annually in advance for the BEE123 SaaS and Consulting Services before the commencement of the subscription period and before each anniversary thereafter during its term.
- 8.3 **No access before fees are paid**. BEE123 will not provide Client with Services or access to the BEE123 Portal until Client has paid the fees.
- 8.4 **Fees are non-refundable**. Client acknowledges that BEE123's fee structure is designed to offer Client the best possible value. BEE123 invests significantly in setting up Client's Services at the start of Client's subscription. BEE123 distributes these costs over Client's subscription period to make Client's fees more affordable. This enables BEE123 to maintain fair and consistent pricing for all its clients. As a result, fees paid in advance for any subscription period (or part) are not refundable, save in the event that Client terminates this agreement as a result of BEE123's proven material breach or unless otherwise indicated in a proposal.
- 8.5 **Manner of payment**. Client must make payment in the manner specified in the relevant proposal.
- 8.6 **BEE123's bank details. It is Client's responsibility to ensure that payments to BEE123 are paid into BEE123's bank account**. BEE123 will never notify Client of any changes to BEE123's bank details via email, telephone, or a purported bank stamped document and Client must consider any such request to be fraudulent and report it to Client's regular contact at BEE123. Client should not rely on bank details it receives on BEE123's invoices as it is possible for these to be intercepted and falsified. In the rare event that BEE123 does wish to change its bank details, it will only do so on 30 days prior written notice to Client through a secure method signed by an authorised

representative of BEE123's executive. Client must ensure that its finance function responsible for payments is aware of the information contained in this clause.

- 8.7 **Verification of bank details.** Client must follow any steps BEE123 provides for Client to verify BEE123's bank details before payment is made.
- 8.8 **Late payments.** Any additional surcharges and penalties specified will apply to any payment received after the due date to cover collection fees and additional administration costs. Client must pay the surcharges and penalties to BEE123 on-demand. Without prejudice to any other right or remedy BEE123 may have, BEE123 may, in accordance with clause 17.1 suspension, suspend Client's access to and use of the BEE123 Portal and Services as BEE123, in its reasonable discretion, may decide until Client has paid all amounts in arrears.
- 8.9 **Interest on overdue amounts.** To the extent permitted by applicable law, BEE123 may charge Client interest for overdue amounts within BEE123's reasonable discretion. If Client does not pay the overdue amounts within 14 days of receiving written notice from BEE123 to do so, any amount not paid by Client on the date of the statement of outstanding invoices will bear interest for BEE123's benefit, from the due date until the date Client pays it, both days inclusive, compounded monthly in arrears. The rate of interest will be at a rate of two percent per annum above the prime overdraft rate of BEE123's bankers published from time to time. A letter signed by a general, branch or other bank manager setting out their rate will be proof of the rate. Interest will be payable on a claim for damages from when the damages were suffered.
- 8.10 **Appropriation.** BEE123 may use any money Client pays BEE123 to settle Client's indebtedness under the agreement.
- 8.11 **Withhold payment.** Client may not withhold or set off payment of any amount due to BEE123 for any reason.
- 8.12 **Certificate.** A certificate, signed by an accountant appointed by BEE123, of the amount due by Client and the date on which it is payable will be proof of the correctness of the certificate's contents and the amount that Client must pay pending Client providing evidence that such an amount is not due.
- 8.13 **Tax.** All fees exclude any tax (unless indicated otherwise). Client will be liable to pay applicable taxes in addition to the fees.
- 8.14 **Fee escalation.** The fees will be escalated automatically by the escalation rate on each anniversary of the then-current subscription period.
- 8.15 **New or additional services.** Fees for new or additional services are subject to change upon 30 days' written notice from BEE123. BEE123 may provide such notice at any time by email or, where applicable, posting the changes to the BEE123 Portal.
- 8.16 **Payment profile.** Client (and any signatory) consents and agrees that BEE123 may provide any registered credit bureau with information about the payment of amounts.
- 8.17 **Reimburse costs.** If BEE123 suspends the service due to Client's non-payment, Client will pay BEE123 the reasonable costs BEE123 incurred (including redeployment, travel and associated expenses) in remobilising BEE123's personnel affected by the agreement and recommencing the Services.

9. Interpretation or opinion of applicable law

- 9.1 **BEE123's interpretation or opinion of the law.** Transformation or empowerment laws including requirements, rules, regulations, codes, practice notes, standards or charters require practical implementation that is open to interpretation. BEE123 provides its Services on its interpretation and opinion. Client acknowledges that a regulator, verification agency or other authority may have a different interpretation or opinion. Therefore, BEE123 is not liable for any loss, damage or harm related to its interpretation or opinion of the law, including Client's decision to act or refrain from acting, or reliance on BEE's interpretation or opinion, which may result in any varying status level.
- 9.2 **Verification agencies' preferences.** Verification agencies have their own interpretation or opinion. Client acknowledges that BEE123's interpretation and opinion may differ from that of Client's verification agency. BEE123 does not guarantee that the file will be complete or that Client's verification agency will accept any verification file or other deliverables that the BEE123 Portal or Services produce. Client is required to check with its verification agency as to their interpretation or opinion and the verification agency's acceptance of Client's verification file that file Client obtains from BEE123.
- 9.3 **Client determines sector code or charter.** Client is responsible for determining whether it is subject to a sector code or charter or other variant scorecard, as determined by applicable law, and which variation of the Services or BEE123 Portal is applicable to Client's business. Client must consult with a verification agency for any guidance required in this regard prior to subscribing. BEE123 will not be liable for any refunds, expenses incurred, losses or damages relating to Client's failure or inability to select the correct or appropriate variation of the Services or BEE123 Portal or related matters.
- 9.4 **Not professional legal advice.** Client must not regard any advice or opinion BEE123 expresses in delivering the Services or on the BEE123 Portal as professional advice and Clients are advised to seek professional advice before relying on it.
- 9.5 **Legislative and regulatory changes.** BEE123 will keep informed of the latest developments of applicable laws relating to the Services. In the event of legislative or regulatory changes which, in BEE123's reasonable discretion, requires BEE123 update or amend the BEE123 Portal or Services, BEE123 will use its reasonable endeavours to update the BEE123 Portal or Services within a reasonable period from the date on which such legislative or regulatory change comes into effect. If the change requires extensive updates to the BEE123 Portal or Services or BEE123 requires more than one calendar month to update or amend it, BEE123 will notify Client of its anticipated timeline for completing the updates or amendments.
- 9.6 **No liability for delayed update.** BEE123 will not be liable for any loss, damage, penalties or harm relating to a delay of the release of such BEE123 Portal or Services update for Client's use.

10. Non-solicitation

- 10.1 **Restriction.** Unless otherwise agreed, no party will, during the currency of any proposal or for a period of 12 calendar months following termination, directly or indirectly solicit, offer employment to, employ, or contract in any manner with any personnel of the other party who were involved in the implementation or execution of the proposal.
- 10.2 **Exceptions.** This restriction will not apply to solicitations made through general advertisements or job boards available to the public, provided that such advertisements or job board postings do not specifically target personnel of the other party. Furthermore, the hiring of personnel who have independently responded to such a general advertisement or job board posting will not be considered a breach of this provision.
- 10.3 **Recruitment fee.** In the event of a breach of this clause, the breaching party will automatically be liable to pay to the affected party, 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 the affected party to the personnel in question applicable as at the date of termination of the personnel's contract with the affected party. This remedy is in addition to any other remedies available to the affected party.

11. Assignment and subcontracting

- 11.1 **BEE123 may assign.** BEE123 may delegate its duties under this agreement or assign its rights under this agreement, in whole or in part, without obtaining Client's prior written consent, unless the parties agree otherwise in a proposal. BEE123 will do its best to provide Client with 30 days prior written notice.

- 11.2 **Client may not assign.** Client may not delegate its duties under this agreement or assign its rights under this agreement, in whole or in part, without obtaining BEE123's prior written consent, which consent will not be unreasonably withheld.
- 11.3 **BEE123's third party contractors.** BEE123 may sub-contract or delegate its obligations under this agreement to third party contractors. BEE123 will remain liable for performance of the third-party contractors. No one may require BEE123 to disclose the terms (including payment terms) of any sub-contract entered into with respect to BEE123's obligations under this agreement.

12. Intellectual property

- 12.1 **Licence.** BEE123 grants Client a limited, non-transferable and non-exclusive licence in respect of the intellectual property that BEE123 may need for supplying the Services.
- 12.2 **Ownership and right to reproduce.** BEE123 owns all intellectual property rights in the Services, including their design, content, data models, configurations, customisations, templates and related documentation. BEE123 has the exclusive right to reproduce, make available to the public, and distribute any of BEE123's proprietary material, which it provides to Client in delivering the Services or in, on, or accessed through the BEE123 Portal.
- 12.3 **Restrictions.** Unless otherwise agreed in writing, Client must not, and must ensure that its personnel do not:
- **modify or create derivative works** – copy, adapt, alter, disassemble, decompile, reverse engineer, or create derivative works from the whole or any part of the Services;
 - **unauthorised distribution or resale** – resell, distribute, sublicense, loan, provide, or otherwise make the whole or any part of the Services available to any third party, whether as a standalone service or as part of a hosted, bureau, outsourcing, or similar offering;
 - **third party enjoyment** – restrict or inhibit the use or enjoyment by any third party; or
 - **unauthorised access or use** – permit any third party to access or use the Services, or merge or combine the Services with any other software or documentation, without BEE123's prior written consent.
- 12.4 **Dispute rights.** Client will not question or dispute the ownership of any of BEE123's proprietary rights at any time.
- 12.5 **Other rights.** Neither party will obtain any rights in the other party's existing material or intellectual property that was not created in performing the agreement or existed before the commencement of the agreement, unless a licence is granted.
- 12.6 **Written permission.** Client may not use BEE123's intellectual property or any third-party trademarks used in BEE123's performance of the Services unless BEE123 expressly permits it in writing or as otherwise permitted by applicable law.
- 12.7 **Notice of infringement.** Client will notify BEE123 as soon as reasonably possible if it becomes aware of Client's infringement of BEE123's proprietary rights.
- 12.8 **Residual knowledge.** Nothing contained in the agreement will restrict BEE123 from the use of any generic ideas, concepts, know-how, or techniques developed by BEE123 or learned in the course of providing the Services.

13. Intellectual property infringements

- 13.1 **Defence.** BEE123 will defend Client against any claims made by an unaffiliated third party that any Services infringe its patent, design, copyright, or trademark and will pay the amount of any resulting adverse final judgement (or settlement to which BEE123 consents). BEE123 will reimburse Client's reasonable third-party costs incurred in connection with assisting BEE123 with the defence of the action. Client will promptly notify BEE123 of the claim in writing and BEE123 will have sole control over its defence or settlement.
- 13.2 **Consequences of successful claim by third parties.** If any third party succeeds in its claim for the infringement of any intellectual property rights, BEE123 may within 30 days of a finding of infringement:
- obtain for Client the right to continue using the infringing item or the parts that constitute the infringement;
 - replace the infringing item or the parts that constitute the infringement with another product that does not infringe and that in all respects operates substantially according to the agreement;
 - alter the infringing item in a way as to render it non-infringing while still in all respects operating substantially according to the agreement; or
 - withdraw the infringing item and refund to Client all fees Client paid to BEE123 under the relevant proposal specifically regarding the infringing item in the preceding six calendar month period.
- 13.3 **Exclusion.** BEE123 will not be liable for any claim that arises out of Services Client selects and acquires from third parties.
- 13.4 **Survival.** This clause will survive termination of the agreement.

14. Confidential information

- 14.1 **Responsibility to keep information confidential.** Each party must keep confidential any information it receives from the other party or under this agreement, including existing material and its data. Each party will take all reasonable steps to ensure its personnel abide by this clause.
- 14.2 **The receiving party's responsibilities.** The party that receives confidential information (**receiving party**) agrees to protect the interests of the party disclosing confidential information (**disclosing party**), and will:
- only use it to comply with its responsibilities under this agreement;
 - only give the information to any of its personnel that need it, and only give as much of it as they need;
 - use reasonable security procedures to make sure personnel keep the information confidential;
 - get promises of confidentiality from those personnel who need access to the information;
 - not reveal the information to anyone else; and
 - not use it for any purpose other than this agreement.
- 14.3 **End of this agreement.** At the end of this agreement, or on written request, the receiving party will give back to the disclosing party all originals and copies of confidential information of the disclosing party that the receiving party has. If the disclosing party agrees, the receiving party may destroy the confidential information it has. This clause does not apply if applicable law requires the receiving party to retain a copy of the confidential information. In such case, the receiving party will continue to perform its responsibilities under this clause until such time as it is legally permissible to return or destroy the confidential information.
- 14.4 **Exceptions.** These responsibilities will not apply to any information that:
- is lawfully in the public domain (available to the general public) when a party received it;
 - lawfully becomes part of the public domain afterwards;
 - is given to the receiving party afterwards by a different person who is allowed to reveal the confidential information; or
 - is given to comply with a court proposal or other legal duty.
- 14.5 **Survival.** This clause about confidential information is separate from the rest of this agreement and remains valid in perpetuity.

15. Client Data and data protection compliance

- 15.1 **Responsibility.** Client must give BEE123 access to the Client Data. If not, BEE123 may not be able to provide Services. BEE123 takes the protection of Client Data seriously and will always try to protect it. BEE123 will:
- **comply with relevant law** – comply with all relevant laws that affect Client Data, including data protection, retention, and destruction laws;
 - **not sell Client Data** – not sell, dispose of, or encumber any Client Data or try to do any of those things; and
 - **implement appropriate technical and organisational measures** – implement appropriate measures to protect Client Data against accidental or unlawful destruction or accidental loss, alteration, unauthorised disclosure or access and against other unlawful forms of processing.
- 15.2 **Client owns Client Data.** Client owns Client Data but gives BEE123 a right to use it to provide the Services when Client provides BEE123 with access to it. BEE123 does not own any Client Data. However, BEE123 does own its derived data. Client Data does not include any derived data that BEE123 creates for its own internal purposes. Derived data is any of BEE123's own data that BEE123 creates from Client Data, such as through aggregation, de-identification, or anonymisation.
- 15.3 **Legal obligations.** Each party is responsible for complying with its respective obligations under applicable law governing Client Data, including applicable data protection law, and each party will take reasonable precautions (having regard to the nature of its obligations under this agreement), to preserve the integrity of Client Data, and to prevent any unauthorised access, corruption or loss. The parties both acknowledge that they are not investigating the steps the other is taking to comply with any applicable privacy and data protection laws.
- 15.4 **Responsible party.** Client acknowledges that it is and remains responsible for the lawfulness of Client Data it provides and for determining the purpose and means of BEE123 processing Client Data.
- 15.5 **Processing on Client's behalf.** BEE123 will process, store, and, where applicable, transfer Client Data for the purpose of performing its rights and obligations under this agreement.
- 15.6 **BEE123's purposes of processing.** BEE123 may also process Client Data for other purposes.
- **Market its product and service offerings.** BEE123 may contact Client or have BEE123's personnel contact Client, via Client's nominated personnel, about BEE123's other products and services.
 - **Research.** BEE123 may conduct research about BEE123 clients.
 - **Track and record user activity.** BEE123 may track and record the manner in which Client, and its end users use the BEE123 Portal and Services; and
 - **Observe trends.** – BEE123 may 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 Client;
- unless the parties agree otherwise in a proposal.
- 15.7 **BEE123 Portal access.** Only the client can grant system access to BEE123 and its personnel. Client may grant and remove BEE123 Portal access to personnel when necessary.
- 15.8 **Sharing Client Data to enable BEE123 to perform.** BEE123 may share Client Data (including user details of Client's end users, if necessary) with its personnel who assist BEE123 with providing the BEE123 Portal and Services. BEE123 will do so only through a written agreement with the affiliate or contractor that imposes the same obligations on them as are imposed on BEE123.
- 15.9 **Client Data storage.** BEE123 may store Client Data on BEE123's computer servers, which servers BEE123's personnel may control, host, and manage, unless the parties agree otherwise in a proposal.
- 15.10 **Location.** Client Data will remain wherever BEE123 places it initially, unless BEE123 has to transfer it to another country to comply with BEE123's obligations to Client. Client consents to BEE123 transferring it cross border if necessary for the purpose of providing the Services.
- 15.11 **Client's failure to share necessary information.** Client remains obligated to pay the fees despite BEE123's failure to perform its obligations in the event that BEE123's failure is as a result of Client's failure or refusal to share information necessary for BEE123 to fulfil its rights and obligations under this agreement.
- 15.12 **Client Data warranties.** Client represents and warrants that:
- **lawful grounds for processing** – prior to providing Client Data to BEE123, Client has obtained all necessary rights, including any legally required consents, for BEE123 to use, process, or, where applicable, transfer Client Data;
 - **Client is responsible for the lawfulness of Client Data** – all Client Data provided to BEE123 complies with applicable laws, including applicable data protection law;
 - **BEE123 will not be in breach of applicable law** – processing will not place BEE123 in breach of any applicable law;
 - **data quality** – Client Data, to the extent it comprises personal information, is and will remain, for the duration of this agreement, true, accurate, relevant, up to date, not misleading, and complete.
- 15.13 **Indemnity.** Client agrees to indemnify, defend, and hold BEE123 harmless (and those related to BEE123 and its personnel, co-branders or other partners) from and against any claim, demand, loss, damage, cost, or liability (including legal costs) relating to Client failing to comply with Client's obligations under this clause. If permissible under applicable law, legal costs will be on an attorney and own client basis.
- 15.14 **Access.** On a party's reasonable written request, the other party will provide the requesting party with the information that it has regarding the requesting party's data and its processing that is necessary to enable the requesting party to comply with its obligations under this clause and the applicable laws. The requesting party will reimburse the other party for its reasonable charges for its assistance.
- 15.15 **Return of data.** On termination of any proposal, each party will return to the other party in the form in which it was received all of the other party's data or information provided to the party for the purpose of performing the relevant proposal, unless a party is otherwise required by applicable law to retain a copy of the data. In such case, the receiving party will continue to perform its responsibilities under this clause until such time as it is legally permissible to return or destroy the data.

16. BEE123's warranties

- 16.1 **Service warranties.** BEE123 warrants in relation to the Services that BEE123:
- will possess and have the right to use knowledge and expertise sufficient to enable BEE123 to provide the Services and is committed to meeting professional standards in delivering the Services;
 - employs suitably trained personnel to provide the Services and to achieve the service levels; and
 - provides the Services according to all applicable laws, enactments, and regulations.
- 16.2 **Software warranties.** The BEE123 Portal is subject to the warranties provided in this agreement. BEE123 provides the software on an 'as is' and 'as available' basis.
- 16.3 **General warranties.** BEE123 further warrants that it:
- has the legal right and full power and authority to execute and deliver, and to exercise its rights and perform its obligations under the

- agreement; and
 - its personnel will not knowingly or intentionally introduce any malicious software into Client's systems or materials.
- 16.4 **Specific warranties.** BEE123 may provide further specific warranties in the relevant proposal. Client acknowledges that no oral or written communications by or on behalf of BEE123 will create a warranty or in any way increase the scope of the undertakings set out in this agreement.
- 16.5 **Limited warranty and service issues.** Any warranty BEE123 has provided in this agreement will not apply if the problem with the Services:
- does not significantly affect its main functions or service levels; or
 - if it was caused or exacerbated by Client's use of the Services other than in accordance with this agreement.

17. Disclaimers of warranties

- 17.1 **Disclaimer.** Client uses the BEE123 Portal and Services at Client's sole responsibility and risk. The BEE123 Portal and Services are provided on an 'as is' and 'as available' basis. Except for the warranties given in this agreement and to the extent allowed by law, BEE123 disclaims all representations, warranties, or conditions, including the following.
- 17.1.1 **Software disclaimers.**
- BEE123 disclaims any implied warranties or conditions of satisfactory quality, no latent defects, merchantability, fitness for a particular purpose, accuracy, system integration, title, and non-infringement, results and reliance on the results.
 - BEE123 disclaims any warranties regarding third party software.
 - BEE123 disclaims that the software, Services or portal will meet the Clients' requirements or be uninterrupted, legally effective or complete, timely, secure, error-free or free from infection by malicious software.
- 17.1.2 **Service disclaimers.**
- BEE123 disclaims the correctness of any advice or interpretation BEE123 provides as, in accordance with clause 9, this represents its interpretation and is interpreted based on the facts provided by Client, and BEE123 is not liable for any damages resulting from incomplete or inaccurate information.
 - BEE123 disclaims the reliance on any advice or interpretation, and Client is responsible for checking any advice or interpretation provided, and for all management decisions and actions taken in response to the BEE123 Services.
- 17.2 **Exclusion of liability.** Despite any warranty BEE123 provides, BEE123 will not be liable for any damage arising from:
- Client's negligence or failure to follow instructions (whether oral or in writing) or misuse;
 - BEE123's reliance on information or documents provided by Client; or
 - any data capture errors.
- 17.3 **Security software.** Client must secure its own systems, devices and user details, including by keeping up-to-date security software on any systems used to access the Services.

18. Client's warranties and indemnities

- 18.1 **Agreement warranties.** Client warrants that:
- it has not been induced to enter into the agreement by any prior representations, warranties or guarantees (whether oral or in writing), except as expressly contained in the agreement;
 - it has obtained all necessary user licences in advance;
 - it will comply with applicable law;
 - by accepting a proposal, it is not acting in breach of any agreement to which it is a party; and
 - it provides accurate and lawful information to BEE123 for it to provide the Services.
- 18.2 **Indemnity for breach of warranty.** Client agrees to indemnify, defend, and hold BEE123 harmless (and those related to BEE123 and its personnel, co-branders or other partners) from and against any claim for any loss or damage by any third party as a result of:
- the breach of these warranties, including all legal costs. If permissible under applicable law, legal costs will be on an attorney and own client basis; and
 - Client's use of the Services or BEE123 Portal, or any implementation, advice or consulting provided by or on behalf of BEE123; unless such loss or damage was a direct result of BEE123's gross negligence or wilful misconduct.

19. Limitation of liability

- 19.1 **Direct damages limited.** A party's maximum liability to the other for any claim for direct damages is the total amount of fees paid by Client to BEE123 in the preceding 12 months for the Services related to the claim. The total aggregate liability for all claims under this agreement will never be greater than the maximum liability. This limitation applies regardless of the basis of the claim (whether in contract, delict, tort or any other legal basis).
- 19.2 **Indirect damages excluded.** A party will never be liable for any indirect, incidental, special or consequential damages or losses arising from the agreement. These include foreseeable or unforeseeable loss of profits, loss of goodwill, pure economic loss, damages relating to lost, deleted or damaged data or software, third-party systems, reputational harm, loss of use and damages relating to downtime or costs of substitute products. This limitation of liability clause prevails. To avoid all doubt, no proposal or annexure can ever supersede this clause.
- 19.3 **Exclusions.** The limitations contained in this clause 19 will not apply to:
- any breach by a party of the other party's proprietary or confidential information, or intellectual property; or
 - any data breach suffered by a party.
- If an exclusion applies, a party's maximum liability is limited to three times the fees Client pays BEE123 in the preceding 12 months or BEE123's insurance, whichever is lower. The limitations in this clause 19 are to the extent permitted by applicable law and despite anything else in the agreement. Client acknowledges and agrees that the limitations in clause 19 form an essential basis of the agreement between the parties.
- 19.4 **BEE123 not liable for Client's breach.** BEE123 will not be liable for any loss or damage suffered by Client from any breach of the agreement by Client or any act, misrepresentation, error or omission made by Client or its personnel.
- 19.5 **Other services.** BEE123 is not liable for any other services, systems or deliverables, including websites, goods, software or services provided by any third party.
- 19.6 **Severability.** This clause is separate and divisible from the rest of this agreement and remains effective even if this agreement ends or is invalid.

20. Breach and termination

- 20.1 **Suspension.** BEE123 may, in its reasonable discretion:
- 20.1.1 immediately suspend Client's right to use the Services if:
- (i) Client tries to gain unauthorised access to them;
 - (ii) BEE123 decides that Client's use poses a security threat to BEE123 or another user other than Client;
 - (iii) there is evidence of fraud on Client's account;
 - (iv) BEE123 believes Client is using them for an illegal purpose or in a way that infringes a third party's rights; or
 - (v) any other reason that BEE123 determines as worthy of immediate suspension; and
- 20.1.2 on seven days written notice to Client, suspend Client's right to use the Services if Client:
- (i) provides false, inaccurate, outdated, incomplete or inappropriate information, Client Data, or user details;
 - (ii) defaults on the payment of any amount due to BEE123 under this agreement;
 - (iii) makes any attempt to defraud BEE123, other clients, or users or to make untrue, defamatory or malicious comments about BEE123, other clients, or users; or
 - (iv) commits any breach of this agreement or any applicable law or regulations; and
 - (v) Client has not managed to correct or remedy its breach to BEE123's satisfaction within that period.
- 20.2 **Termination for breach.** If a party does not fix any breach of this agreement (failure to comply with it) within 14 days of receiving written notice from the other party to do so, the other party may, without prejudice to any of its rights:
- claim specific performance of this agreement (make the party comply with this agreement); or
 - in the event the breach is material, immediately cancel this agreement in writing; and
 - claim proven damages from the other party, including any claim for any fees already due.
- 20.3 **Immediate termination in other circumstances.** Either party may immediately end this agreement at any time by giving the other notice in writing if:
- the other is insolvent (bankrupt), or has some legal disability, for example, if they are placed under administration;
 - the other takes steps to deregister itself (close down) or is deregistered;
 - the other makes any settlement or arrangement with its creditors;
 - the other fails to pay a court proposal against it (does not satisfy a writ of execution) for more than one million rand (or equivalent), within 21 days;
 - anything analogous to the foregoing occurs in any applicable jurisdiction, which is not dismissed in 21 days;
 - termination is necessary to comply with any applicable law or government instruction; or
 - the parties agree.
- 20.4 **Severability.** This clause is separate and divisible from the rest of this agreement and remains effective even if this agreement ends or is invalid.

21. Account suspension

- 21.1 **Non-payment.** BEE123 may, without prejudice to any other right or remedy BEE123 may have, and in accordance with the Terms of Service's Breach and termination clause 20, suspend Client's access to and use of the BEE123 Portal and the Services as BEE123, in its reasonable discretion, decides until Client has paid all payments in arrears in full.
- 21.2 **Misuse and reporting.** BEE123 may, in accordance with the Terms of Service's breach and termination clause, suspend or terminate Client's access to the BEE123 Portal if it suspects misuse or a breach of this agreement. BEE123 may report any misuse to relevant authorities. BEE123 further reserves the right to disclose any evidence it has that relates directly or indirectly to misuse.

22. Effect of termination

- 22.1 **Access to Client Data.** Subject to clause 22.2 and clause 22.3, upon termination, cancellation, or expiry of this agreement, BEE123 will stop Client's (and its end users) access to and use of the BEE123 Portal and Services. Client acknowledges that it may no longer be able to access its Client Data via the BEE123 Portal from this time.
- 22.2 **Post termination access.** If this agreement terminates and Client notifies BEE123 within 30 days that it requires further access to its Client Data, BEE123 may provide Client with access to the BEE123 Portal for a period of five business days in order that it may access, copy, and print out its Client Data, subject to the following:
- it is possible that BEE123 may have deleted Client Data, in which case it will not be able to provide access to Client;
 - BEE123 may charge Client a reasonable fee for providing it with access to its Client Data; and
 - if Client's account remains in arrears for 90 days, BEE123 may have deleted Client's account and its Client Data along with it.
- 22.3 **Deletion of Client Data.** Despite clause 22.2, if BEE123 terminates this agreement in accordance with clauses 17.2 and 20.3, BEE123 may irretrievably delete Client Data from the effective date of termination. In accordance with clause 4.9, Client is responsible for making regular backups of Client Data.
- 22.4 **Amounts due to BEE123 become due and payable.** On termination, cancellation, or expiry of this agreement, all amounts due to BEE123 for Services rendered before termination will become due and payable even if BEE123 has not yet invoiced them. Client may not withhold the amounts for any reason, unless an arbitrator directs otherwise.
- 22.5 **Post termination assistance.** Following termination, Client may take advantage of any post-termination assistance that BEE123 may generally make available (such as data retrieval arrangements). BEE123 may provide Client with post-termination assistance, but BEE123 will not be under an obligation to do so. Client's right to take advantage of any post-termination assistance will depend on Client's acceptance of and compliance with any fees, conditions or terms that BEE123 may impose for such assistance.
- 22.6 **No expectation.** Client acknowledges and confirms that no expectation has been created by anyone, by the agreement or any other agreement, entitling Client or BEE123 to expect the renewal or extension of the term of any agreement.
- 22.7 **Severability.** This clause is separate and divisible from the rest of this agreement and remains effective even if this agreement ends or is invalid.

23. Insurance

BEE123 will take out and maintain adequate insurance cover with reputable insurers for public liability, product liability, third-party liability, cyber liability and property damage to meet its potential liability arising from this agreement. BEE123's insurance does not imply it accepts liability beyond the limits in clause 19.

24. Resolving disputes

- 24.1 **Negotiation.** The parties agree to first attempt to resolve any dispute arising from this agreement through good-faith negotiations. Either party may initiate negotiations by providing written notice to the other party, outlining the nature of the dispute.

- 24.2 **Mediation.** If the dispute is not resolved through negotiation within 14 days of the initial notice, the parties agree to submit the dispute to mediation under AFSA's rules. AFSA means the Arbitration Foundation of Southern Africa (or its successor or body nominated in writing by it in its stead).
- 24.3 **Arbitration.** If the dispute is not resolved through mediation within 30 days of the commencement of mediation, or if either party withdraws from mediation, the parties must refer the dispute within 15 business days to arbitration (including any appeal against the arbitrator's decision) under AFSA's latest rules for expedited arbitrations. The arbitration will be held in English in Johannesburg. The parties will agree to appoint one arbitrator. If the parties cannot agree on the arbitrator within 10 business days after the referral, the Secretariat of AFSA (or its successor in title) will appoint the arbitrator.
- 24.4 **Arbitration binding.** The arbitrator's award will be binding and may be entered as a judgment in any court of competent jurisdiction.
- 24.5 **No joining of any other party to arbitration.** 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.
- 24.6 **Legal costs.** Any legal costs (attorneys and advocates fees and the costs of experts and witnesses) incurred by the parties in the arbitration will be recoverable on an attorney and own-client scale.
- 24.7 **Costs of arbitration.** The costs of the arbitration proceedings, including the fees of the arbitrator/arbitrators, will be borne equally between the parties, unless the arbitrator's award provides otherwise.
- 24.8 **Urgent interim relief.** This clause will not stop a party from applying to court for urgent or interim relief (temporary help) while the dispute resolution process is being finalised. An example might be an interdict (type of court order). This clause will not stop BEE123 from claiming any amount due to BEE123 by applying to a court, rather than through negotiation, mediation or arbitration.
- 24.9 **Severability.** This clause is separate and divisible from the rest of this agreement and remains effective even if this agreement ends or is invalid.

25. Notices and domicile

- 25.1 **Notices.** The parties will send all notices, authorisations, disclosures, acknowledgements, or requests by hand delivery, prepaid registered post, or email to an address or number given in the specific proposal, or for BEE123 on the first page of these terms.
- 25.2 **Service (delivery) address for legal documents.** Each party chooses its street addresses and numbers as its *domicilium citandi et executandi* (its address for the service of any document used in legal action) for this agreement.
- 25.3 **Change of addresses or numbers.** Each party may change the addresses or correct numbers to any other addresses or numbers in the same country on 14 days prior written notice to the other.
- 25.4 **Deemed delivery.** Notice will be considered to be delivered on the date shown on any hand-delivered, prepaid registered post, courier, or email confirmation of delivery.
- 25.5 **Notice actually received.** If a party actually receives any notice or other communication, this will be good enough.

26. Force majeure

- 26.1 **Parties not liable.** No party is responsible for any breach of this agreement caused by circumstances beyond its reasonable control, including flood, fire, earthquake, war, tempest, hurricane, disease, industrial action, or 'acts of God'.
- 26.2 **BEE123 not liable.** BEE123 is not responsible for any breach of this agreement caused by circumstances beyond its reasonable control, including:
- communications failures, including data centre or undersea cable failures,
 - theft, destruction or unauthorised access to BEE123's records, data, programmes or services, or
 - supply chain disruptions,
 - any interruption to or failure of any website, computer or telecommunications or utilities services not provided by BEE123, including the Internet.
- 26.3 **Party affected to notify other party.** If there is an event of force majeure, the party affected will tell the other immediately of:
- the cause, nature and extent of the circumstances;
 - the expected duration of the circumstances; and
 - the extent to which its performance will be affected;
- and they will meet within seven days to negotiate other ways to carry out any affected responsibilities under this agreement. The parties will continue to comply with the responsibilities that are not affected by the circumstances.
- 26.4 **Right to cancel.** If a party cannot fulfil a material (significant) part of its responsibilities under this agreement for more than 30 days because of force majeure, the other party may cancel this agreement, without liability to the affected party, on 7 days' written notice.

27. General

- 27.1 **Good faith.** The parties will at all times cooperate with and act in good faith towards each other in performing this agreement and any proposals.
- 27.2 **Relationship.** The agreement does not create an employment relationship between the parties.
- 27.3 **Entire agreement.** The agreement is the entire agreement between the parties on the subject and supersedes all documentation, information and other communications (in each case whether spoken or written) between the parties with respect thereto.
- 27.4 **Signed in part.** The agreement and proposals may be signed in two or more counterparts, and the signed counterparts, taken together, will constitute a binding agreement between the parties.
- 27.5 **BEE123's right to update.** BEE123 may update the terms from time to time. BEE123 will, as far as practically possible, give Client 30 days prior written notice of any updates to the terms by sending a notification through its Services, or placing a notification on the BEE123 Portal or website. Client's continued use of the Services after the update will indicate Client's acceptance of the updated terms.
- 27.6 **No variation.** Despite anything else in these terms, if BEE123 agrees to vary its terms in respect of a particular proposal, no variation or modification to these terms will be effective unless in writing and signed by both parties' authorised representatives. The proposal must specifically reference the clauses in these terms and state that the parties intend to change the clause in these terms.
- 27.7 **Waiver (giving up of rights).** Any waiver a party may allow the other party will not affect or substitute any of a party's rights against the other party.
- 27.8 **Severability.** If any term is void (invalid), unenforceable, or illegal, the term may be severed (removed) from and will not affect the rest of this agreement if it does not change its purpose. If the term would cease to be invalid, unenforceable, or illegal if some part of the term were deleted without affecting the intent and purpose, the term in question will apply with such change as may be necessary to make it valid and enforceable.
- 27.9 **Governing law.** The law of South Africa governs this agreement.

- 27.10 **Jurisdiction.** Client consents to the jurisdiction of the lowest courts in South Africa in respect of any action or proceedings BEE123 may bring against Client in connection with this agreement, even if the action or proceedings would otherwise be beyond its jurisdiction without prejudice to BEE123's right to institute any action in any other court having jurisdiction.
- 27.11 **Non-exclusivity.** BEE123 may provide any Services to any other person or entity. BEE123 may exploit its intellectual property subject to its confidentiality obligations.
- 27.12 **Costs.** Each party is responsible for its own costs of drafting and negotiating this agreement.
- 27.13 **Endorsement.** BEE123 may use Client's name, company logo and a general description of the Services BEE123 provides in any proposals, presentations or other similar documents that BEE123 may issue, employ, publish or submit from time to time, unless client instructs BEE123 in writing not to do so.
- 27.14 **Acceptance of privacy policy.** By signing this agreement, Client confirms that it has read and understood the terms of BEE123's privacy policy.
- 27.15 **Survival.** The termination, cancellation, or expiry of this agreement will not affect the enforceability of the terms that are intended to operate after expiry or termination.