



Data Processing Agreement

to fulfil the responsible party's obligation to enter into a contract with the operator

between

Name of party	{Responsible_Party_Name} responsible party	
Company registration number	{Responsible_Party_IdentificationNumber}	
Physical address	{Responsible_Party_VATRegistrationNumber}	
Postal address	{Responsible_Party_PhysicalAddress}	
Signature (who warrant that they are duly authorised to sign)		
Name of signatory		
Title of signatory		
Date of signature		

and

Name of party	BEE123 (Pty) Ltd. operator	
Registration number	2016/150254/07	
Physical address	Building 2, Waverley Office Park, 15 Forest Rd, Waverley, Johannesburg, 2018	
Signature (who warrant that they are duly authorised to sign)		
Name of signatory		
Title of signatory		
Date of signature		

1 Introduction

This agreement is between the **responsible party** and the **operator**. The responsible party enters into this agreement with the operator to fulfil its data protection obligations in terms of law. Each party is an organisation incorporated under the laws of the country where it is legally registered and having their registered offices and principal business places at the physical addresses and registration or identification numbers specified on this agreement's cover page.

2 Purpose

2.1 **Nature of the agreement.** This agreement supplements the responsible party's principal agreement with the operator. It also clarifies the relationship between the responsible party and the operator under applicable data protection laws. This agreement is incorporated by reference into the principal agreement between the parties regarding the goods or services.

2.2 **Recording consensus.** The parties enter into this written agreement with each other on its terms to:

- manage their relationship;
- facilitate a productive working dynamic;
- clearly define their respective rights and responsibilities;
- avoid misunderstandings or disputes; and
- ensure a mutually beneficial relationship;

when it comes to compliance with the applicable data protection laws and responsibility for compliance.

3 Definitions, parties, principal agreement and interpretation

3.1 **Definitions.** In this agreement:

applicable data protection laws means relevant data protection laws, including:

- the South African Protection of Personal Information Act 4 of 2013;

together with any:

- national implementing laws;
- ePrivacy laws; and
- other related laws agreed between the parties in writing;

appropriate technical and organisational measures means regarding a given goal, the technical and organisational efforts that a reasonable person in the operator's position would use to achieve that goal as quickly, effectively, and efficiently as possible;

data protection losses means all liabilities arising under the applicable data protection laws, including all:

- costs, claims, demands, actions, settlements, interest, charges, expenses, losses and damages (including relating to material or non-material damage); and
- to the extent permitted by law:
 - administrative fines, penalties, sanctions, liabilities or other remedies imposed by a supervisory authority;
 - compensation to be paid to a data subject; and
 - the reasonable costs of compliance with investigations by a supervisory authority;

documented instructions means the principal agreement, this data processing agreement, the operator's standard procedures, and any other relevant written agreements between the parties, unless the parties agree otherwise in writing;

personal data means any information about a living human being or existing organisation (as applicable data protection laws require), provided that someone is capable of identifying them from that information;

personal data incident means:

- a complaint or a request regarding the exercise of a data subject's rights under applicable data protection laws;
- an investigation into or personal data seizure by government officials, or a specific indication that such an investigation or seizure is imminent;
- any unauthorised, accidental or otherwise unlawful personal data processing;
- any breach of security or confidentiality in terms of this agreement leading to confirmed or possible risks to the personal data; or
- where implementing an instruction received from the responsible party would violate applicable laws to which the responsible party or operator are subject, in the opinion of the operator.

personnel means any:

- director, employee, or other person who works (permanently or temporarily) under either party's supervision; or
- a person who renders services to either party for their obligations under this agreement as their agent, consultant, contractor, or other representative;

principal agreement means the agreement between the responsible party and the operator in terms of which the operator processes personal data on the responsible party's behalf;

processing means doing anything with personal data, including gathering it, disclosing it, or combining it with other information; and

sub-operator means any downstream operator that the operator engages to process personal data under the principal agreement and this agreement, as those documents permit.

3.2 **Parties.** In this agreement:

responsible party is the responsible party, as specified on this agreement's cover page, and means the person who determines the purpose ('why') and means ('how') of processing the personal data alone or in conjunction with others (although it is more important that they determine why to process the personal data than how) and those related to it; and

operator is the operator, as specified on this agreement's cover page, and means the person who:

- processes personal data on the responsible party's behalf in terms of a contract; and
 - enters into this agreement with the responsible party; and
- those related to them.
- 3.3 **Principal agreement terms.** The principal agreement's terms remain in full force and effect except as modified in this agreement.
- 3.4 **Undefined terms.** Any terms not otherwise defined in this agreement have the meaning the principal agreement gives to them.
- 3.5 **Data protection law terms.** Terms used in this agreement that have meanings ascribed to them in applicable data protection laws, including 'data subject', 'data protection officer', 'information officer' or 'supervisory authority' carry the meanings set out under those laws to the extent that this principal agreement does not define them.
- 3.6 **Agreement terms prevail.** This agreement's provisions will prevail in the event of a conflict between any of the principal agreement's provisions and this agreement's provisions.

4 Background

- 4.1 **Application.** This agreement applies when the operator processing personal data on the responsible party's behalf for specific activities subject to applicable data protection laws to achieve the responsible party's purposes as set out in the principal agreement between the responsible party and the operator. It does not apply to any of the operator's:
- processing on the responsible party's behalf in terms of any other activity not set out in the principal agreement between the responsible party and operator; or
 - other processing, such as on the operator's behalf.
- 4.2 **Written agreement required.** The applicable data protection laws require that the responsible party conclude a written agreement with the operator with respect to the processing activities of personal data that the operator performs on behalf of the responsible party. This agreement serves as that written agreement.
- 4.3 **Agreement on security measures required.** The parties must agree on the security measures necessary to safeguard the integrity and confidentiality of personal data in terms of applicable data protection laws.
- 4.4 **Drafting approach.** The parties have drafted this agreement in plain language to be fair and easy to understand. The parties wish to conclude this agreement quickly without unnecessary delay to start adding value to each other as soon as possible. Each party may freely engage the other party to discuss and resolve any issues that may jeopardise the parties wishes in terms of this clause.

5 Duration and termination

- 5.1 **Commencement.** This agreement will come into effect on the effective date of the principal agreement.
- 5.2 **Duration.** The operator will process personal data until the principal agreement expires or terminates, unless:
- the responsible party instructs them to do otherwise; or
 - they or their sub-operator (as the case may be) returns or deletes the personal data (at the responsible party's request).

6 Requirements

- 6.1 **Required details.** Attachment 2 provides an overview of the following details related to the processing:
- the processing's subject-matter;
 - the processing's duration;
 - the processing's nature;
 - the processing's purpose;
 - the personal data type; and
 - the data subject categories;
- to the extent that the principal agreement does not specify those details.
- 6.2 **Purpose pursuit.** The parties have entered into a principal agreement for the purposes set out in Attachment 2 and the operator may choose the means they consider necessary to pursue those purposes at their discretion, provided that their choices are compatible with:
- this agreement's requirements; and
 - the documented instructions.

7 Responsible party and operator

- 7.1 **Determination by responsible party.** The responsible party will determine the scope, purposes and manner in which the operator may process the personal data, to the extent that the principal agreement does not adequately describe the operator's data processing activities.
- 7.2 **Operator compliance.** The operator will process personal data in compliance with:
- its obligations under the applicable data protection laws; and
 - the terms of this agreement.
- 7.3 **Responsible party compliance.** The responsible party will comply with:
- all applicable data protection laws related to personal data, the services and the exercise and performance of its rights and obligations in this agreement. This includes maintaining all the relevant regulatory registrations and notifications required by applicable data protection laws; and
 - the terms of this agreement.
- 7.4 **Processing instructions.** The operator may only process the personal data:

- based on the documented instructions of the responsible party; and
 - to the extent that providing the services related to the processing activities requires them to.
- 7.5 **Activities beyond instructions.** The operator will tell the responsible party if they reasonably believe that any of the operator's legal obligations requires a specific processing activity beyond the scope of the documented instructions.
- 7.6 **Infringing instructions notification.** The operator will immediately tell the responsible party if they believe that any instruction infringes applicable data protection laws, provided that:
- this is not an obligation to monitor or interpret the laws that apply to the responsible party;
 - this is without prejudice to clauses 7.3, and 7.7;
 - this does not constitute legal advice to the responsible party; and
 - to the maximum extent permitted by law and regardless of the basis of the claim (whether in contract, delict, tort or any other legal basis), the operator will have no liability for any losses, costs, expenses or liabilities (including data protection losses) arising from any processing done in accordance with any additional processing instructions from the responsible party after receiving the information from the operator.
- 7.7 **Responsible party's warranties.** The responsible party warrants that:
- prior to providing the personal data to the operator, they have all necessary rights to provide the personal data to the operator, and comply with the applicable data protection laws related to the processing of the personal data necessary to provide the services to the responsible party;
 - one or more lawful grounds set out in applicable data protection laws support the lawfulness of the processing of the personal data including transferring the personal data;
 - all instructions given by the responsible party to the operator are in accordance with data protection laws;
 - it has done due diligence on the operator's processing operations, and is satisfied that:
 - the operator's processing operations are suitable for the responsible party's purposes; and
 - the operator has sufficient expertise, reliability and resources to implement technical and organisational measures that meet the requirements in the applicable data protection laws;
 - it will notify the operator if there is a change to the nature of the personal data the operator processes (including the type and categories of data subjects)
- 7.8 **Responsible party delays.** The responsible party will not withhold, delay or condition its agreement to a requested change by the operator that is necessary to ensure that the operator and its sub-operators comply with data protection laws.
- 7.9 **Responsible party's responsibilities.** The responsible party is responsible for making sure that certain designated personnel within their organisation:
- provide all necessary privacy notices to data subjects;
 - obtain any necessary data subject consent to the processing;
 - maintain a record of such consent;
 - communicate the fact that a data subject has revoked consent to the operator where a data subject does so;
- to the extent that applicable data protection laws require.

8 Confidentiality

- 8.1 **Authorised persons confidentiality.** The operator must make sure that their personnel authorised to process the personal data and sub-operator have committed themselves to confidentiality, such as by:
- signing an appropriate confidentiality agreement; or
 - being otherwise bound to a duty of confidentiality;
 - or are under an appropriate statutory obligation of confidentiality.

9 Security

- 9.1 **Data security.** The responsible party and operator will implement appropriate technical and organisational security measures to make sure that the level of security is appropriate to the risks to the personal data in terms of applicable data protection laws, considering the:
- state of the art (being the most recent level of development of technology of security measures at that particular time);
 - implementation costs;
 - processing nature, scope, context and purposes; and
 - varying risks to people's rights and freedoms in terms of likelihood and severity.
- These measures will include the security measures agreed upon between the parties in Attachment 3 as a minimum.
- 9.2 **Changes.** Despite anything in this agreement, the operator may make changes to the technical and organisational security measures based on the criteria described in this clause.
- 9.3 **On-going evaluation.** The operator will evaluate the implemented measures on an on-going basis to maintain compliance with the requirements set out in relevant data protection laws.
- 9.4 **Additional measures.** Any additional technical and organisational measures must be agreed by both parties and will be at the responsible party's cost and expense.
- 9.5 **Support and maintenance services.** The responsible party will ensure that, if feasible, any personal data that the operator processes while providing support and maintenance services to the responsible party is anonymised prior to granting the operator access to it.

10 Records, information and audit

- 10.1 **Records.** The operator will maintain written records of all categories of processing activities carried out on the responsible party's behalf in accordance with applicable data protection laws.

- 10.2 **Access to information.** The operator will make available to the responsible party such information reasonably necessary to demonstrate the operator's compliance with its obligations under applicable data protection laws.
- 10.3 **Audits in terms of principal agreement.** Audits of the operator's activities under this agreement are set out in the principal agreement.
- 10.4 **Audit rights.** If the principal agreement does include audit rights, the parties will discuss and agree in advance on the terms of the audit including:
- the audit start date,
 - scope, and
 - duration of, and security and confidential controls applicable to any audit.
- 10.5 **Fees.** The operator may charge a fee (based on the operator's reasonable costs) for an audit in terms of this agreement. The operator will provide details on the applicable fee and the basis of the calculation to the responsible party prior to any audit.
- 10.6 **Third parties undertakings.** Audits will be conducted in a manner that will not prejudice the operator's undertakings toward third parties (including the operator's customers, partners, and vendors).
- 10.7 **Responsible party representatives.** All the responsible party's representatives or external auditors participating in an audit must enter into a confidentiality agreement with undertakings in favour of the operator.
- 10.8 **Evidence of compliance.** The operator may use their adherence to either an approved:
- code of conduct; or
 - certification mechanism;
- recognised under applicable data protection laws as an element to show compliance with the requirements set out in relevant data protection laws.

11 Data transfers

- 11.1 **Transferring instructions.** The operator will only transfer personal data to a third country or international organisation on the documented instructions or using a statutory mechanism described in the applicable data protection law. The operator will provide a list of recipients of personal data on the responsible party's request.
- 11.2 **Statutory mechanism cooperation.** The parties agree to cooperate in good faith if they are relying on a specific statutory mechanism to standardise international data transfers and:
- the relevant authority subsequently modifies or revokes that mechanism; or
 - a court of competent jurisdiction holds it to be invalid;
- by:
- promptly suspending that transfer; or
 - pursuing a suitable alternate mechanism that can lawfully support the transfer.

12 Information obligations and incident management

- 12.1 **Operator incident notification.** The operator must notify the responsible party after becoming aware of a personal data incident without undue delay, and provide the responsible party with details of the personal data incident.

13 Contracting with sub-operators

- 13.1 **Sub-operators.** The responsible party agrees that the operator may engage sub-operators. Upon the responsible party's request, the operator will provide the responsible party with a list of the then-current sub-operators.
- 13.2 **Sub-operator contract.** The operator respects the conditions for sub-operator contracts in terms of applicable data protection laws. The operator will impose the same standards provided for in this agreement in its contracts or other written agreement with any sub-operator to govern their processing.
- 13.3 **Sub-operator changes.** The operator will inform the responsible party of any changes of sub-operators and allow the responsible party to object to such changes, provided that the parties will make a good-faith effort to resolve the responsible party's objection if the responsible party timeously sends the operator a written objection notice, setting forth a reasonable basis for objection.
- 13.4 **Responsible party objection to sub-operator changes.** The operator will cure the objection to the changes by:
- cancelling its plans to use the sub-operator regarding the processing of pers
 - onal data, or offering an alternative to provide the services without such sub-operator;
 - taking the corrective steps requested by the responsible party in its objection and proceed to use the sub-operator; or
 - ceasing to provide, or the responsible party agreeing not to use (temporarily or permanently) the particular aspect of the services that would involve the use of such sub-operator to process the personal data, subject to a mutual agreement by the parties to adjust the charges for the services.
- If none of the above options are reasonably available and the objection has not been resolved to both parties' mutual satisfaction within 30 days after the operator receives the responsible party's objection, either party may terminate the principal agreement for its convenience in terms of termination clause in the principal agreement.
- 13.5 **Replacement.** The operator may replace a sub-operator without advance notice to the responsible party if the reason for the change is beyond the operator's reasonable control. The operator must notify the responsible party of the replacement as soon as reasonably practicable, and the responsible party may object to the replacement in line with this clause.

14 Assistance to responsible party

- 14.1 **Help responsible party to respond.** The operator will provide commercially reasonable assistance to the responsible

party to fulfil their obligation to respond to requests by data subjects exercising their rights, provided that:

- the operator will assist the responsible party with appropriate technical and organisational measures insofar as possible to respond to requests by data subjects exercising their rights; and
- the responsible party will be responsible for reasonable costs the operator incurs in providing this assistance at the operator's rates.

14.2 **Other help to the responsible party.** The operator will provide reasonable assistance to the responsible party with:

- their obligations regarding the security of processing;
- data protection impact assessments as defined by applicable data protection laws;
- their prior consultation obligations in terms of applicable data protection laws; and
- notifications to the supervisory authority or communications to data subjects regarding personal data incidents, considering the nature of the processing and the information available to the operator, and provided that responsible party will pay the operator's generally applicable fees for providing such assistance (such as time and material rates or fees for additional technical measures).

14.3 **Make compliance information available.** The operator must make all information necessary to comply with the legal rules that apply to operators available to the responsible party on request.

15 Return or deletion of personal data

15.1 **Deletion or return obligations.** At the responsible party's written request, the operator will:

- delete or return all the personal data to the responsible party; and
- delete all existing copies unless the law requires them to continue to store those copies;

when:

- the operator has finished providing the responsible party with the goods or services related to the processing; or
- the operator has otherwise fulfilled all purposes agreed in the context of the goods or services related to the processing activities where the responsible party does not require them to do any further processing.

15.2 **Retention.** The operator will inform the responsible party of any legal obligation that requires the operator to retain personal data.

15.3 **Operator's third party termination obligations.** On termination of the agreement, the operator will:

- notify all third parties supporting the personal data processing; and
- ensure that they all either delete the personal data or return it to the responsible party.

16 Liability and indemnity

16.1 **Indemnity.** The responsible party indemnifies and holds the operator harmless against all data protection losses suffered or incurred by, awarded against or agreed to be paid by, the operator and any sub-operator arising from or in connection with:

- the responsible party's non-compliance with the applicable data protection laws;
- any processing by the operator or any sub-operator pursuant to any documented instructions that infringes any applicable data protection law; or
- any breach by the responsible party of any of its obligations, except to the extent that the operator is liable under clause 16.2.

16.2 **Liability.** The operator will be liable for data protection losses (howsoever arising, whether in contract, tort (including negligence) or otherwise) under and in connection with this agreement:

- only to the extent caused by processing personal under this agreement and directly resulting from the operator's breach of the main body of this agreement; and
- in no circumstances to the extent that any data protection losses (or the circumstances giving rise to them) are contributed to or caused by responsible party's breach of this agreement as described in clause 16.1 above.

16.3 **Claims.** If a party receives a compensation claim from a person relating to the processing of personal data, such party will promptly provide the other party with notice and full details of such claim. The party with conduct of the action will:

- make no admission of liability nor agree to any settlement or compromise of the relevant claim without the prior written consent of the other party (which will not be unreasonably withheld or delayed); and
- consult fully with the other party in relation to any such action, but the terms of any settlement or compromise of the claim will be exclusively the decision of the party that is responsible under this agreement for paying the compensation.

16.4 **Claim by the parties.** The parties agree that the responsible party will not be entitled to claim back from the operator any part of any compensation paid by the responsible party for such damage to the extent that the responsible party is liable to indemnify the operator in terms of clause 16.1.

16.5 **Application.** Despite any provision under applicable data protection laws to the contrary, this clause 16 applies to the allocation of liability for data protection losses between the parties, including for compensation to data subjects, except:

- to the extent not permitted by applicable law; and
- that it does not affect the liability of either party to any data subject.

17 General

17.1 **Governing law.** This agreement is governed by the laws of the country specified in the relevant provisions of the principal agreement.

17.2 **Dispute resolution.** Any dispute arising from or in connection with this agreement will be resolved through good-faith negotiations between the parties, failing which good-faith mediation under the rules of the Arbitration Foundation of

Southern Africa, failing which it will be brought exclusively before the competent court of the jurisdiction specified in the relevant provisions of the principal agreement.

- 17.3 **Signed in part.** The agreement and orders may be signed in two or more counterparts, and the signed counterparts, taken together, will constitute a binding agreement between the parties.
- 17.4 **Changes to the terms.** No change to the terms will be effective unless in writing and signed by both parties.
- 17.5 **No assignment.** No party may delegate its duties or assign its rights under this agreement, in whole or in part, without the other party's prior written consent.
- 17.6 **Severability.** If any term is void, unenforceable, or illegal, the term may be severed from and will not affect the rest of this agreement if it does not change its purpose.
- 17.7 **Survival.** The main body of this agreement will survive termination or expiry of the agreement and continue:
- indefinitely in the case of clauses 16 to 18; and
 - until 12 months following the earlier of the termination or expiry of this agreement in the case of clauses 3 to 15, provided that any termination or expiry will be without prejudice to any accrued rights or remedies of either party under this agreement at the time of such termination or expiry.

Attachment 1: Contact details of information officers and others

1. Responsible party's contact persons

Contact information of the responsible party's information officer or other appropriate contact point:

Name	\${RP_IO_name}
Email	\${RP_IO_email}

2. Operator's contact persons

Contact information of the operator's information officer or other appropriate contact point:

Name	Claudia Pather
Email	Claudia.pather@bee123.co.za

Attachment 2: Details required by relevant data protection laws

1. Processing subject-matter

The processing's subject-matter:

2. Processing duration

The processing's duration:

3. Processing nature

The processing's nature:

4. Processing purpose

The processing's purpose:

5. Personal data type

The personal data type:

6. Data subject categories

The data subject categories:

7. Categories of data subjects whose personal data is transferred

The data subject categories:

8. Sensitive data transferred (if applicable)

The sensitive data:

Attachment 3: Security measures

Please see BEE123's Security Pack attached.