



Non-Disclosure Agreement (NDA)

for the **reciprocal** non-disclosure of confidential information
between

Name of party	BEE123 (Pty) Ltd	BEE123
Registration or Identification number	2016/150254/07	
Physical address	Building 2, Waverley Office Park, 15 Forest Road, Waverley, Johannesburg, 2199	
Postal address	Postnet Suite 240, Private Bag X1, Melrose Arch, 2017	
Telephone number	0861 233 123	
Contact person	Head of Operations, currently Claudia Pather	
Email address	legalsupport@bee123.co.za	
Signature (who warrant that they are duly authorised to sign)	X For and on behalf of Party	
Name of signatory		
Title of signatory		
Date of signature		

and

Name of party	\${Counter Party_Full_Name}	Counterparty
Registration or Identification number	\${Counter Party_IdentificationNumber}	
Physical address	\${Counter Party_PhysicalAddress}	
Postal address	\${Counter Party_PostalAddress}	
Telephone number	\${Counter Party_TelephoneNumber}	
Contact person	\${Counter Party_ContactPerson}	
Email address	\${Counter Party_EmailAddress}	
Signature (who warrant that they are duly authorised to sign)	X For and on behalf of Party	
Name of signatory		
Title of signatory		
Date of signature		

The parties acknowledge that they have read, understood, accepted, and agreed to be bound by the terms of this agreement. This agreement will not be binding until it is signed.

1. Introduction

The parties may have disclosed or may wish to disclose to each other information of a confidential and proprietary nature. This agreement governs the parties' rights and obligations to the confidential and proprietary information.

2. Definitions

In this agreement:

Confidential Information means all information of a confidential nature (owned or used by, or relating to the discloser) regardless of form (oral, written or electronic), whether identified or designated as confidential or proprietary, or not (or that, due to the nature of such information or under the circumstances surrounding its disclosure reasonably should be understood to be treated as confidential by the recipient), whether disclosed before, on or after the date of signature and includes:

- the discloser's past, present and future research and development;
- Discloser's business activities, products, services, customers, as well as Discloser's technical knowledge and trade secrets;
- any information received by a third party that either party is obligated to treat as confidential; and
- the terms of this agreement.
- the Derived Information.

Derived Information means any note, calculation, conclusion, summary or other material derived or produced partly or wholly from any confidential information.

Discloser means the party disclosing Confidential Information in terms of this agreement.

Personnel means any director, employee, agent, consultant, contractor or other representative.

Recipient means the party receiving Confidential Information in terms of this agreement.

3. Duration

This agreement is effective from date of signature by the party signing last in time and will continue indefinitely. This is subject to a party's right to terminate this agreement under clause 13 (termination).

4. Purpose

Confidential Information is being disclosed to:

- investigate or formalise a possible commercial relationship between the parties;
- market the offerings of a party;
- investigate the possibility of either party becoming a supplier to the other or its customers; or
- another purpose agreed between the parties in writing.

5. Recipient obligations

5.1 **Keep confidential.** Each party will keep the Confidential Information confidential and will take all reasonable security precautions to maintain the confidentiality of the Confidential Information (which will include applying the same degree of care and security precautions as it takes to protect its own Confidential Information).

5.2 **The Recipients responsibilities.** Recipient will:

- only use Confidential Information to comply with its responsibilities under this agreement.
- only give Confidential 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 Confidential Information confidential.
- get written promises of confidentiality from those Personnel who need access to the Confidential Information.
- not reveal the Confidential Information to anyone else.
- only use the Confidential Information for the Purpose and for no other Purpose unless with the prior physical written consent of Discloser.

5.3 **Restrictions of use.** Recipient will not:

- use the Confidential Information for its own benefit or for the benefit of any third party.
- use the information for any commercial purpose not permitted by this agreement, unless authorised in physical writing by the discloser;
- copy or duplicate in any form Confidential Information, or knowingly assist or allow anyone else to copy or duplicate any Confidential Information in its possession or under its control, without the Discloser's prior physical written approval;
- reverse engineer, decompile or disassemble any computer programs forming part of the Confidential Information; and
- use the Confidential Information in any manner that will cause loss or damage to Discloser.

5.4 **Duty to notify.** Recipient will promptly notify Discloser upon becoming aware of any unauthorised:

- loss,
 - disclosure,
 - breach of confidentiality, or
 - use or misappropriation,
- of Confidential Information.

5.5 **Exceptions.** These responsibilities will not apply to any information that:

- Recipient already had knowledge of prior to disclosure by Discloser and was not received by Recipient from Discloser under an obligation of confidence;
- is lawfully in the public domain (available to the general public) when Recipient received it;
- lawfully becomes part of the public domain afterwards;
- is independently developed by Recipient (or those related to it) or for it by third parties independently of the information disclosed by Discloser; or
- is disclosed by Recipient with the prior written approval of an authorised representative of Discloser.

6. Disclosure required by law

Recipient can disclose Confidential Information if required by law or in accordance with a judicial, administrative or governmental order, provided Recipient:

- gives Discloser reasonable physical written notice prior to disclosure (unless the law prevents it from doing so);

- consults with Discloser on possible steps to be taken to avoid or limit disclosure and takes steps agreed with Discloser; and
- uses its reasonable endeavours to obtain any assurance or order that disclosed Confidential Information will be treated confidentially by the authority or person to which it is disclosed.

7. Return of Confidential Information

On receipt of a written request from Discloser, Recipient will:

- return to Discloser all documentation and materials (including any originals, copies, reproductions or summaries) containing Discloser's Confidential Information; or alternatively
- at the request of Discloser, destroy the documentation and materials. Recipient will certify in writing as soon as possible from the date of the destruction of the documentation and materials that it has complied with these requirements.

8. Non-solicitation

Neither party will, during the currency of this agreement or for a period of six calendar months following termination, directly or indirectly solicit, offer employment to, employ or contract in any manner with any Personnel of the other party involved in the Purpose.

9. Ownership

Confidential Information will remain the exclusive property of Discloser and there is no granting or conferring, whether by sale, license or otherwise, to Recipient of any right, title or interest to or in any of the Confidential Information disclosed, nor in any of the patents, trademarks, copyrights or other intellectual property rights of Discloser or its licensors.

10. Accuracy of the Confidential Information

Both parties agree that the Confidential Information provided is believed by Discloser to be generally accurate and correct. However, in no event will Discloser, its employees, consultants or third parties be liable for errors, omissions or inaccuracies of any kind in the Confidential Information and Recipient will be responsible for verifying the accuracy and correctness of the Confidential Information disclosed. No warranty of any kind is given under this agreement regarding the Confidential Information, it being provided as is and with all faults, and any guarantees or warranties (including warranties of merchantability and fitness for Purpose and non-infringement) are excluded.

11. Compliance with laws

Recipient agrees to comply with all applicable international and national laws that apply to the Confidential Information, or any product, process or service that is the direct product of the Confidential Information, as well as end-user, end-use and destination restrictions issued by the relevant government.

12. Breach and dispute

- 12.1 If Recipient breaches or threatens to breach this agreement, Discloser will be entitled to injunctive, protective or other appropriate relief in any court of competent jurisdiction restraining Recipient from breaching the terms or from disclosing or using any Confidential Information to any person.
- 12.2 Despite anything to the contrary, Discloser may pursue any other remedies available to it, either at law or in equity, for breach or threatened breach, including recovery of liquidated damages.
- 12.3 In the event of a dispute arising under this agreement relating to a disclosure of Confidential Information, the onus of proof will be on Recipient to show that the disclosure was authorised in accordance with the terms of this agreement.

13. Termination

A party may terminate this agreement on 30 calendar days written notice to the other party. Recipient will continue to be bound by recipient's obligations under this agreement regarding all Confidential Information Discloser discloses despite termination of the agreement, the completion of the Purpose, return or destruction of Confidential Information.

14. Notices and domicile

- 14.1 **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 this agreement.
- 14.2 **Service (delivery) address for legal documents.** Each party chooses its physical 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.
- 14.3 **Change of addresses or numbers.** Each party may change the addresses or numbers in this agreement to any other addresses or numbers in the same country by writing to the other party 14 days before the change.
- 14.4 **Deemed delivery.** Notice will be considered to be delivered on the date shown on any hand-delivered, prepaid registered post, courier, fax or email confirmation of delivery.
- 14.5 **Notice actually received.** If a party actually receives any notice or other communication, this will be good enough.

15. Assignment

No party may delegate its duties under this agreement or assign its rights under this agreement, in whole or in part. However, either party may assign this agreement to any successor or purchaser of its business or some of its assets.

16. General

- 16.1 **Entire agreement.** The agreement is the entire agreement between the parties on the subject.
- 16.2 **Changes.** No change to this agreement is effective unless in writing and signed by authorised signatories of both parties.
- 16.3 **Software.** If a party provides software (either as goods or services) as Confidential Information under this agreement, it may only be used by the Recipient for evaluation and providing feedback to Discloser. The software is provided "as is" without any warranty of any kind. Recipient will not be liable for any damages relating to Recipients use of the software.
- 16.4 **Waiver (giving up rights).** Any favour Discloser may allow Recipient will not affect or substitute any of Disclosers rights against Recipient.
- 16.5 **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.
- 16.6 **Governing law.** South African law governs this agreement.
- 16.7 **Jurisdiction.** Recipient consents to the jurisdiction of the Magistrate's Court in respect of any action or proceedings that Discloser may

bring against Recipient in connection with this agreement, even if the action or proceedings would otherwise be beyond its jurisdiction without prejudice to its right to institute any action in any other court having jurisdiction.

16.8 **Costs.** Each party is responsible for its own costs of drafting and negotiating this agreement.

16.9 **Publicity.** Neither party will make or issue any formal or informal announcement or statement to the press in connection with this agreement, without the prior written consent of the other party.