



## Beyond Attendance (Pty) Ltd Premium Subscriber Agreement

Last Updated: February 2017

This Premium Subscriber Agreement (the “Subscriber Agreement”) is between Beyond Attendance (Pty) Ltd (“BA”) and the organisation agreeing to these terms (“Customer”). This Subscriber Agreement governs Customer’s access to BA’s collaborative workplace management service (the “Service”) and its associated applications and website. By clicking “I Agree”, or by attaching this Subscriber Agreement to a purchase order or similar order form, or by using the Service as a subscriber, Customer agrees to the terms of this Subscriber Agreement. If an individual is entering into this Subscriber Agreement on behalf of an organisation such organisation shall be deemed the Customer hereunder and such individual hereby represents and warrants that he has the power and authority required to bind such organisation to this Subscriber Agreement.

### 1. The Service and Associated Software.

Beyond Attendance (Pty) Ltd is a business in the Information Technology industry, that offers software and IT solutions including biometric time and attendance service and subscriptions. Persons using this Service under the Customer’s account (the “End Users”) may access and use the Services in accordance with this Subscriber Agreement and BA’s [Acceptable Use Policy](#)

BA may update or modify the Services from time to time. If, in BA’s reasonable judgment, any such modification to the Service materially reduces the Service’s functionality, BA will inform Customer via the email address associated with Customer’s account no less than twenty (20) days prior to such change.

BA provides certain downloadable client software applications (the “Software”) for use in connection with the Service. This Software is updated automatically and, if such Software is designed for use on a mobile device, then a compatible mobile device is required for use. The license being granted to Customer hereunder does not constitute a sale of the Software or any copy thereof, and as between BA and Customer, BA retains all right, title, and interest in the Software.

BA will use industry standard technical and organisational security measures in connection with the storage, that are designed to protect the integrity of Customer Data and to guard against the unauthorised or unlawful access to, use of or processing of such Customer Data. For purposes, hereof, the term “Customer Data” shall mean the structured data and any files or attachments submitted to the Service by Customer, as well as the account and contact information submitted to the Service by Customer and its End Users.

BA will use reasonable efforts, consistent with standard industry practices, to ensure that the Service and Software do not contain any viruses, backdoors, Trojans, or other computer code that is designed to disrupt, disable or harm the operation of the Service or Software. However, there is no implied warranty in respect of this.

INITIAL



## 2. Customer Obligations

### a. Administration of Customer's Account.

Customer may specify one or more administrators (each an "Administrator") to manage its account. Administrators have the ability to access, monitor, use, export and disclose all content posted by End Users. Customer is responsible for: (i) the selection of its Administrator(s); (ii) maintaining the confidentiality of passwords and Administrator accounts; (iii) managing access to Administrator accounts; and (iv) ensuring that each Administrator's use of the Service complies with this Subscriber Agreement. BA shall not be held liable for any actions on the part of Customer's Administrator(s).

### b. End User Conduct; Compliance.

Customer is responsible for use of the Service by its End Users and for their compliance with BA's [Acceptable Use Policy](#). Customer is also responsible for providing any notice and obtaining any consents and authorisations necessary: (i) to allow the Administrator to access, monitor, use and disclose the content posted by the End Users on the Service; and (ii) to allow BA to provide the Administrator with access to such End User content. The Service is not authorised for use by persons under the age of 16 and Customer will ensure that it does not allow any person under 16 to use the Service. Customer will promptly notify BA if it becomes aware of any unauthorised access to Customer's account or the Service.

### c. Restrictions.

Customer or End Users will not:

- i. rent, sell, resell or lease the Service to any third party without BA's permission and written consent;
- ii. use the Service for any purpose where either the use or the failure of the Service might lead to personal injury, death or physical damage; or
- iii. disassemble, decompile or reverse engineer the Service or attempt or assist anyone else to do so, unless such restriction is prohibited by law.

### d. Suspension.

BA may request that Customer suspend the account of any End User who:

- i. violates this Subscriber Agreement or BA's [Acceptable Use Policy](#); or
- ii. is using the Service in a manner that BA reasonably believes may cause a security risk, a disruption to others' use of the Service, or liability for BA. If Customer fails to promptly suspend or terminate such End User's account, BA reserves the right to do so.

## 3. Customer's Use of Third Party Services.

BA does not warrant or support any third-party service and will not be responsible for any act or omission on the part of such third party or its service.

INITIAL
---------



#### 4. Intellectual Property Rights.

a. **Limited License to Use Customer Content.**

Customer hereby grants to BA a limited, non-exclusive and non-transferable (except in connection with the sale or transfer of its business) license to access, use, copy, reproduce, process, adapt, publish, transmit and display content submitted to the Service by the End Users (the “Customer Content”) for the limited purpose of (i) providing the Service and associated customer support to Customer; (ii) displaying the Customer Content to the End Users; and (iii) analysing and improving the Service.

b. **Reservation of Rights.**

Except as expressly set forth herein, this Subscriber Agreement does not (i) grant BA any rights or interest in or to the Customer Content or any Customer Intellectual Property; or (ii) grant Customer any rights or interest in or to the Service or any BA Intellectual Property. For purposes, hereof, the term “Intellectual Property” shall mean any current or future worldwide rights under any patent, copyright, trademark, or trade secret; any moral rights or any similar rights.

c. **Use of Customer Suggestions.**

BA may incorporate into the Service any suggestions or feedback received from Customer without any obligation to Customer and any such modifications to the Service shall be the sole and exclusive property of BA. BA may also share and publish aggregate, anonymised data about the use of our Service by our customers.

d. **BA Customer List.**

BA may include Customer’s name in a list of BA’s Customers online and in print and electronic marketing materials.

#### 5. Fees, Payment and Delivery

Subject to receipt of payment, requests will be processed within 2 (two) working days and subscription will be confirmed by way of email.

Fees are non-refundable except as required by law or as explicitly set forth herein. Customer will pay all applicable fees when due and, if such fees are being paid via credit card or other electronic means, Customer authorises BA to charge such fees using Customer’s selected payment method. By default, customer accounts are set to auto-renew and BA may automatically charge Customer for such renewal on or after the renewal date associated with Customer’s account unless Customer has cancelled the Service prior to its renewal date. BA may revise fee rates for the Service from time to time and will provide Customer’s designated administrator(s) with email notice of any changes in fees at least thirty (30) days prior to Customer’s Service renewal date. Customer is responsible for providing complete and accurate billing information to BA. BA may suspend or terminate Customer’s use of the Service if fees become past due. Customer is responsible for all taxes (excluding taxes on

INITIAL
---------



BA's net income) and BA will charge VAT when required to do so by law.

If Customer requires the use of a purchase order or purchase order number, Customer must (a) provide the purchase order number at the time of purchase; and (b) agrees that, except for any amendments to this Subscriber Agreement that are clearly marked as such on the face of the Purchase Order, any terms and conditions on a Customer purchase order that conflict with this Subscriber Agreement will not apply and are null and void.

## 6. Customer Privacy policy

BA shall take all reasonable steps to protect the personal information of users. For the purpose of this clause, "personal information" shall be defined as detailed in the Promotion of Access to Information Act 2 of 2000 (PAIA). The PAIA may be downloaded from [http://www.polity.org.za/attachment.php?aa\\_id=3569](http://www.polity.org.za/attachment.php?aa_id=3569)

## 7. Card acquiring and security

Card transactions will be performed by PayGate (Pty) Ltd ("PayGate"), who are an approved payment gateway for all South African Acquiring Banks. PayGate uses the strictest form of encryption, namely Secure Socket Layer 3 (SSL3) and no Card details are stored on the website. Customer can go to [www.paygate.co.za](http://www.paygate.co.za) to view their security certificate and security policy.

## 8. Customer details separate from card details

Customer details on BA will be stored separately from the card details which are entered by Customer on PayGate's secure site. For more detail on PayGate refer to [www.paygate.co.za](http://www.paygate.co.za).

## 9. Merchant Outlet country and transaction currency

The merchant outlet country at the time of presenting payment options to the cardholder is South Africa. Transaction currency is South African Rand (ZAR).

## 10. Terms and Terminations

This Subscriber Agreement will remain in effect until Customer terminates its subscription to the Service or until this Subscriber Agreement is otherwise terminated as provided for herein. Customer may terminate this Subscriber Agreement at any time. In addition, either party may terminate this Subscriber Agreement if: (a) the other party is in material breach and fails to cure such breach within twenty (20) days following receipt of written notice from the non-breaching party; (b) the other party ceases its business operations or becomes subject to insolvency proceedings and the proceedings are not dismissed within 90 days. In the event that this Subscriber Agreement is terminated, (i) the rights granted to Customer pursuant to this Subscriber Agreement (except as specifically set forth in this section) will cease immediately; and (ii) any premium features provided to Customer will cease to be

INITIAL



provided. The following sections will survive expiration or termination of this Subscriber Agreement: Sections 4(b); 4(c); 10 to 14.

## 11. Confidentiality.

### a. Confidentiality.

During the course of their performance under this Subscriber Agreement, each party may make available to the other party information that is not generally known to the public and at time of disclosure is either identified as, or should reasonably be understood by the receiving party to be, proprietary or confidential (the “Confidential Information”). Confidential Information shall include, but shall not be limited to:

- i. business plans, strategies, forecasts, projects and analyses;
- ii. financial information and fee structures;
- iii. business processes, methods and models;
- iv. employee, customer and supplier information;
- v. sales and marketing information;
- vi. With respect to the Customer, Confidential Information also includes the Customer Content.

### b. Obligations.

Except as otherwise expressly permitted under this Services Agreement, with the express prior written consent of the disclosing party, or as required by law, the receiving party will not disclose, transmit or otherwise disseminate to a third party any Confidential Information of the disclosing party. The receiving party will use the same care and discretion with respect to the Confidential Information received from the disclosing party as it uses with its own similar information, but in no event less than a reasonable degree of care. BA may disclose Customer’s Confidential Information to its employees, consultants, agents or advisors who have a strict need to know such Confidential Information solely for the purpose of performing BA’s obligations under this Agreement and only to those who are obligated to maintain the confidentiality of such Confidential Information upon terms at least as protective as those contained in this Agreement. Customer may disclose BA’s Confidential Information to its employees, consultants, agents or advisors who have a strict need to know such Confidential Information and are obligated to maintain the confidentiality of such Confidential Information upon terms at least as protective as those contained in this Agreement.

### c. Exclusions.

The obligations set forth in Section 7(b) above shall not apply to any Confidential Information that the receiving party can demonstrate: (i) the receiving party possessed, without any obligation of confidentiality, prior to disclosure by the disclosing party; (ii) is or becomes publicly available without breach of this Agreement by the receiving party; (iii) is or was independently developed by the receiving party without the use of any Confidential Information of the disclosing

INITIAL



party; or (iv) is or was received by the receiving party from a third party that does not have an obligation of confidentiality to the disclosing party or its affiliates. Either party may disclose the terms of this Agreement to potential parties to an acquisition or similar transaction to facilitate due diligence and closing of the transaction, provided that potential party is subject to written non-disclosure obligations and limitations on use only for the prospected transaction. The receiving party may disclose Confidential Information of the disclosing party if legally required to do so in connection with any legal or regulatory proceeding, provided, however, that in such event the receiving party will, if lawfully permitted to do so, notify the disclosing party within a reasonable time prior to disclosure so as to allow the disclosing party an opportunity to seek appropriate protective measures.

## 12. Indemnification.

### a. **By Customer.**

Customer hereby agrees to indemnify, defend and hold harmless BA, its licensees and licensors, and their respective employees, contractors, agents, officers and directors (together, the “BA Affiliates”), from and against any and all liabilities, damages, obligations, losses, costs and expenses (including but not limited to reasonable attorney’s fees) (together, the “Losses”) arising from or as a result of any claim by a third party against BA or the BA Affiliates regarding:

- i. use of or access to the Service by Customer or its End Users in violation of this Subscriber Agreement or our [Acceptable Use Policy](#); or
- ii. any data or Customer Content transmitted or received through Customer’s account.

### b. **By BA.**

BA hereby agrees to indemnify, defend and hold harmless Customer and its employees, contractors, agents, officers and directors (together the “Customer Affiliates”), from and against any and all Losses arising from or as a result of any claim by a third party against Customer or the Customer Affiliates to the extent based on an allegation that the Service or BA’s technology used to provide the Service infringes or misappropriates any copyright, trade secret, patent, or trademark right of the third party. In no event, will BA have any obligations or liability under this section arising from:

- i. use of the Service in a modified form or in combination with materials not furnished by BA;
- ii. any content, information, or data provided by Customer, End Users, or other third parties. THIS INDEMNITY IS CUSTOMER’S ONLY REMEDY UNDER THIS SUBSCRIBER AGREEMENT FOR ANY VIOLATION BY BA OF ANY THIRD PARTY’S INTELLECTUAL PROPERTY RIGHTS.

### c. **Infringement Claims.**

If the Service becomes, or in BA’s reasonable judgment is likely to become, the subject of a claim of infringement, then BA may:

INITIAL
---------



- i. obtain the right, at BA's expense, for Customer to continue using the Service;
- ii. provide a non-infringing functionally equivalent replacement;
- iii. modify the Service so that it is no longer infringing.

If BA, in its sole and reasonable judgment, determines that none of the above options are commercially reasonable, then BA may suspend or terminate Customer's use of the Service and provide Customer with a pro rata refund of prepaid fees.

**d. Process.**

The party seeking indemnification will provide prompt notice concerning the existence of an indemnifiable claim and cooperate fully with the indemnifying party in defending the claim. Failure to give prompt notice shall not constitute a waiver of a party's right to indemnification and shall affect the indemnifying party's obligations hereunder only to the extent that the indemnifying party's rights are materially prejudiced by such failure or delay. The indemnifying party will have full control and authority over the defence of any claim; provided, however, that:

- i. the indemnified party may join in the defence at its own expense using counsel of its choice; and
- ii. any settlement requiring the party seeking indemnification to admit liability or make any financial payment will require such party's prior written consent, not to be unreasonably withheld or delayed.

**13. Limitation of Liability**

TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, EXCEPT IN CONNECTION WITH THEIR RESPECTIVE INDEMNIFICATION OBLIGATIONS HEREUNDER, IN NO EVENT SHALL EITHER PARTY OR THEIR RESPECTIVE AFFILIATES, AGENTS, DIRECTORS, EMPLOYEES OR SUPPLIERS BE LIABLE UNDER THIS SUBSCRIBER AGREEMENT FOR (I) ANY INDIRECT, PUNITIVE, INCIDENTAL, SPECIAL, CONSEQUENTIAL OR EXEMPLARY DAMAGES; OR (II) LOSS OF USE, DATA, BUSINESS REVENUES, PROFITS (IN EACH CASE WHETHER DIRECT OR INDIRECT), GOODWILL, OR OTHER INTANGIBLE LOSSES. UNDER NO CIRCUMSTANCES WILL BA BE RESPONSIBLE FOR ANY DAMAGE, LOSS OR INJURY RESULTING FROM HACKING, TAMPERING OR OTHER UNAUTHORIZED ACCESS OR USE OF THE SERVICE OR CUSTOMER'S ACCOUNT OR THE INFORMATION CONTAINED THEREIN BY ANY THIRD PARTY. THESE LIMITATIONS OF LIABILITY SHALL APPLY REGARDLESS OF WHETHER A PARTY KNEW OR SHOULD HAVE KNOWN THAT SUCH DAMAGES WERE POSSIBLE AND EVEN IF A REMEDY FAILS OF ITS ESSENTIAL PURPOSE.

EXCEPT IN CONNECTION WITH ITS INDEMNIFICATION OBLIGATIONS HEREUNDER, IN NO EVENT SHALL BA BE LIABLE TO CUSTOMER FOR ANY CLAIMS, PROCEEDINGS, LIABILITIES, OBLIGATIONS, DAMAGES, LOSSES OR COSTS IN AN AMOUNT EXCEEDING THE AMOUNT PAID BY CUSTOMER TO BA HEREUNDER DURING THE TWELVE (12) MONTHS PRIOR TO THE EVENT GIVING RISE TO LIABILITY.

INITIAL
---------



**14. Hosting of the Service; Export Restrictions.** The Service is controlled and operated from facilities in the Northern Europe. BA makes no representations that the Service is appropriate or available for use in other locations. Customers who access or use the Service from other jurisdictions (or who allow their End Users to do so) do so of their own volition and are responsible for compliance with all applicable South African and local laws and regulations, including but not limited to export and import regulations. If Customer is located outside of the South Africa, Customer agrees that BA may transfer, store and process Customer Content in locations other than Customer's country.

## **15. Miscellaneous**

**a. Modifications.**

BA may revise this Subscriber Agreement from time to time by posting the modified version on its website at least twenty (20) business days prior to the effective date of the modifications being made; provided, however, that no such modification shall include a reduction in Customer's rights or BA's obligations unless affirmatively agreed to by Customer in advance. If, in BA's sole and reasonable discretion, the modifications being proposed are material, BA will notify Customer of such proposed modifications via email to the email address associated with Customer's account. By continuing to access or use the Service after the posted effective date of modifications to this Subscriber Agreement that do not include a reduction in Customer's rights or BA's obligations hereunder, Customer agrees to be bound by such modifications.

**b. Severability.**

Should any portion, provision or clause of this agreement be held to be void, invalid or unenforceable for any reason whatsoever, then such provision, portion or clause shall be deemed to be severable and excluded from this agreement, and all the remaining terms and conditions shall remain in full force and effect.

**c. Country of Domicile.**

This website is governed by the laws of South Africa and Beyond Attendance (Pty) Ltd chooses as its domicilium citandi et executandi for all purposes under this agreement, whether in respect of court process, notice, or other documents or communication of whatsoever nature, 30 Quillhall Lane, Kloof, Durban, South Africa.

**d. Dispute Resolution.**

Any dispute regarding the reasonableness of the monthly increase shall be referred to the accounting officer of BA for determination and his/her ruling shall be final and binding upon the parties. Any other dispute, breach, impasse or deadlock between the parties (without prejudice to BA's rights to apply for injunctive relief or to refer any breach to the applicable magistrate or high court of Kwa-Zulu Natal, South Africa) shall be referred to arbitration. The arbitrator shall be a person nominated by the president of the Kwa-Zulu Natal law society and such person shall not necessarily be a lawyer. The arbitration shall be held upon such terms, within Kwa-

INITIAL
---------



Zulu Natal, South Africa, as the arbiter may decide, in which event the arbitration may be held as informal and expeditiously as possible, unless the arbitrator determines that the arbitration be held in accordance with the summary procedure for arbitration as set out in the rules for the conduct of arbitration prepared by the association of arbitrators. The decision of the arbitrator shall be final and binding upon the parties and he shall be entitled to stipulate who shall pay costs, including his costs and disbursements (including expert fees or witnesses' fees) of the arbitration. Any party to the arbitration proceedings shall be entitled to have the award made an order of court.

e. **Relationship of the Parties.**

The parties are and shall be independent contractors with respect to all services provided under this Subscriber Agreement.

f. **Force Majeure**

Except for payment obligations, neither BA nor Customer will be liable for inadequate performance to the extent caused by a condition that is beyond the party's reasonable control, including but not limited to natural disaster, civil disturbance, acts of terrorism or war, labour conditions, governmental actions and interruption or failure of the Internet or any utility service.

g. **Assignment**

Neither this Subscriber Agreement nor any of the rights and licenses granted hereunder, may be transferred or assigned by either party without the other party's express written consent; provided, however, that either party may assign this Subscriber Agreement without the other party's consent to an affiliate or in connection with a merger, acquisition, corporate reorganisation or sale of all or substantially all of its assets. Any other attempt to transfer or assign this Subscriber Agreement will be null and void.

h. **Entire Agreement.**

This Subscriber Agreement, together with any Customer purchase order or order form associated herewith (as limited by Section 6), constitutes the entire agreement of the parties concerning the subject matter hereof and supersedes and replaces any prior or contemporaneous understandings and agreements, whether written or oral, with respect to the subject matter hereof. If a court of competent jurisdiction deems any provision of this Subscriber Agreement invalid, the invalidity of such provision shall not affect the validity of the remaining provisions hereof, which shall remain in full force and effect.

i. **No Waiver.**

No waiver of any term of this Subscriber Agreement shall be deemed a further or continuing waiver of such term or any other term, and a party's failure to assert any right or provision under this Subscriber Agreement shall not constitute a waiver of such right or provision.

INITIAL
---------



**16. Company Information**

This website is run by Beyond Attendance (Pty) Ltd with registration number 2016/256105/07 and WH Ludlow as director.

**17. Beyond Attendance (Pty) Ltd contact details:**

Should you have any queries relating to any terms of conditions or agreements, please send an email to [terms@beyondattendance.com](mailto:terms@beyondattendance.com) or call us on +27 (0)31 764 8550.

Congrats! You've reached the end!

Thanks for taking the time to learn about the policies of Beyond Attendance (Pty) Ltd. Have a great day!

INITIAL
---------