

Terms of Service

Updated: 18th December 2023

About this document

This document explains the terms and conditions applicable to your usage of the Ben platform.

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Definitions

Add-On Services: means additional services or functionality that may be added to the Subscription.

Agreement: these Terms of Service and any Order Form.

Ben: means Thanks Ben Ltd.

Ben Platform / Platform: the web site located at thanksben.com

Commencement Date: the date of signature of the first Order Form

Confidential Information: means all confidential information (however recorded or preserved) disclosed by a party or its representatives (as defined below) to the other party and that party's representatives whether before or after the date of this Agreement in connection with the business, assets, affairs, customers, clients, suppliers, or plans, intentions, or market opportunities of the disclosing party.

Data: the data inputted by You, or by us on Your behalf or otherwise generated in respect to Your use of the Services.

Documentation: any documentation made available to You by Ben from time to time, whether in electronic form or otherwise, including on the Ben web site which sets out a description and user instructions for the Services.

Fees: the fees payable by You to Ben for the Services and Your Subscription as detailed on Your Order Form.

Implementation Plan: the plan, time schedule and sequence of events for Customer set-up and implementation to enable the Customer to go-live with the Services.

Initial Term: the initial term for your Subscription as detailed in your Order Form, which shall commence on the Start Date.

Intellectual Property Rights: all intellectual and industrial property rights including patents, know-how, registered trade marks, registered designs, utility models, applications for and rights to apply for any of the foregoing, unregistered design rights, unregistered trade marks, rights to prevent passing off for unfair competition and copyright, database rights, topography rights, domain names and any other rights in any invention, discovery or process, in each case in the United Kingdom and together with all renewals and extensions.

Minimum Specification: means the specification which Your systems are required to meet in order to use the Services, as revised from time to time.

Order Form: Your order for Services detailing the Fees relating to Your Subscription or Add-On Services and incorporating this Agreement.

Renewal Term: the Initial Term and any subsequent terms described in clause 15.1.

Recurring Fees: the monthly, annual or any other recurring Fees payable to Ben from the Start Date as detailed in the Order Form.

Services: the services provided by Ben to You under this Agreement, including access to the Ben Platform as more particularly described in the Documentation and any Order Form and any updates.

Start Date: the date: (a) agreed between the parties detailed in the Order Form as the Target Go-Live Date; (b) we first make our Services available to You; (c) on which Ben have completed all of our obligations in the Implementation Plan in respect to Go-Live; (d) you start using the Services or any of them.

Subscription: means the Services to be provided to You under Your subscription tier, as detailed in Your Order Form and any Documentation.

Term: the Initial Term and any Renewal Term as detailed in any Order Form.

User(s): Your employees and independent contractors who You authorise to use the Services in accordance with this Agreement.

User License: the license granted to each User to access and use the Ben Platform.

You or Your: means the business detailed in an Order Form.

A reference to a statute or statutory provision is a reference to it as it is in force for the time being, taking into account any amendment, extension, or re-enactment and includes any subordinate, interim or provisional legislation for the time being in force made under it. Any words following the terms including, include, in particular, for example or any other similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or terms preceding those terms. References to clauses and schedules are to the clauses and schedules of this Agreement; references to paragraphs are to paragraphs of the relevant schedule to this Agreement. The details of Your Subscription and Your Order Form form part of this Agreement and shall have effect as if set out in full in the body of this Agreement.

1. Services

- 1.1. This **Agreement** will operate as a framework agreement which defines the contractual terms and conditions under which Ben will supply Services to You. Whilst this Agreement remains in force, the parties shall agree the provision of Services as set out in an Order Form which shall be governed by and be subject to, the terms and conditions of this Agreement.
- 1.2. **Variation to this Agreement** Any revised version of this Agreement shall automatically apply to any current Initial Term or Renewal Term (as applicable) and any Add-On Services when purchased.
- 1.3. **Terms of this Agreement.** This Agreement shall commence on the Start Date and shall continue throughout the Term unless earlier terminated in accordance with the terms of this Agreement.
- 1.4. **Provision of Services.** Ben shall, during the Term, use commercially reasonable endeavours to make the Services available 24 hours a day seven days a week, except for: (a) planned maintenance carried out during the maintenance window of 05:00 to 08:00 UK time; and (b) unscheduled maintenance performed outside of normal business hours.
- 1.5. Any dates quoted for delivery of Services are approximate only. Any services which are not detailed in the Subscription, or an Order Form are out of scope and subject to additional charges.
- 1.6. **Support Services.** Ben will, as part of the Services, provide You with Ben's standard customer support services and onboarding services as detailed in Your Subscription

and any Documentation. Ben may amend its support services at its discretion from time to time.

- 1.7. **Updating Service.** As part of its updating service Ben shall provide error correction, patches, fixes and updates to the Services as generally made available to its customers. Where requested, You may be required to update Your IT infrastructure in order to continue to comply with any required Minimum Specification for the Services. For the avoidance of doubt the cost of the updating service described in this clause is included in Your Fees but excludes any sum payable by You to ensure compatibility with the Services. Ben shall have no liability whatsoever for any failure of Your IT infrastructure to comply with the Minimum Specification.
- 1.8. **Service Improvements.** You acknowledge that Ben may change or modify the Services from time to time. Ben shall only be required to provide You with reasonable notice of a change or modification to the Services in advance if the change of modification is material (and does not extend or enhance the functionality or architecture of the Services) or may substantially adversely affect Your use of the Services.
- 1.9. **Changes to Benefits Providers, Terms and Offers.** Except where such service providers are nominated by You, we reserve the right to change or modify the third-party providers of services available to Users on the Platform from time to time. Subject to the following conditions:
 - a) **Notice of Changes** We will make reasonable efforts to provide You with prior notice of any changes to the benefits providers available to your Users. Notice may be given through your Platform dashboard and/or by e-mail. Given the nature of the Services you acknowledge and agree that our ability to provide advance notice may vary depending on circumstances, and that the availability of benefits offered by third-party providers is subject to the discretion of those providers and may be withdrawn or discontinued at any time.
 - b) **No Liability for Third-Party Provider Changes:** You agree that we shall not be held liable for any losses, damages, claims, or disputes arising from changes or discontinuation of benefits offered by third-party providers. This includes any financial losses, inconveniences, or adverse effects experienced by You or your Users due to the withdrawal or modification of offers by third-party providers.
 - c) **Alternative Options:** In the event of a change in benefits providers, You have the option to explore and engage with other available benefits providers listed on the Platform
- 1.10. Unless otherwise agreed in writing, You acknowledge that the Services have not been developed to meet Your or your User's individual requirements and that it is therefore Your responsibility to ensure that the facilities and functions of the Services as described in Your Subscription Documentation meet Your requirements.

2. Onboarding and support in accessing and using our services

- 2.1. Following the signature of Your Order Form, and payment being made we will contact You to provide You with the information You need to access and use our Services.
- 2.2. Please refer to Your Subscription Documentation for information and assistance around onboarding and accessing our Services. The support services provided as part of Your Subscription are detailed in Your Subscription Documentation. Full access to all of our online resources and FAQs is provided to all users. Any support

requests or onboarding assistance requested which is outside the scope of Your Subscription will be chargeable as Add-On Services.

- 2.3. **Your responsibility to understand our Services and Your use of them.** You acknowledge and agree that whilst our Services are designed for ease of use, it is Your responsibility to ensure that any individuals involved in accessing and using the Services are appropriately trained in the use of any applicable technology and understand and are familiar with the Services and any training materials or Documentation made available to You relating to them. You are solely responsible for ensuring that all users of the Services are appropriately trained in its use. Ben shall have no responsibility to provide support if support issues are deemed by Ben to be the result of misuse or lack of appropriate training by You in the use of Services.
- 2.4. In the event that You do not provide us with the information we require from You (and that information is accurate and complete in all respects) we will not be liable for Your inability to make use of the Services in whole or part, and any additional work required by us to support Your onboarding or access to the Services shall be chargeable (and provided at our discretion) as additional services at Ben's standard rates then in force. Ben is not liable for any delay or inability to use or access the Services in whole or part directly or indirectly caused by a delay by You or any third party or any failure to comply with Your obligations under this Agreement.
- 2.5. **Migration Services.** Where specified, Ben shall use reasonable efforts to ensure the accurate migration of any data, but gives no warranties as to the completeness or accuracy of such migration. You shall be entirely responsible for checking the accuracy and completeness of the data provided to Ben and any migrated data and shall promptly give sufficient details to us of any inaccuracies or omissions in order to permit us to correct them. Any corrections or modifications to migrated data shall be chargeable activities at Ben's rates then in force for such services.
- 2.6. The Services will not commence until the Implementation Fee (as detailed in the Order Form) is paid. The Customer acknowledges that unless otherwise agreed between the parties that the first payment of Recurring Fees for the Initial Term as detailed in the Order Form shall become immediately payable on the Start Date whether the Customer is making full use of the Services or not.

3. License to use Ben platform

- 3.1. Subject to You paying the appropriate Fees to Ben, the restrictions set out in this clause 3 and the other terms and conditions of this Agreement, Ben hereby grants to You a personal, non-exclusive, non-transferable, non-sub-licensable, revocable right: (a) to permit Users to use the Services and the Documentation during the Term solely for Your business operations; and, (b) to access and use the Ben Platform, Services and the Documentation within the limits of the Subscription You have purchased.
- 3.2. **Limitations on Use.** The rights provided under this Agreement are granted to You only, unless otherwise agreed in writing.
- 3.3. **Exceeding the limits of Your Subscription or Services.** If Your use of the Services exceeds any limits detailed in an Order Form, Ben shall be entitled to automatically increase its Fees applicable to Your use or to increase Your Fees to account for such additional use of the Services. You agree to pay any applicable increase in Fees for such charges within 30 days of receipt of invoice. If at any time it becomes apparent to Ben that You have underpaid Fees, all Fees applicable to Your actual historical use will be immediately payable to account for any shortfall. Ben may audit Your use of

the Services at any time to ensure compliance with this Agreement. Ben reserves the right at all times to monitor Your usage of the Services.

- 3.4. Where You amend Your Subscription part way through any Term including by the addition of Add-On Services, such additional Fees as may be payable shall be pro-rated from the date of activation by Ben for the remainder of the then current Term. You may not decrease the number of Users during any Subscription term. User numbers are subject to a minimum user base requirement.

4. Ben's obligations

- 4.1. **Warranty** Ben warrants that it will perform the Services substantially in accordance with the material terms of the Documentation and with reasonable skill and care, including operating firewalls and virus checks and implementing effective and appropriate data security in respect to the provision of Services.
- 4.2. The warranty at clause 4.1 shall not apply to the extent of any non-conformance which is caused by use of the Services contrary to Ben's instructions, or modification or alteration of the Services by any party other than Ben. If the Services do not conform with the foregoing warranty, Ben will, at its expense, use all reasonable commercial endeavours to correct any such non-conformance promptly, or if reasonably practicable, provide You with an alternative means of accomplishing the desired performance. Such correction or substitution constitutes Your sole and exclusive remedy for any breach of the warranty set out in this clause.
- Notwithstanding the foregoing, Ben:
- a)** does not warrant that Your use of the Services will be uninterrupted or error-free; nor that the Services, Documentation and/or the information obtained by You through the Services will meet Your requirements; and
 - b)** is not responsible for any delays, delivery failures, or any other loss or damage resulting from the transfer of data over communications networks and facilities, including the internet, and You acknowledge that the Services may be subject to limitations, delays and other problems inherent in the use of such communications facilities.
- 4.3. Ben shall have no obligation to provide any services under this clause (and shall be entitled to charge You additional charges at its then current rates) where faults or support requests arise from: **(a)** misuse, incorrect or unauthorised use of the Services; **(b)** failure of Your IT infrastructure or any part of it; **(c)** use of the Services not in accordance with guidance provided by, or in combination with any software not approved by, Ben; **(d)** any breach of Your obligations under this Agreement.
- 4.4. The warranties, representations (and where applicable, warranties) set out in this clause are in lieu of all other express or implied warranties or conditions, including implied warranties or conditions of satisfactory quality and fitness for a particular purpose, in relation to this agreement. Without limitation, Ben specifically denies any implied or express representation that the Services will be fit for any purpose or use other than that specifically stated by Ben in writing in the Documentation.

5. Third party services

- 5.1. You acknowledge and agree that: (i) the use and availability of certain parts of our Services are dependent on third-party service providers, (ii) these third-party services may not operate in a reliable manner all of the time and they may impact on the way

that our Services operate, and (iii) Ben are not responsible for damages and losses due to the operation of these third-party products and services.

- 5.2. **Third Party Services / Integration.** Ben offer services and functionality using third party developer tools such as application programming interfaces (“APIs”) (our “Integration Services”). These third party API terms and conditions contain restrictions on access, storage and use of information. Ben have no control over the content of third party sites or resources which we link to through our use of APIs or your use of the Ben API and accept no liability or responsibility for them, your use or inability to use Integration Services, the web sites they link to or their contents, their accuracy or reliability or for any loss or damage (direct, indirect, special, consequential or otherwise) whatsoever that may arise from your use of any of them or the results obtained. Your use of Ben Integration Services is on an “as is” basis and without any warranty of any kind (subject to any additional Ben terms that may apply).
- 5.3. Where the Platform contains links to other sites and resources provided by third parties, these links are provided for your information only. Such links should not be interpreted as approval or endorsement by us of those linked websites or the information you may obtain from them.
- 5.4. **Relationship with Third-Party Benefits Providers:** We do not have any control over the actions, terms, or performance of the third-party benefits providers, who may withdraw their services at any time. You acknowledges and agrees that any engagement, transactions, or interactions with the third-party benefits providers are solely between You and/or your Users and the respective provider. We do not assume any responsibility or liability for the services, products, or agreements entered into between the customer and the third-party benefits providers
- 5.5. **Third-Party Benefits Provider’s Terms:** Any agreements, terms, or conditions entered into by the customer or any Users with the third-party benefits providers, including accessing their websites or utilizing their services, are subject to the provider’s own terms and conditions. It is Your and your Users responsibility to review and comply with the third-party provider’s terms, policies, and practices.
- 5.6. **Your Responsibility:** It is your responsibility to conduct due diligence, verify the suitability and compatibility of the third-party benefits providers, and assess the risks associated with engaging with them. You agree to indemnify and hold us harmless from any claims, liabilities, or damages arising from your or Users engagement with the third-party benefits providers.
- 5.7. **No Warranty:** Ben makes no representations or warranties regarding the accuracy, reliability, or quality of the services, products, or offers provided by the third-party benefits providers. Ben disclaims all warranties, whether express or implied, including but not limited to warranties of merchantability, fitness for a particular purpose, or non-infringement.
- 5.8. Where you have requested to integrate your own third-party benefits providers into the Services (“Nominated Third-Party Benefits Providers”) you acknowledge and agree that Ben is not responsible for the conduct, services, availability, or quality of such Nominated Third-Party Benefits Providers services and Ben is not liable for any inability to integrate any such Nominated Third-Party Benefits Providers with the Services. Any disputes or claims related to Nominated Third-Party Benefits Providers are solely between You and that third-party benefits provider and Ben will not be liable for any damages or costs of any type arising out of, or in any way connected with, your relationship with these Nominated Third-Party Benefits Providers or the availability, accessibility or use of their services.

6. Restrictions of use and acceptable use policy

- 6.1. You are responsible for any User's breach of this Agreement and undertake that each User shall keep a secure password for their use of the Services and Documentation, that such password shall be changed regularly and that each User shall keep their password confidential. To the extent permissible by law, Ben will not be liable for any loss that You, a User or any third party may incur as a result of any use or misuse of any username or password or any part of the Services, whether with or without Your knowledge.
- 6.2. You shall not access, store, distribute or transmit any viruses, or any material during the course of its use of the Services that: **(a)** is unlawful, harmful, threatening, defamatory, obscene, infringing, harassing or racially or ethnically offensive; **(b)** facilitates illegal activity; **(c)** depicts sexually explicit images; **(d)** promotes violence; **(e)** is discriminatory based on race, gender, colour, religious belief, sexual orientation, disability, or any other illegal activity; or **(f)** causes damage or injury to any person or property; and Ben reserves the right, without liability to You, to disable Your access to Services as a result of a breach of the provisions of this clause.
- 6.3. Except to the extent expressly permitted under this Agreement and to the maximum extent permitted by law, You shall not: **(a) (i)** attempt to copy, reproduce, modify, duplicate, create derivative works from, frame, mirror, republish, download, display, transmit, or distribute all or any portion of the Services and/or Documentation (as applicable) in any form or media or by any means; or **(ii)** attempt to reverse compile, disassemble, reverse engineer or otherwise reduce to human-perceivable form all or any part of the Services; or; **(b)** access all or any part of the Services and Documentation in order to build a product or service which competes with the Services and/or the Documentation; or **(c)** use the Services and/or Documentation to provide services to third parties or offer any part of the Services for sale or distribution over any other medium; or **(d)** license, sell, rent, lease, transfer, assign, distribute, display, disclose, or otherwise commercially exploit, or otherwise make the Services and/or Documentation available to anyone except the Users; or **(e)** attempt to obtain, or assist third parties in obtaining, access to the Services and/or Documentation; or **(f)** permit any third party to benefit from the use or functionality of the Services.

7. Your obligations

You shall:

- 7.1. **(a)** provide Ben with all necessary and timely co-operation in relation to this Agreement; including all necessary access to such information as may be required by Ben in order to render the Services, including but not limited to, Data and documentation requested for the provision of the Services (and ensure that such information and data is accurate in all material respects). Ben is not liable for any inability to use the Services in whole or part directly or indirectly caused by You or any third party; **(b)** appoint an individual who shall have the authority to contractually bind You on matters relating to the Services; **(c)** be responsible (at Your own cost) for ensuring that Your IT infrastructure complies with the relevant specifications to use the Services provided by Ben, including the Minimum Specification, as amended from time to time; **(d)** comply with all applicable laws and regulations with respect to Your activities under this Agreement and in Your use of the Services; **(e)** be

responsible for procuring any third party co-operation required for the receipt of the Services (including but not limited to co-operation in respect to any Nominated Third-Party Benefits Providers; **(f)** carry out all other of Your responsibilities set out in this Agreement in a timely and efficient manner. In the event of any delays in Your provision of such assistance as agreed by the parties, Ben may adjust any agreed timetable or delivery schedule as reasonably necessary

- 7.2. **Safeguarding and Security** be solely responsible for procuring and maintaining Your network connections and telecommunications links from Your systems to the Services, and all problems, conditions, delays, delivery failures and all other loss or damage arising from or relating to Your network connections or telecommunications links or caused by the internet;
- 7.3. operate best practice and ensure appropriate security precautions are taken in connection with its use of the Services. You are responsible for taking all reasonable steps to mitigate the risks inherent in the provision and receipt of the Services, including data loss and taking all reasonable and usual precautions to safeguard Your IT infrastructure, including operating firewalls and virus checks and implementing effective and appropriate data security in respect to the provision and receipt of Services.
- 7.4. **Uploading Content** Whenever You make use of a feature that allows You to upload content (any digital material) to our Services, You must comply with the content standards set out in clause 6.2 of this Agreement (or as otherwise provided to You by us). You retain all of Your ownership rights in Your content, but You grant us a non-exclusive licence to use, store, edit, reproduce, modify and copy that content and to distribute and make it available to third parties in order for Ben to provide the Services. You warrant that any content you upload will be non-infringing of any third party rights and you will be liable to us and indemnify us for any breach of that warranty. We have the right to remove any content you make available through the Platform, without liability, if, in our opinion, that content does not comply with the standards set by us. We may suspend or terminate our agreement with you or any access to the Services, without liability, if in our opinion You are not complying with the spirit of this Agreement or our Platform.
- 7.5. **Ensuring that Your use of our Services meets any required standards.** You must: (i) ensure that any content uploaded by You and all activities You carry out through the Services and any subsequent agreement with any users of Your services complies with all applicable local legislation; (ii) ensure that any content uploaded by You to the Services is true, accurate, current and complete and ensure that You maintain and promptly update this information if it changes; (iii) not use the Services or our other services in any unlawful manner, for any unlawful purpose, or in any manner inconsistent with these terms, or act fraudulently or maliciously; (iii) not infringe our intellectual property rights or those of any third party in relation to Your use of the Services; (iv) not use the Services in a way that could damage, disable, overburden, impair or compromise our systems or security or interfere with other users.

We have the right to remove any content You make available through the Services, without liability, if, in our opinion, that content does not comply with the standards set by us.

- 7.6. **Users** You are responsible for fielding enquiries directly from your end Users and for any liability which results from their use of our Services. You agree to indemnify us, in full in respect to any claim made against us by any end User. You accept all responsibility for and agree to release us entirely from any claims, liabilities, disputes,

actions or proceedings arising from or connected to your interaction with any third party through our, or as a result of our provision of Services.

8. Data and data protection

- 8.1. **Your Data.** You shall own all rights, title and interest in and to all of your Data and shall have sole responsibility for the legality, reliability, integrity, accuracy and quality of your Data. We do not back-up your content and data used on the Platform.
- 8.2. Ben shall, in providing the Services, comply with its Privacy Policy relating to the privacy and security of the Data as amended from time to time by Ben in its sole discretion.
- 8.3. Ben acknowledges that all Intellectual Property Rights and other proprietary rights in all data generated from the use by You of the Services (the “**Service Data**”) are owned and shall continue to be owned by You.
- 8.4. You grant to Ben a non-exclusive, perpetual, irrevocable, royalty free license to use any data generated from Your use of the Services (“Service Data”) and any Data (provided that such data is anonymised) for the purpose of: **(a)** statistical analysis and monitoring of data and querying and analysing such data for the purpose of providing the Services and improving the quality of services Ben provides to its customers or providing other Services to Customers; **(b)** exercising its rights and fulfilling its other obligations under this Agreement; **(c)** complying with any applicable governmental or regulatory requirements.
- 8.5. The parties acknowledge that if Ben processes any personal data on Your behalf when performing its obligations under this agreement, You are the controller and Ben is the processor for the purposes of **Data Protection Legislation**. Schedule 1 sets out the obligations of the parties in respect to the processing of personal data.

9. Suspension of services

- 9.1. Ben may suspend Services without liability if: **(a)** Ben reasonably believes that the Services are being used in breach of the Agreement or the spirit of this Agreement, or you are engaging in any activity which is damaging or potentially damaging to our business or other users; **(b)** You don't co-operate with Ben's reasonable investigation of any suspected violation of the Agreement; **(c)** there is an attack on the Services or the Services are accessed by or manipulated by a third party without Ben's consent; **(d)** Ben is required by law to suspend the Services or Your access to the Services; or
- 9.2. Subject to clause 9.3, Ben may suspend the Services on 14 days advance notice if there is another event not detailed in clause 9.1 for which Ben reasonably believe that suspension of the Services is necessary to protect its or any other party's network, system, the Services or other customers.
- 9.3. Ben will use reasonable endeavours to give You advance notice of a suspension under this clause 9, unless Ben determines in its reasonable commercial judgement that an immediate suspension is necessary to protect Ben or its customers from imminent and significant operational or security risk.
- 9.4. For the avoidance of doubt, any suspension of Services, unless caused directly by Ben, shall not suspend Your obligation to pay any Fees.

10. Charges and payment

- 10.1. You shall pay the Fees to Ben in accordance with this clause 10, subject to any other payment terms detailed in Your Order Form, or as otherwise agreed between the parties.
- 10.2. If you have purchased Services under a Subscription, payment is by monthly instalments in advance following the Start Date as detailed in the Order Form.
- 10.3. You shall provide to Ben relevant valid, up-to-date and complete contact and billing details and Ben shall invoice You for the Implementation Fee (as detailed in your Order Form) on the Commencement Date and on the Start Date for the Fees payable for Your Subscription and the applicable Initial Term, as detailed in the Order Form.
- 10.4. If Ben has not received payment within 7 days after the due date for any Fees, then without prejudice to any other rights and remedies of Ben: **(a)** Ben may, without liability to You, on 2 days advance notice, disable Your account and suspend access to all or part of the Services and Ben shall be under no obligation to provide any or all of the Services while the invoice(s) concerned, any interest, administrative and legal costs of collecting payment and any further sums payable, remain unpaid; and **(b)** interest shall accrue on such due amounts at an annual rate equal to 4% over the then current base lending rate of the Bank of England at the date the relevant invoice was issued, commencing on the due date and continuing until fully paid, whether before or after judgment.
- 10.5. All amounts and fees stated or referred to in this Agreement: (a) are non-cancellable and non-refundable; (b) are exclusive of applicable tax, which shall be added to Ben's invoice(s) at the appropriate rate.
- 10.6. Ben shall be entitled to increase the Fees payable for Services at the start of each Renewal Term, on thirty days' prior written notice to You. In the event that You do not agree to such increase, You may terminate this Agreement at the end of the then-current Initial Term or Renewal Term (as applicable). In the event that You do not notify Ben that You object to any increase, the Renewal Term shall be extended and include the increase in Fees accordingly.

11. Proprietary rights

- 11.1. You acknowledge and agree that Ben and/or its licensors are the sole and exclusive owners of all Intellectual Property Rights and other proprietary rights in the Services and the Documentation. Except as expressly stated herein, this Agreement does not grant You any rights to, or in, Intellectual Property Rights, or any other rights or licenses in respect of the Services or the Documentation.

12. Confidentiality

- 12.1. Each party may be given access to Confidential Information from the other party in order to perform its obligations under this Agreement. A party's Confidential Information shall not be deemed to include information that: **(a)** is or becomes publicly known other than through any act or omission of the receiving party; **(b)** was in the other party's lawful possession before the disclosure; **(c)** is lawfully disclosed to the receiving party by a third party without restriction on disclosure; **(d)** is independently developed by the receiving party, which independent development can be shown by written evidence; or **(e)** is required to be disclosed by law, by any court of competent jurisdiction or by any regulatory or administrative body, provided

that to the extent practicable and permitted by law, the receiving party shall promptly notify the disclosing party in advance of such requested disclosure and provide the disclosing party with an opportunity to object to such request.

- 12.2. Subject to clause 12.3, each party shall hold the other's Confidential Information in confidence and, unless required by law, not make the other's Confidential Information available to any third party, or use the other's Confidential Information for any purpose other than the implementation of this Agreement.
- 12.3. A party may disclose the other party's Confidential Information to those of its representatives who need to know such Confidential Information for the purpose of exercising its rights and obligations under this Agreement, provided that: (a) it informs such representatives of the confidential nature of the Confidential Information before disclosure; and (b) at all times, such representatives have an appropriate binding confidentiality agreement in place with the disclosing party (no less onerous than this clause) and it is responsible for such representatives' compliance with the confidentiality obligations set out in this clause.
- 12.4. Each party shall take all reasonable steps to ensure that the other's Confidential Information to which it has access is not disclosed or distributed by its employees or agents in violation of the terms of this Agreement.
- 12.5. Neither party shall be responsible for any loss, destruction, alteration or disclosure of Confidential Information caused by any third party, provided that such party has taken reasonable steps to protect and avoid the loss, destruction, alteration or disclosure of such Confidential Information.
- 12.6. You acknowledge that details of the Services, and the results of any performance, security, penetration, vulnerability or other logical, analytical, data or information gathering tests carried out on the Services, constitute Ben's Confidential Information.
- 12.7. Ben acknowledges that Your Data is Your Confidential Information.
- 12.8. This clause 12 shall survive termination of this Agreement, however arising.

13. Indemnity

Except to the extent directly caused by Ben, You shall defend, indemnify and hold harmless Ben against claims, actions, liabilities, proceedings, losses, damages, expenses and costs (including without limitation court costs and reasonable legal fees) arising out of or in connection with: (i) Your or any User's use of the Services and/or Documentation; or (ii) Your collection, use, processing and/or transfer of any Data, Service Data or other personal data; or (iii) any claim of any of any kind including legal fees arising from any claim, demand or action alleging that any use You make of the Services is contrary to any law, code or regulation in any country.

13.1. **Ben's indemnity if Services infringe any third party IP / Ben breaches DPA 2018.**

Ben shall, subject to clause 14.4, defend You against any claim that: (a) the Services infringe any United Kingdom patent effective as of the Start Date, UK copyright, trade mark, or right of confidentiality; (b) Ben have breached the Data Protection Act 2018, and shall indemnify You for any amounts awarded against You in judgment or settlement of such claims, provided that: (i) Ben is given prompt notice of any such claim; (ii) You provide reasonable co-operation to Ben in the defence and settlement of such claim, at Ben's expense; and (iii) Ben is given sole authority to defend or settle the claim. In the defence or settlement of any claim, Ben may procure the right for You to continue using the Services, replace or modify the Services so that they become non-infringing or, if such remedies are not reasonably available, and Ben are

unable, after best efforts, to procure for You the right to continue using the Services or to provide functionally equivalent Services, terminate this Agreement on 14 Business Days' notice without further liability to You.

- 13.2. **Exclusions to Ben's IP and Data Protection Indemnity.** In no event shall Ben, its employees, agents and sub-contractors be liable to You to the extent that the alleged infringement is based on: (a) a modification of the Services by anyone other than Ben; or (b) Your use of the Services in a manner contrary to the instructions given to the Customer by Ben; or (c) Your use of the Services after notice of the alleged or actual infringement from Ben or any appropriate authority.
- 13.3. The foregoing states each party's sole and exclusive rights and remedies, and each party's (including that party's employees, agents and sub-contractors') entire obligations and liability, for infringement of any patent, copyright, trade mark, database right or right of confidentiality.

14. Limitation of liability

- 14.1. This clause 14 sets out the entire financial liability of Ben (including any liability for the acts or omissions of its employees, agents and sub-contractors) to You in respect of: **(a)** any breach of this Agreement and any support services; **(b)** any use made by You of the Services and Documentation or any part of them; and **(c)** any representation, statement or tortious act or omission (including negligence) arising under or in connection with this Agreement.
- 14.2. Except as expressly and specifically provided in this agreement: **(a)** You assume sole responsibility for your use of the Services, reliance on any content and any action taken; **(b)** all warranties, representations, conditions and all other terms of any kind whatsoever implied by statute or common law are, to the fullest extent permitted by applicable law, disclaimed and excluded from this agreement including, without limitation, any warranties of title, merchantability, or fitness for a particular use or purpose; and **(c)** the Services and the Documentation are provided to You on an "as is" basis.
- 14.3. Nothing in this Agreement excludes the liability of either party: **(a)** for death or personal injury caused by Ben's negligence; or, **(b)** for fraud or fraudulent misrepresentation.
- 14.4. Subject to clause 14.1 and clause 14.3: **(a)** to the maximum extent permitted by law, Ben shall not be liable, whether in tort (including for negligence or breach of statutory duty), contract, misrepresentation, restitution or otherwise for any loss of profits, loss of business, depletion of goodwill and/or similar losses or loss or corruption of data or information, or pure economic loss, or for any special, indirect, punitive, exemplary or consequential loss, costs, damages, charges or expenses however arising under or relating to this agreement, even if Ben has been advised of the possibility thereof, and regardless of the legal or equitable theory (contract, tort or otherwise) upon which the claim is based.; and **(b)** Ben's total aggregate liability in contract, tort (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise, arising in connection with the performance or contemplated performance of this Agreement shall be limited to the total amount of Fees paid by You to Ben during the 6 months immediately preceding the date on which the claim arose. As the Fees for the service properly reflect the delineation of risk between the parties, each party agrees to ensure that it will be responsible for making its own arrangements for the insurance of any loss in excess of its accepted legal liability as necessary.

- 14.5. Under no circumstances shall Ben be responsible or liable for: (a) any inaccuracy, error or delay in, or omission of any data or information entered into the Services by You or any third party; (b) any error or delay in the transmission of such data or information; or (c) any interruption in any such data or information (d) Your reliance on any data or information generated by the Services.

15. Term and termination

- 15.1. This Agreement shall, unless otherwise terminated as provided in this clause 15 commence on the **Start Date** and shall continue through the **Initial Term** and (unless otherwise stated in the Order Form) thereafter, this Agreement shall be automatically renewed for successive rolling periods of your Initial Term (each a **Renewal Term**), until: **(a)** either party notifies the other party of termination, in writing, at least 60 days before the end of the Initial Term (if applicable) or 30 days before any Renewal Term, in which case this Agreement shall terminate upon the expiry of the applicable Initial or Renewal Term; or **(b)** otherwise terminated in accordance with the provisions of this Agreement.
- 15.2. Without affecting any other rights that it may be entitled to, either party may terminate this Agreement or any Order Form without liability to the other if: **(a)** the other party commits a material breach of any of the terms of this Agreement and (if such a breach is remediable) fails to remedy that breach within 30 days of that party being notified in writing of the breach; or **(b)** the other party has a receiver or administrative receiver appointed over it or over any part of its business or assets or passes a resolution for winding up (except for the purposes of a genuine scheme of solvent amalgamation or reconstruction) or a court of competent jurisdiction makes an order to that effect, or becomes subject to an administration order or enters into any voluntary arrangement with its creditors, or it ceases or threatens to cease or carry on business.
- 15.3. Without affecting any other rights that it may be entitled to, Ben may terminate the Agreement for breach if: **(a)** payment of any invoiced amount (except to the extent such invoice is disputed in good faith) or Fee payable is overdue and following notification to You, You do not pay the overdue amount within seven business days of a written notice from Ben; **(b)** You breach the acceptable use policy in clause 6.
- 15.4. On termination of this Agreement for any reason: **(a)** all licences and access to the Services granted under this Agreement shall immediately terminate and the method of access supplied to You will automatically expire and the Services will cease to operate immediately; and **(b)** Ben may destroy or otherwise dispose of any of the Data in its possession unless Ben receives, no later than 10 business days after the effective date of the termination of this Agreement, a written request for the delivery to You of the then most recent back-up of the Data. This will be delivered to You within 30 days of its receipt of such a written request, provided that You have, at that time, paid all fees and charges outstanding at and resulting from termination (whether or not due at the date of termination). You shall pay all reasonable expenses incurred by Ben in returning or disposing of the Data; and **(c)** the accrued rights of the parties as at termination, or the continuation after termination of any provision expressly stated to survive or implicitly surviving termination, shall not be affected or prejudiced.
- 15.5. Termination of an individual Order Form shall not terminate the agreement. Termination of an Order Form in accordance with this clause shall have the effect

that the terminated Order Form shall be severed from the agreement, which shall otherwise remain in full force and effect.

15.6. The parties may following termination agree a 30 day transition period for Services to continue, subject to the payment of an agreed fee in advance to Ben.

15.7. If this Agreement is terminated prior to the end of the Initial Term or any Renewal Term, all fees payable up to the end of the Initial Term or any Renewal Term and all other fees due and payable to Ben under this Agreement shall be immediately due and payable to Ben.

16. Marketing

You allow Ben to publish You as a customer of Ben for marketing purposes and to use Your then current trade mark logo and name on the Ben web site. Ben may from time to time collaborate with You to produce and publish customer comments, endorsements, case studies and other instances of advocacy, for the purposes of marketing, which You have the right to amend and / or approve before publication. Ben will make reasonable efforts to inform You when and where the publications occur. Whilst Ben will use its best endeavours to ensure best practice, Ben cannot be held liable for any inaccuracies or errors in either Ben marketing materials or third-party marketing materials.

17. Non-solicitation

You shall not, without the prior written consent of Ben, at any time from the date of the Agreement to the expiry of six (6) months after its termination, solicit or entice away from Ben or employ or attempt to employ any person who is, or has been, engaged as an employee or sub-contractor of Ben at any point during the term of this Agreement only. Any consent given by Ben in accordance with this Agreement in writing shall be subject to You paying to Ben a sum equivalent to 20% of the then current annual remuneration of Ben's employee or sub-contractor or, if higher, 20% of the annual remuneration to be paid you to such employee or sub-contractor.

18. Force majeure

Ben shall have no liability to You under this Agreement if it is prevented from or delayed in performing its obligations under this Agreement, or from carrying on its business, by acts, events, omissions or accidents beyond its reasonable control, including, without limitation, strikes, lock-outs or other industrial disputes (whether involving the workforce of Ben or any other party), failure of a utility service or transport or telecommunications network, act of God, war, riot, civil commotion, malicious damage, compliance with any law or governmental order, rule, regulation or direction, accident, breakdown of plant or machinery, fire, flood, storm or default of Ben's or sub-contractors for so long as said cause persists, provided that You are notified of such an event and its expected duration.

19. General

19.1. No variation or modification of this Agreement shall be effective unless it is in writing and signed by both parties (or their authorized representatives).

19.2. No failure or delay by a party to exercise any right or remedy provided under this Agreement or by law shall constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy. No

single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.

- 19.3. Except as expressly provided in this Agreement, the rights and remedies provided under this Agreement are in addition to, and not exclusive of, any rights or remedies provided by law.
- 19.4. If any provision (or part of a provision) of this Agreement is found by any court or administrative body of competent jurisdiction to be invalid, unenforceable or illegal, the other provisions shall remain in force. If any invalid, unenforceable or illegal provision would be valid, enforceable or legal if some part of it were deleted, the provision shall apply with whatever modification is necessary to give effect to the commercial intention of the parties.
- 19.5. This Agreement, and any documents referred to in it, constitute the whole agreement between the parties and supersede any previous arrangement, understanding or agreement between them relating to the subject matter they cover. Each of the parties acknowledges and agrees that in entering into this Agreement it does not rely on any undertaking, promise, assurance, statement, representation, warranty or understanding (whether in writing or not) of any person (whether party to this Agreement or not) relating to the subject matter of this Agreement, other than as expressly set out in this Agreement.
- 19.6. You shall not, without the prior written consent of Ben, assign, transfer, charge, sub-contract or deal in any other manner with all or any of its rights or obligations under this Agreement. Ben may at any time assign, transfer, charge, sub-contract or deal in any other manner with all or any of its rights or obligations under this Agreement.
- 19.7. Nothing in this Agreement is intended to or shall operate to create a partnership, joint venture, agency, franchise or employment relationship between the parties, or authorise either party to act as agent for the other, and neither party shall have the authority to act in the name or on behalf of or otherwise to bind the other in any way (including, but not limited to, the making of any representation or warranty, the assumption of any obligation or liability and the exercise of any right or power).
- 19.8. This Agreement does not confer any rights on any person or party (other than the parties to this Agreement and, where applicable, their successors and permitted assigns).
- 19.9. The provisions of clauses 8, and 10 through 21 shall survive any termination or expiration of this Agreement in accordance with their terms.
- 19.10. This Agreement may be executed in any number of counterparts and by different parties on separate counterparts, each of which, when executed and delivered, shall be deemed to be an original, and all of which, when taken together, shall constitute but one and the same Agreement.

20. Notices

- 20.1. Any notice required to be given under this Agreement shall be in writing and shall be delivered by hand or sent by pre-paid first-class post or recorded delivery post to the other party at its address set out in this Agreement, or such other address as may have been notified by that party for such purposes as set out in this Agreement. A notice delivered by hand shall be deemed to have been received when delivered (or if delivery is not in business hours, at 9 am on the first business day following delivery). A correctly addressed notice sent by pre-paid first-class post or recorded delivery post shall be deemed to have been received at the time at which it would have been delivered in the normal course of post. A notice sent by e-mail shall be deemed to

have been received at 9am on the first day following delivery. Where Ben is required under this Agreement to give You any notice in writing, Ben may give this notice by letter or by email.

21. Governing law and jurisdiction

- 21.1. This Agreement and any disputes or claims arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) are governed by, and construed in accordance with, the law of England.
- 21.2. The parties irrevocably agree that the courts of England have exclusive jurisdiction to settle any dispute or claim that arises out of or in connection with this Agreement or its subject matter or formation (including non-contractual disputes or claims)