

Terms of Service

Updated: 12th August 2025

About this document

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

1. Definitions	4
2. Structure and term of Agreement	6
3. Services	7
4. Implementation Services	8
5. Provision of the Platform	9
6. Subscription limits and Add-On Services	9
7. Support services	10
8. Third party usage and Affiliates	10
9. Ben's obligations	11
10. Third Party Integrations	11
11. Restrictions of use and acceptable use policy	12
12. Your obligations	13
13. Data and data protection	15
14. Suspension	16
15. Fees and payment	17
16. Proprietary rights	18
17. Confidentiality	18
18. Indemnity	19
19. Limitation of liability	21
20. Term and termination	22
21. Marketing	24
22. Non-solicitation	24
23. Force majeure	25
24. General	25
25. Notices	26
26. Governing law and jurisdiction	27

1. Definitions

Activation Order Form: as defined in clause 2.2.

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

Agreement: these Terms of Service, including the Schedules, and any Order Form entered into pursuant to them.

Ben: means Thanks Ben Ltd, a private limited company incorporated in England and Wales with company number 12335851, whose registered office is at 9th Floor 107 Cheapside, London, United Kingdom, EC2V 6DN.

Benefit: any employee benefit, product or service made available to You and Users through the Platform.

Benefit Provider: any third party provider of a Benefit.

Commencement Date: the date of execution of the first Activation 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 from 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 Platform 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, excluding any Benefit Fees.

Go-Live Date: the earliest of the date: (a) agreed between the parties detailed in the Order Form as the target Go-Live Date(s); and (b) when Ben first makes the Platform available to You for use and on which Ben has completed all of its obligations in the Implementation Plan in respect of the Implementation Services.

Implementation Fee: the fee payable by You for the Implementation Services as detailed in Your Order Form.

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

Implementation Services: the services provided by Ben to configure, customise, and set up the Platform for Your use, including data migration, system integration, initial training, and any other preparatory work as detailed in the Implementation Plan.

Initial Term: the initial term for Your Subscription as detailed in the relevant Activation Order Form, commencing on the Go-Live Date (and where there are multiple Go-Live Dates for a Subscription, the Initial Term shall commence on the earliest Go-Live 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: an order form entered into pursuant to these Terms of Service describing Your Subscription, the Services being purchased, the Fees relating to Your Subscription, any Add-On Services, and where applicable any changes to an existing Subscription.

Platform: the website located at www.thanksben.com.

Recurring Fees: for each Subscription, the annual or any other recurring Fees payable to Ben from the Go-Live Date (and where there are multiple Go-Live Dates for a Subscription, the Recurring Fees shall be payable from the earliest Go-Live Date) for the Initial Term and for any Renewal Term, as detailed in the Order Forms applicable to that Subscription, and as amended in accordance with this Agreement.

Renewal Term: in respect of a Subscription, a period equal in duration to the Initial Term (unless otherwise agreed in an Order Form).

Services: as defined in clause 3.1.

SLA: Ben's service level agreement in your Order Form.

Subscription: means a subscription to access the Platform and accompanying Services to be provided to You under Your subscription tier, as detailed in the relevant Order Form.

Term: the term of this Agreement.

Terms of Service: these terms and conditions.

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

You or Your: means the entity to whom Ben is providing the Services, whose details are included in the first Activation 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. In the event of a conflict between an Order Form and this Agreement, the Order Form shall prevail.

2. Structure and term of Agreement

- 2.1. **These terms are a framework.** These Terms of Service will operate as a framework agreement which defines the contractual terms and conditions under which Ben will supply Services to You.
- 2.2. **Agreement of Order Forms.** The parties shall agree the provision of Services by entering into Order Forms, which shall be governed by and be subject to these Terms of Service, and shall be incorporated into the Agreement. Order Forms may include:
 - (a) Order Forms under which a Subscription is first purchased (“Activation Order Form”); and
 - (b) Order Forms which vary an existing, previously purchased Subscription (“Variation Order Form”).
- 2.3. **Term of this Agreement.** This Agreement shall commence on the Commencement Date and shall continue, unless terminated earlier in accordance with its terms, until either party gives to the other party written notice to terminate. Notice served in accordance with this clause shall only expire when all Subscriptions active at the point at which notice is served expire, and/or are terminated. If there are no active Subscriptions as at the date notice to terminate is served under this clause 2.3, such notice shall terminate this Agreement with immediate effect. The parties shall not enter into any further Order Forms after the date on which notice to terminate is served under this clause 2.3.
- 2.4. **Term of each Subscription.** Each Subscription shall commence on the date of signature of the Activation Order Form, following which Ben shall begin providing the Implementation Services in respect of that Subscription until the Go-Live Date, on which the Initial Term shall

commence. At the end of the Initial Term, the Subscription shall automatically renew for successive Renewal Terms, unless:

- (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 the end of any Renewal Term, in which case the relevant Subscription shall terminate upon the expiry of the applicable Initial or Renewal Term; or
 - (b) otherwise terminated in accordance with the provisions of this Agreement,
- and the Initial Term together with each subsequent Renewal Term are referred to collectively as the "Subscription Term".

3. Services

- 3.1. Scope of Services.** The services provided as part of each Subscription will be as set out in the Order Forms that relate to that Subscription (the "Services") and may comprise the:
 - (a) provision of access to the Platform in accordance with clause 5;
 - (b) provision of Implementation Services in respect of the Platform in accordance with the Implementation Plan;
 - (c) provision of the "Professional" service as described in your order form; and/or
 - (d) the Ben Card Solution as defined and described in, and provided in accordance with the Card Terms of Service.
- 3.2. Delivery and performance dates.** Any dates quoted for delivery or performance of any part of the Services are approximate only. Any services which are not detailed in the Documentation, Implementation Plan, or an Order Form are out of scope and subject to additional charges as Add-On Services.
- 3.3. 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 or 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. In the event that You object to such changes on the grounds that such change has a material adverse and detrimental effect on Your use of the Platform, Your sole remedy shall be the termination of this Agreement. In the event of the termination of this Agreement by You in accordance with this clause, Ben shall refund to You any Recurring Fees already paid in advance for the Platform which have not been provided up to the date of termination, on a pro-rata basis.

- 3.4. The Services are not bespoke.** 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 the Documentation relevant to Your Subscription meet Your requirements.
- 3.5. AI-powered features.** Your use of any AI-powered features within the Platform shall be subject to the AI terms of service.

4. Implementation Services

- 4.1. Implementation Plan.** Ben will use reasonable endeavours to perform the Implementation Services in accordance with the Implementation Plan.
- 4.2. Your responsibility to understand the Platform and Your use of it.** You acknowledge and agree that whilst the Platform is designed for ease of use, and notwithstanding any obligation on Ben to provide training as set out in the Implementation Plan, it is Your responsibility to ensure that any individuals involved in accessing and using the Platform are appropriately trained in the use of the Platform and understand and are familiar with the Platform and any training materials or Documentation made available to You relating to them.
- 4.3. Liability for delays.** Ben will not be liable for any delay or failure in performance of the Services, or inability to use or access the Platform or deterioration in its performance, in whole or part directly or indirectly caused by any act or omission by You or anyone acting on Your behalf (including any failure or delay by You or any third party acting on Your behalf to comply with Your obligations under this Agreement, including the provision of assistance or information, or any misuse, incorrect or unauthorized use of the Platform, or failure to use the Platform in accordance with Ben's instructions), or any failure of Your IT infrastructure or any part of it. In such circumstances, Ben shall be entitled to an extension of time for the performance of its affected obligations. Any additional work required to be carried out by Ben, as a result of such act or omission, in order to fulfil its obligations or procure Your access to the Platform, shall be chargeable (and provided at Ben's discretion) as Add-On Services at Ben's standard rates then in force.
- 4.4. Migration Services.** Where specified in the Implementation Plan, Ben shall use reasonable efforts to ensure the accurate migration of any Data into the Platform, but shall not be liable to the extent You provide Ben with incomplete or inaccurate Data. 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. If errors in the migrated Data are directly attributable to Ben's migration process, independent of the quality of Data provided by You, Ben will correct such errors at no additional charge. If corrections or modifications to migrated Data are necessary as a result of the Data provided by You, such corrections will be chargeable activities at Ben's rates then in force for such services.

5. Provision of the Platform

- 5.1. Right to access the Platform.** In respect of each Subscription, for the duration of the Subscription Term and subject to You paying the appropriate Fees to Ben 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 to permit Users to use the Platform and the Documentation solely for Your business operations within the limits of the Subscription You have purchased.
- 5.2. Availability.** Ben shall, during the Subscription Term, use commercially reasonable endeavours to make the Platform available 24 hours a day seven days a week, except for: (a) planned maintenance; and (b) unscheduled emergency maintenance performed outside of normal business hours in accordance with our SLA.

6. Subscription limits and Add-On Services

- 6.1. The limits of Your Subscription.** If Your use of the Platform exceeds any limits detailed in this Agreement or an Order Form, Ben shall be entitled to automatically charge You for such additional use of the Platform. You agree to pay any applicable additional Fees within 30 days of receipt of invoice. Ben shall be entitled to audit and monitor Your use of the Platform at any time to ensure compliance with this Agreement.
- 6.2. Amending Your Subscription.** Where You amend Your Subscription part way through any Initial Term or Renewal 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 Initial Term or Renewal Term. You may not decrease the number of Users during any Initial Term or Renewal Term. User numbers are subject to a minimum user base requirement.

7. Support services

- 7.1. Support services.** Ben will, as part of the Services, provide You with Ben's standard customer support services and onboarding services as detailed in the relevant Documentation and the SLA.
- 7.2. Updating service.** As part of its support service Ben shall provide error correction, patches, fixes and updates to the Platform as generally made available to its customers. 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 deterioration in the performance of the Platform caused by a failure of Your IT infrastructure to comply with the Minimum Specification.
- 7.3. Out of scope requests.** Any support requests or onboarding assistance requested which is outside the scope of Your Subscription will be chargeable as Add-On Services.
- 7.4. Misuse or lack of training.** 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.

8. Third party usage and Affiliates

- 8.1. Use by subcontractors and consultants.** You may allow third party sub-contractors and consultants to make use of the Platform only for Your internal business purposes in accordance this Agreement, however You remain responsible for all activities of these third parties and their compliance with the terms of this Agreement.
- 8.2. Use by Affiliates.** Affiliates (where an "Affiliate" means, in respect of an entity, any other entity directly or indirectly, controlling, controlled by, or under common control with, that entity) can use the Platform:
- (a) under an existing Subscription subject to the following: (i) Your Affiliates shall be entitled to use the Platform under such Subscription provided such use is in accordance with this Agreement and any usage limitations contained within in it (such as a maximum number of Users); (ii) You shall be liable for each Affiliate's acts, omission and breaches of the Agreement, and Ben shall be entitled to recover any Fees payable for use of the Platform and Benefit Fees payable by an Affiliate from You directly (unless the parties otherwise agree in an Order Form that the Affiliate is directly responsible for payment); and (iii) any claims brought against Ben under or in connection with that Subscription must be brought by You; or

(b) by an Affiliate purchasing its own Subscription under this Agreement by entering into a separate Activation Order Form.

9. Ben's obligations

9.1. Warranty. Ben warrants that it will perform the Services materially in accordance with the Documentation and with reasonable skill and care.

9.2. Exceptions to warranty. Ben shall not be liable for any breach of the warranty at clause 9.1 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 or any party acting under Ben's authority. If the Services do not conform with the warranty at clause 9.1, Ben will, at its expense, use all reasonable 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 clause 9.1. 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 Platform may be subject to limitations, delays and other problems inherent in the use of such communications facilities.

9.3. Exclusion of implied terms. The warranties and representations set out in this Agreement are in lieu of all other express or implied (by statute or common law) warranties, representations or conditions, including implied warranties or conditions of satisfactory quality and fitness for a particular purpose, which are (to the fullest extent permitted by applicable law) excluded from this Agreement.

10. Third Party Integrations

10.1. Platform integrations. The Platform offers the ability for You to integrate with various third-party products, software, and applications ("Third Party Integrations"). You acknowledge and agree that:

(a) the operation of such Third Party Integrations may be dependent on You accepting, agreeing to, and complying with the relevant terms and conditions of the third-party provider of the Third Party Integrations, and Ben shall not have any liability should the

Third Party Integrations be unavailable due to Your failure to accept or comply with such terms and conditions;

- (b) these Third Party Integrations may not operate in a reliable manner at all times, and they may impact the way that the Platform operates, and Ben makes no warranty or representation regarding the performance of such Third Party Integrations;
- (c) Ben is not responsible for any damages or losses suffered or incurred by You due to the use of, operation, or failure of these Third Party Integrations;
- (d) the third-party provider of such Third Party Integrations may at any time remove, disable, or discontinue the Third Party Integrations in question, or the ability to integrate with them, and Ben shall not be liable to You for any resulting unavailability of the Third Party Integration; and
- (e) 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.

11. Restrictions of use and acceptable use policy

11.1. Your responsibility for Users. 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 misuse of any username or password or any part of the Services, whether with or without Your knowledge.

11.2. Prohibited activities. You shall not access, store, distribute or transmit any viruses, or any material to the Platform during the course of Your use of it 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 the Services as a result of a breach of the provisions of this clause.

11.3. Restrictions on use of the Services. 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, unless otherwise agreed with Ben in writing, 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) unless otherwise agreed with Ben in writing, permit any third party to benefit from the use or functionality of the Services.

12. Your obligations

12.1. Your obligations. You shall:

- (a) perform Your obligations under this Agreement in a timely and efficient manner, and 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 You shall ensure that such information and Data are accurate in all material respects);
- (b) appoint an individual who shall have the authority to contractually bind You on matters relating to the Services;

- (c) comply with all applicable laws and regulations with respect to Your activities under this Agreement and in Your use of the Services;
- (d) be solely responsible for procuring and maintaining Your network connections and telecommunications links from Your systems to the Platform, 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;
- (e) be responsible for procuring the co-operation of any of Your third-party suppliers and subcontractors required for the receipt of the Services (but for the avoidance of doubt excluding any subcontractors of Ben); and
- (f) without prejudice to Ben's security obligations (as further described at the Ben Trust Centre), operate best practice and ensure appropriate security precautions are taken in connection with Your use of the Platform, including operating firewalls and virus checks.

12.2. Uploading Content. Whenever You or Your Users make use of a feature that allows You or them to upload "content" (meaning any digital material) to the Platform, You must comply (and must procure that Your Users comply) with the content standards set out in clause 11.2 of this Agreement (or as otherwise provided to You by us). You retain all of Your ownership rights in Your content, but You grant Ben 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. Ben has the right to remove any content You or Your Users upload to the Platform, without liability, if, in Ben's opinion, that content does not comply with this Agreement.

12.3. Ensuring that Your use of the Services meets any required standards. You must (and must procure that Your Users):

- (a) ensure that any content uploaded by You to the Platform is to the best of Your knowledge, true, accurate, current and complete and ensure that You maintain and promptly update this information if it changes;
- (b) not infringe Ben's Intellectual Property Rights or those of any third party in relation to Your use of the Platform; and
- (c) not use the Platform in a way that could damage, disable, overburden, impair or compromise Ben's systems or security or interfere with other users.

12.4. Users. You are responsible for fielding enquiries directly from Your Users and for any liability which results from their use of the Platform (other than any liability directly caused by any breach by Ben of this Agreement). You agree to indemnify Ben, in full in respect to any

claim made against Ben by any User except to the extent such claims arise directly from Ben's breach of this Agreement.

13. Data and data protection

- 13.1. 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.
- 13.2. Ben's right to use Your Data.** You grant to Ben the right for the Term to use Your Data solely for the purposes of providing the Services.
- 13.3. Data back-ups.** Ben shall take back-ups of Your Data in accordance with its Data Policy (available on request). Where:
- (a) Ben has caused any corruption or loss of Your Data through a breach of this Agreement, Your sole remedy shall be for Ben to restore the latest back-up it has taken of Your Data; and
 - (b) where the Customer has caused any corruption or loss of Your Data, Ben shall have no obligation to restore Your Data from any back-up it has taken. You must always keep a separate copy of Your Data.
- 13.4. Security.** Ben shall implement effective and appropriate data security in respect to the provision of Services (including operating firewalls and virus checks).
- 13.5. Usage Data.** You grant to Ben a non-exclusive, perpetual, irrevocable, royalty free license to use any of the Data generated from Your use of the Platform (but for the avoidance of doubt not any of the Data You upload to the Platform) ("Usage Data"), provided that such data is anonymised, for the purposes 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; and
 - (c) complying with any applicable governmental or regulatory requirements.
- 13.6. DPA.** Ben's Data Processing Addendum ("DPA") sets out the obligations of the parties in respect to the processing of personal data. 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 (as defined in the DPA).

14. Suspension

14.1. Ben's right to suspend. Ben shall be entitled to suspend access to the Platform without liability if:

- (a) Ben reasonably believes that the Platform is being used in breach of the Agreement, or You are engaging in any activity which is damaging or potentially damaging to Ben's business or other users;
- (b) You do not co-operate with Ben's reasonable investigation of any suspected violation of the Agreement;
- (c) there is an attack on the Platform or the Platform is accessed by or manipulated by a third party without Ben's consent (in such circumstances Ben shall be entitled to suspend access to the Platform immediately to protect the integrity and security of the Platform, the data held on the Platform, and its users, but Ben will notify You as soon as practicable of any such suspension); and/or
- (d) Ben is required by law to suspend access to the Platform (in such circumstances Ben shall be entitled to suspend access to the Platform immediately without prior notice, but will notify You of the suspension and the reasons for it as soon as legally permissible).

14.2. Notice of suspension. Unless immediate suspension is required under clauses 14.1(c) and/or 14.1(d), Ben will provide You with reasonable prior notice of any intended suspension and provide an opportunity to remedy any breach within a specified timeframe appropriate to the nature of the breach.

14.3. Other events requiring suspension. Ben shall be entitled to suspend the Services on 14 days' advance notice if there is another event not detailed in clause 14.1 for which Ben reasonably believes that suspension of the Services is necessary to protect its or any other party's network, system, the Platform or other customers.

14.4. Restoration of access. Following a suspension of access to the Platform under this Agreement, Ben will promptly restore Your access to the Platform once the cause of the suspension has been resolved to Ben's reasonable satisfaction. The timeline for restoration will depend on the nature of the issue but will occur without undue delay.

14.5. Effect on payment obligations. For the avoidance of doubt, any suspension of Services, unless caused directly by a breach by Ben of this Agreement, shall not suspend Your obligation to pay any Fees or Benefit Fees. However, if the suspension is due to reasons beyond Your control or due to a Force Majeure Event (as defined in clause 23), Ben shall

work with You to resolve the issue promptly and discuss appropriate adjustments to the Fees, if applicable.

15. Fees and payment

- 15.1. Obligation to pay the Fees.** You shall pay the Fees to Ben in respect of each Subscription in accordance with this clause 15, subject to any other payment terms detailed in the Order Forms applicable to that Subscription, or as otherwise agreed between the parties.
- 15.2. Implementation Fee.** The Services in respect of any Subscription will not commence until the Implementation Fee is paid.
- 15.3. Billing details.** Upon the Commencement Date, You shall provide to Ben relevant valid, up-to-date and complete contact and billing details. In respect of each Subscription, Ben shall be entitled to invoice You for the Implementation Fee on or after the date of signature of the relevant Order Form. You shall pay the Implementation Fee to Ben within 15 days of the date of the invoice.
- 15.4. Payment of Recurring Fees.** In respect of each Subscription the Recurring Fees shall become payable for the Initial Term as outlined in your Order Form. Unless agreed between the parties, for each subsequent Renewal Term, fees will be billed annually in advance of the start of each Renewal Term.
- 15.5. Late payment.** If Ben has not received payment within 14 days after the due date for any Fees or Resold Benefit Fees, then without prejudice to any other rights and remedies Ben has:
- (a) Ben shall be entitled, without liability to You, on 7 days' advance notice, to disable Your account and suspend access to all or part of the Platform (or as applicable to suspend performance of the Implementation 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.
- 15.6. Nature of Fees.** All amounts and fees stated or referred to in this Agreement:
- (a) are non-cancellable and non-refundable; and

(b) are exclusive of applicable tax (such as VAT), which shall be added to Ben's invoice(s) at the appropriate rate.

15.7. Right to increase Fees. Ben shall be entitled to increase the Recurring Fees payable in respect of each Subscription 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 by giving notice, effective 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 the Fees shall be increased accordingly. Ben shall be entitled to increase Resold Benefit Fees from time to time upon written notice to You.

16. Proprietary rights

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 Platform, 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 Platform, Services or the Documentation.

17. Confidentiality

17.1. Provision of Confidential Information. 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.

17.2. Confidentiality obligations. Subject to clause 17.3, 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.

- 17.3. Right to disclose.** 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.
- 17.4. Limiting disclosure.** 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, contractors or agents in violation of the terms of this Agreement.
- 17.5. Loss caused by third parties.** 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.
- 17.6. Details of the Services.** 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 in respect of the Platform, constitute Ben's Confidential Information.
- 17.7. Your Data.** Ben acknowledges that Your Data is Your Confidential Information.
- 17.8. Survival.** This clause 17 shall survive termination of this Agreement, however arising.

18. Indemnity

- 18.1. Your indemnity to Ben.** Except to the extent directly caused by Ben's breach of this Agreement or negligence, You shall defend, indemnify and hold harmless Ben, its affiliates, officers, directors, employees, and subcontractors from and against any 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:
- (a) Your or any User's misuse or unauthorised use of the Platform and/or Documentation; or
 - (b) any use made by Ben in accordance with this Agreement of any Data;

- (c) any claim or allegation of any kind that any use You make of the Platform is contrary to any applicable laws, rules, regulations, or codes of practice, including, but not limited to, employment laws or workplace regulations;
- (d) any breach of obligations owed to Users who are Your employees, former employees, or contractors, including claims of discrimination, unfair treatment, denied or delayed access to benefits, or other claims arising from their ability (or inability) to access or use the Platform provided by You or on Your behalf;
- (e) any breach of the terms, conditions, or policies of Benefits Providers or other third parties arising out of or in connection with Your or Your Users' use of the Platform; and
- (f) any failure to fulfil Your responsibilities or obligations as an employer or in any other capacity relating to Users who are employees, contractors, or third parties accessing the Platform.

18.2. Ben's indemnity to You. Subject to clause 19.3, Ben shall defend You against any claim that:

- (a) the Platform infringes any patent effective as of the Go-Live Date, copyright, trade mark, or right of confidentiality; and
- (b) Ben has breached the Data Protection Act 2018,

and shall indemnify You for any amounts awarded against You in judgment or settlement of such claims.

18.3. Indemnified Party's obligations. Where a party (the "Indemnified Party") wishes to recover under one of the indemnities in clauses 18.1 and 18.2, it shall:

- (a) give the party providing the indemnity (the "Indemnifying Party") prompt notice of the claim in respect of which it wishes to recover;
- (b) provide reasonable cooperation to the Indemnifying Party in the defence and settlement of such claim, at the Indemnifying Party's expense; and
- (c) give the Indemnifying Party sole authority to defend or settle the claim.

18.4. Ben's rights as the Indemnifying Party. In the defence or settlement of any claim covered by clause 18.2(a), Ben may procure the right for You to continue using the Platform, replace or modify the affected parts of the Platform so that they become non-infringing or, if such remedies are not reasonably available, and Ben is unable, after best efforts, to procure for You the right to continue using the Platform or to provide equivalent functionality, terminate any affected Subscription and if applicable this Agreement on 14 days' notice without further liability to You.

- 18.5. Exclusions to Ben's IP and Data Protection Indemnity.** In no event shall Ben, its employees, agents and sub-contractors be liable to You under the indemnity in clause 18.2(a) to the extent that the alleged infringement is based on:
- (a) a modification of the Platform by anyone other than Ben or a party acting under its control; or
 - (b) Your use of the Platform in a manner contrary to the written instructions given to You by Ben; or
 - (c) Your use of the Platform after notice of the alleged or actual infringement from Ben or any appropriate authority; or
 - (d) any Data or content uploaded by You, on Your behalf, or by Your Users to the Platform.
- 18.6. Sole and exclusive remedy.** 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.

19. Limitation of liability

- 19.1. Disclaimers.** Except as expressly and specifically provided in this Agreement: (a) You assume sole responsibility for the Data uploaded to the Platform; and (b) the Services and the Documentation are provided to You on an "as is" basis.
- 19.2. Liability that is not limited or excluded.** Nothing in this Agreement excludes the liability of either party:
- (a) for death or personal injury caused by negligence; or,
 - (b) for fraud or fraudulent misrepresentation; or
 - (c) for a breach of its confidentiality obligations in clause 17; or
 - (d) for infringing the other party's Intellectual Property Rights.
- 19.3. Liability exclusions and limits.** Subject to clause 19.2:
- (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 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
 - (b) in respect of each Subscription, Ben's total aggregate liability in any 12-month period starting on the date of signature of the Activation Order Form or any anniversary of it

(each an “Subscription Year”), whether 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 in respect of that Subscription in that Subscription Year, shall be limited to the total amount of Fees paid by You to Ben during that Subscription Year; and

- (c) except where liability relates to a specific Subscription under clause 19.3(b), Ben's total aggregate liability in any 12-month period starting on the Commencement Date or any anniversary of it (each an “Agreement Year”), whether 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 in that Agreement Year, shall be limited to 75% of the total amount of Fees paid by You to Ben during that Agreement Year. 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.

19.4. Matters for which Ben is not responsible. 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 Platform by You or any third party, or provided by You to Ben in order for Ben to provide the Implementation Services, and Ben will not be liable for any resulting error or failure in the enrolment of a User to a Benefit, calculating Your or any User’s tax treatment or status, or calculating pension contributions in respect of a User;
- (b) any error or delay in the transmission of such Data or information;
- (c) any interruption in any such Data or information;
- (d) Your reliance on any Data or information generated by the Platform; or
- (e) any loss or corruption of Data, except to the extent set out in clause 13.3.

20. Term and termination

20.1. Mutual termination rights. Without affecting any other rights that it may be entitled to, either party shall be entitled to terminate a Subscription (or any active Order Form prior to the Subscription starting) by written notice without liability to the other if:

- (a) the other party commits a material breach of any of the terms of this Agreement in respect to that Subscription or Order Form 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.

20.2. Ben's additional rights to terminate. Without affecting any other rights that it may be entitled to, Ben shall be entitled to terminate a Subscription (or any active Order Form prior to the Subscription starting) for breach if:

- (a) payment of any Fees, Resold Benefit Fees or other invoiced amount (except to the extent such invoice is disputed in good faith) is overdue and following suspension of access by Ben under clause 15.5, You do not pay the overdue amount within seven business days of a further written notice from Ben; or
- (b) You breach clause 11.

20.3. Consequences of termination. On termination of a Subscription for any reason:

- (a) all access to the Platform granted under that Subscription shall immediately terminate and the method of access supplied to You will automatically expire and the Platform will cease to operate immediately;
- (b) Ben shall cease providing any other Services under that Subscription;
- (c) Ben shall delete any of Your Data in its possession relating to that Subscription unless Ben receives, no later than 10 business days after the effective date of the termination, 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;
- (d) 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;
- (e) the provisions of clauses 13, and 15 through 26 shall survive any termination or expiration of this Agreement in accordance with their terms; and
- (f) any Fees and Benefit Fees outstanding at the date of termination shall continue to be payable, and Ben shall be entitled to invoice for any Fees and Benefit Fees incurred but not yet invoiced for (which shall be payable in accordance with this Agreement).

- 20.4. Termination of individual Subscriptions.** Termination of an individual Subscription shall not automatically terminate the Agreement. Termination of a Subscription shall have the effect that the terminated Subscription (and any applicable Order Forms) shall be severed from the Agreement, which shall otherwise remain in full force and effect. Where Ben has the right to terminate any Subscription under clauses 20.1 or 20.2, it shall also be entitled to terminate any other active Subscription.
- 20.5. Transition period.** 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.
- 20.6. Effect of early termination on payment.** If this Agreement is terminated prior to the end of the Initial Term or any Renewal Term other than by the Customer for material breach by Ben, all Fees and Benefit 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.

21. Marketing

- 21.1. Permitted Marketing Activities.** Ben may use Your current name, trade marks, and logo(s) (“Brand Assets”) only for the following purposes and always subject to Your brand guidelines as provided to Ben from time to time:
- (a) displaying Your logo and/or name on Ben’s website and in sales or marketing materials for the purpose of identifying You as a customer;
 - (b) referring to You as a customer in Ben’s communications with prospective clients, partners and investors;
 - (c) preparing and publishing case studies relating to Your use of Ben’s Services or the Platform;
 - (d) producing and publishing customer testimonials, endorsements or quotes provided by You; and
 - (e) co-presenting with You at events such as conferences, webinars, or industry panels, where participation is mutually agreed in advance.
- 21.2. Approvals.** Ben must obtain Your prior written approval (not to be unreasonably withheld or delayed) before:
- (a) publication of case studies, testimonials, endorsements, or customer quotes featuring Your Brand Assets;
 - (b) any use of Your Brand Assets in relation to co-presenting at an event.

- 21.3. Generic use of Your logo and/or name under clauses 21.1(a) and 21.1(b) above does not require separate approval, provided Ben complies with Your brand guidelines.

22. Non-solicitation

You shall not, without the prior written consent of Ben, at any time from the Commencement Date to the expiry of six (6) months after this Agreement's 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, other than by means of a national advertising campaign open to all comers and not specifically targeted at any of the employees of Ben. Any consent given by Ben in accordance with this clause 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 by You to such employee or sub-contractor.

23. Force majeure

Ben shall have no liability to You under this Agreement if it or its subcontractor is prevented from or delayed in performing its obligations under this Agreement by acts, events, omissions, or accidents beyond its reasonable control, including, without limitation, strikes or other industrial disputes, internet or other telecommunications failures, denial of service attacks, compliance with any law or governmental order, rule, regulation, or direction, fire, flood, storm, pandemic, or other outbreak of disease (each a "Force Majeure Event") affecting Ben or its subcontractors. In the event of a Force Majeure Event, Ben shall notify You as soon as reasonably practicable, providing details of the Force Majeure Event and its expected duration and use commercially reasonable efforts to minimise the impact of the Force Majeure Event, including seeking alternative solutions where commercially reasonable, to fulfil its obligations under this Agreement. If the Force Majeure Event persists for more than 4 weeks, either party may immediately terminate the Agreement upon written notice to the other party, without liability, except for any accrued rights and obligations up to the date of termination.

24. General

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

- 24.2. Waiver.** 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.
- 24.3. Rights and remedies.** 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.
- 24.4. Severance.** 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.
- 24.5. Entire agreement.** This Agreement, and any Order Forms entered into under 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.
- 24.6. Assignment.** 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 Your 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.
- 24.7. Relationship between the parties.** Except as otherwise set out in this Agreement, 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).

- 24.8. Third party rights.** 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).
- 24.9. Counterparts.** 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.

25. Notices

Any notice required to be given under this Agreement shall be in writing and shall be delivered by: (a) 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; or (b) email (and where a notice is given to Ben by email, it must be sent to legal@thanksben.com (as updated in writing by Ben from time to time), and where notice is given to You by email, it may be sent to the contact email address provided by You on the first Activation Order Form entered into. 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.

26. Governing law and jurisdiction

- 26.1. Governing law.** 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 laws of England.
- 26.2. Jurisdiction.** 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).
- 26.3. Ben's right to injunction and payment of fees.** Notwithstanding the foregoing, Ben reserves the right to seek and obtain injunctive relief, whether in the form of a temporary restraining order, preliminary injunction, injunction to enforce an arbitration award, or other

order of similar import, including obtaining full payment of all fees and costs under this Agreement from any court of competent jurisdiction.