

**PLEASE READ THESE TERMS AND CONDITIONS CAREFULLY BEFORE USING THE WEBENEFIT SERVICES. IF YOU DO NOT AGREE TO THESE TERMS OF USE, YOU MUST NOT USE THE WEBENEFIT PLATFORM.**

## 1. INTRODUCTION AND ACCEPTANCE

- 1.1 WeBenefit is a service provider that focuses on the provision of multiple value added services and goods and solutions. WeBenefit has made available the WeBenefit Platform to enable organisations to acquire Goods and Services from the WeBenefit Platform;
- 1.2 Services and Goods acquired by the Customer will be subject to these terms and conditions (“**General Terms and Conditions**”) and Services and/or Goods specific terms and conditions (“**Specific T&Cs**”) (where applicable), collectively referred to as the “**Services and/or Goods Contract**”.
- 1.3 **FIRST TIME ACCESS TO THE WEBENEFIT SERVICES (on behalf of Beneficiary): By Clicking on “Register Now” or “Login” for the first time or “I agree” the user acknowledges that:-**
- 1.3.1 He/she is authorised to act on behalf of the Customer;
- 1.3.2 He/she has read the General terms and Conditions;
- 1.3.3 He/she agrees to the General Terms and Conditions;
- 1.3.4 He/she hereby confirms that the necessary authorisation has been obtained for the Customer to utilise the WeBenefit Services; and
- 1.3.5 The Customer will be bound by these General Terms and Conditions when utilising the Services and/or Products made available on the WeBenefit Platform
- 1.3.6 **If he/she is not authorised to act on behalf of the Customer, that he/she will be personally bound by these General Terms and Conditions and that all references to ‘Customer’ will be amended to the ‘user’.**
- 1.4 **WEBENEFIT HAS THE RIGHT IN ITS SOLE DISCRETION TO AMEND THESE GENERAL TERMS AND CONDITIONS OR SPECIFIC T&Cs, WHICH AMENDED CONDITIONS, WILL BE APPLICABLE WHEN PUBLISHED ON THE WEBENEFIT PLATFORM (WITH HYPERLINK THERETO) AND SUBSEQUENT TO THE USER LOGIN TO THE WEBENEFIT PLATFORM. THE TERMS AND CONDITIONS AVAILABLE ON THE WEBENEFIT PLATFORM AT TIME OF SUBMISSION OF THE ORDER WILL APPLY. AMENDMENTS TO ANY TERMS AND CONDITIONS SHALL NOT AFFECT PREVIOUSLY ACCEPTED ORDERS. IN LIGHT OF THE AFORESAID WE DO RECOMMEND THAT YOU READ THE TERMS AND CONDITIONS BEFORE SUBMISSION OF ANY ORDER.**
- 1.5 **TAKE NOTE:** the Terms of Use already applies to you as a user of the WeBenefit website. If there are any conflict between the Terms of Use and these General Terms and Conditions, then the latter will prevail.

## 2. INTERPRETATION

Unless otherwise expressly stated, or the context otherwise requires, the words and expressions listed below shall, when used in these General Terms and Conditions, including this interpretation, bear the meanings ascribed to them:

- 2.1 “**Activation Date**” means the date when a Service will be activated;
- 2.2 “**Authorised Users**” means those employees or agents of the Customer who are authorised by the Customer to use the WeBenefit Platform and the Documentation;
- 2.3 “**Confidential Information**” means any information of whatever nature which has been or may be obtained by either party from the other party pursuant to General Terms and Conditions, whether in writing or in electronic form or pursuant to discussions between the Parties or which can be obtained by examination, testing, visual inspection or analysis, including without limitation, scientific, business or financial data, know-how, formulae (including but not limited to the formula used to calculate the Customer benefit from these General Terms and Conditions), processes, designs, sketches, photographs, plans, drawings, specifications, sample reports, models, supplier lists, price lists, studies, findings, computer software, inventions or ideas. For the avoidance of doubt, Confidential Information is inclusive of any intellectual property and Personal Information that either Party may disclose to the other pursuant to this agreement;
- 2.4 “**Commencement Date**” means the date upon which the provision of Services and/or Goods or an upgrade on a Service will occur, whether the date as state on the Services/Goods Contract or the Activation Date;
- 2.5 “**Consumer**” means consumer as defined in the CPA
- 2.6 “**CPA**” means the Consumer Protection Act 68 of 2008;

- 2.7 **"Customer"** means the organisation that will utilise the WeBenefit Platform to procure the selected Goods and Services from time to time and to benefit from any consumer acquisition of goods or services via the WeBenefit Services;
- 2.8 **"Data Subject"**: as defined under the POPI Act;
- 2.9 **"Documentation"**: the document made available to the Customer by WeBenefit online via WeBenefit Platform or such other web address notified by WeBenefit to the Customer from time to time which sets out a description of the Services and/or Goods and the user instructions for the WeBenefit Services.
- 2.10 **"ECT Act"** means the Electronic Communications and Transactions Act 2002;
- 2.11 **"Effective Date"** means the date a user on behalf of the Customer has clicked on "Register Now" or "I Accept" button to access the WeBenefit Platform or any subsequent access the WeBenefit Platform by an Authorised User;
- 2.12 **"Goods"**: the goods (or any part of them) available on the WeBenefit Platform, made available to the Customer, subject to these General Terms and Conditions and the Specific T&Cs.
- 2.13 **"Goods Specification"**: any specification for the Goods, including any relevant plans or drawings, that is agreed in writing by the Customer and WeBenefit under a Service and/or Goods Contract.
- 2.14 **"Implementation Phase"** means the period commencing on the Commencement Date of a Services and/or Goods Contract and terminating on completion of the Implementation, envisaged to have a duration as set out in the Project Plan, which time will only be confirmed or amended by agreement between both parties;
- 2.15 **"Intellectual Property Rights"/"IPR"** means, but shall not be limited to, concepts, know-how, data processing techniques, copyrights, patents, designs, inventions, trademarks, which are created, invented and/or developed, registered or unregistered;
- 2.16 **"Loan Equipment"** means any hardware, network facilities and/or telecommunication facilities and/or any other equipment or utilities of whatever nature which either Party has lent or made available to the other, regardless of whether or not such loan or availability is regulated in terms of a Services and/or Goods Contract, including but not limited to equipment/hardware under a rental agreement;
- 2.17 **"Location"** means the location where Services will be provided;
- 2.18 **"Operator"**: has the meaning set out in section 1 of the POPI Act 2013.
- 2.19 **"Order"**: the Customer's order for the supply of Goods and/or provision Services, as set out [the Customer's purchase order form (via WeBenefit Platform or any other means as supplied by WeBenefit) OR overleaf OR the Customer's written acceptance of the Supplier's quotation, as the case may be.
- 2.20 **"Parties"** means WeBenefit and the Customer; and "Party" means either of them as the context may indicate;
- 2.21 **"Personnel"** means the employees and/or sub-contractors of WeBenefit designated by WeBenefit to perform Services or deliver the Goods;
- 2.22 **"Personal Information"**: has the meaning set out in section 1 of the Protection of Personal information Act 2013 ("POPI Act");
- 2.23 **"Processing and process"** have the meaning set out in section 1(1) of the POPI Act 2013.
- 2.24 **"POPI Act"** means the Protection of Personal Information Act of 2013;
- 2.25 **"Project Plan"** means the document to be jointly produced and agreed between the Parties prior to the start of the Implementation Phase, which details the tasks, responsibilities and timeframes to allow the WeBenefit to implement and commence the agreed Services. The Project Plan shall form part of the relevant Service and/or Goods Contract (only where applicable);
- 2.26 **"Proposal"** means the Services and/or Goods proposal as may be requested from time to time by the Customer from WeBenefit, where defined Services and/or Goods Specifications and pricing are not already available on the WeBenefit Platform;
- 2.27 **"Responsible Party"**: has the meaning set out in section 1 of the POPI Act 2013.
- 2.28 **"Customer Data"** means the Customer's data - provided to WeBenefit either by the Customer or by any third party on the Customer's behalf to enable WeBenefit to perform the Services;
- 2.29 **"Customer Material"** means all rules, processes, reports, documentation, software or inventions provided or made available by or on behalf of the Customer to WeBenefit for purposes of carrying out the Services, irrespective of the media on which they occur, and includes, all written and printed material;
- 2.30 **"Customer Premises"** or **"Customer Site"** means the premises of the Customer as stipulated under the relevant Service and/or Goods Contract, or such other address as may be advised by Customer

- from time to time;
- 2.31 **"Services"** means the various services available on the WeBenefit Platform to the Customer for its benefit, subject to these General Terms and Conditions and the Specific T&Cs;
- 2.32 **"Service Location"** means location where Services will be performed or delivered or where Services will be delivered from, and will be specified under each Service and/ or Goods Contract (Specifications);
- 2.33 **"Service and/or Goods Contract"**: the contract between WeBenefit and the Customer for the supply of Goods and/or Services in accordance with the General Terms and Conditions and the Specific T&Cs applicable on the day of the Order;
- 2.34 **"Specifications"** means the written document, which sets out the detailed requirements of the Services, which is agreed and initiated by the Parties, and forms part of the Service and/or Goods Contract;
- 2.35 **"Third Party Provider"** means a 3<sup>rd</sup> party that perform the ordered services or deliver the Goods as ordered;
- 2.36 **"WeBenefit"** means WeBenefit (Pty) Limited, a company incorporated in the Republic of South Africa with registration number: 2015/326698/07;
- 2.37 **"WeBenefit's Equipment"** means any Hardware, network or software used by WeBenefit to perform the Services or delivery of the Goods, including but not limited to the WeBenefit Platform;
- 2.38 **"WeBenefit Platform"** means the software program/platform made available by WeBenefit to the Customer and its Authorised Users to select and acquire Services and Goods and monitor all WeBenefit activities available to the Customer;
- 2.39 **"WeBenefit's Premises"** means WeBenefit's business premises situated at 3 Amber Place, Amber Close, Bloemhof, Bellville, South Africa, unless otherwise stated in a Services and/or Goods Contract;
- 2.40 **"WeBenefit Services"** means the WeBenefit Platform and all its functionalities and associated services to make available to the Customer certain Goods and Services and any other services or goods that may be agreed to and delivered outside the WeBenefit Platform to the Customer.
- 2.41 **"WeBenefit Share"** means the share of the payment, as received from a Consumer's transaction, calculated against the percentages applicable to the Consumer's selected Services and/or Goods at the time of the Consumer's transaction via the WeBenefit Services.
- 2.42 Clause and paragraph headings are for purposes of reference only and shall not be used in interpretation.
- 2.43 Unless the context clearly indicates a contrary intention, any word connoting:
- 2.43.1 any gender includes the other two genders;
- 2.43.2 the singular includes the plural and vice versa;
- 2.43.3 natural persons includes artificial persons and vice versa;
- 2.43.4 insolvency includes provisional or final sequestration, liquidation or judicial management.
- 2.44 A reference to a Business Day is a reference to any day excluding Saturday, Sunday and a public holiday in the Republic of South Africa.
- 2.45 When any number of days is prescribed such number shall exclude the first and include the last day unless the last day falls on a Saturday, Sunday, or a public holiday in the Republic of South Africa, in which case the last day shall be the next succeeding Business Day.
- 2.46 A reference to an enactment is a reference to that enactment as at the date of signature hereof and as amended or re-enacted from time to time.
- 2.47 The rule of interpretation that a written agreement shall be interpreted against the party responsible for the drafting or preparation of that agreement shall not apply.
- 2.48 If any provision in a definition is a substantive provision conferring rights or imposing obligations on any party, notwithstanding that it is only in the definition clause, effect shall be given to it as if it were a substantive provision in the body of the Agreement.
- 2.49 Where any term is defined within the context of any particular clause in General Terms and Conditions, then, unless it is clear from the clause in question that the term so defined has limited application to the relevant clause, the term so defined shall bear the meaning ascribed to it for all purposes in terms of General Terms and Conditions, notwithstanding that the term has not been defined in the definition clause.
- 2.50 General Terms and Conditions will in all respects be governed by and construed under the laws of the Republic of South Africa.

### 3. BASIS OF CONTRACT

- 3.1 All information that are incorporated by using hyperlinks and / or other methods of reference form part of the General Terms and Conditions and/or any of the Specific T&Cs (see section 11(3) of the ECT Act);

- 3.2 The Customer acknowledges that all agreements, authorization or request on the WeBenefit Platform satisfy the “writing” requirement as per section 12 of the ECT Act;
- 3.3 For purposes of the WeBenefit Services including submission of Orders the mere sending of Data Messages or click on “Register Now” or “I accept” or “Submit” demonstrates the user’s acknowledgement and agreement to these General terms and Conditions and Specific T&Cs (where applicable).
- 3.4 The Customer represents and warrants that its turnover or net asset value exceeds the sum of R2m (two million rand) and therefore agree to these General Terms and Conditions not as a Consumer;
- 3.5 **Invitation to do business:** Presentation of the Services and/or Goods on the WeBenefit Platform is an invitation to do business with the Customer;
- 3.6 **Offer:** An Order constitutes an offer by the Customer to purchase Goods and/or Services in accordance with the Services and/or Goods Contract.
- 3.7 **Shopping chart:** Placing Goods in a wish list or shopping chart without completing the purchase cycle does not constitute an order for such Goods, and as such, Goods may be removed from the shopping chart if stock is no longer available or the price thereof might change without notice to the Customer. The Customer cannot hold WeBenefit or the Third Party Provider liable if such Goods are not available or are not available at the particular price when the Customer complete or attempt to complete the purchase cycle at a later stage.
- 3.8 **Acceptance and Contract:** WeBenefit or the Third Party Provider will indicate the acceptance of the Order by delivering the Goods to the Customer or allowing the Customer to collect them, and only at that point will an agreement (the “Services and/or Goods Contract”) of sale between the Customer and WeBenefit or the Third Party Provider come into effect. This is regardless of any communication from WeBenefit stating that the Order or payment has been confirmed. WeBenefit will indicate the rejection of the Order (by WeBenefit itself or the Third Party Provider) by cancelling it and, as soon as possible thereafter, refunding the Customer for any amount already paid.
- 3.9 The Service and/or Goods Contract constitute the entire agreement between the parties for a specific Order. The Customer acknowledges that it has not relied on any statement, promise, representation, assurance or warranty made or given by or on behalf of WeBenefit which is not set out in the Services and/or Goods Contract.
- 3.10 Any samples, drawings, descriptive matter or advertising issued by WeBenefit and any descriptions of the the WeBenefit Platform or other communication channel are issued or published for the sole purpose of giving an approximate idea of the Services and/or Goods described in them. They shall not form part of the Services and/or Goods Contract or have any contractual force.
- 3.11 Except where specifically provided to the contrary in Specific T&Cs and then only to the extent so specified, each Services and/or Goods Contract shall be a separate and legally binding contract under which the Customer agrees to purchase, use or rent and WeBenefit agrees to supply certain Services and/or Goods. Insofar as any term and condition in an Specific T&Cs conflicts with these General Terms and Conditions in respect of-
- 3.11.1 the description of Services or the Goods (including but not limited to pricing, specifications, return policy, delivery policy), the terms and conditions in the Specific T&Cs shall prevail;
- 3.11.2 any other matter, these General Terms and Conditions shall prevail.
- 3.12 **Specific T&Cs amendment:** The terms of one Service and/or Goods Specific T&Cs will only apply to another Service and/or Goods Specific T&Cs to the extent specifically and expressly stated therein but to the extent that any Specific T&Cs expressly overrides the provisions of General Terms and Conditions, such amendment will be effective only in respect of that Specific T&C and not any other Specific T&Cs.
- 3.13 In the absence of any Specific T&Cs, these General Terms and Conditions will be binding on the Customer.
- 3.14 The place of conclusion of the Services and/or Product Contract will be presumed to be at WeBenefit Premises.

#### 4. RELATIONSHIP

- 4.1 For the avoidance of doubt, the Parties record and agree that pursuant to the implementation of this agreement WeBenefit shall at all times act as an independent contractor;
- 4.2 Nothing in this agreement shall constitute an employer / employee relationship or an agency or a partnership in any shape or form between the Parties nor authorise either of the Parties to incur any liability on behalf of the other of them, save to the extent expressly provided for herein.

#### 5. TERM

- 5.1 The duration of each Service made available through the WeBenefit Platform will be as confirmed under the relevant Specific T&Cs

- 5.2 Any termination of General Terms and Conditions and / or any Services and/or Goods Contract however caused, shall not affect the coming into force or the continuance in force of any provision of the General Terms and Conditions and / or Services and/or Goods Contract which is expressly or by implication intended to come into or continue in force on or after such termination.

## WEBENEFIT PLATFORM USE

### 6. WEBENEFIT PLATFORM LICENSE GRANTED

- 6.1 Subject to the Customer and its Authorised Users complying with these General terms and Conditions, WeBenefit hereby grants to the Customer a non-exclusive, non-transferable right to permit the Authorised Users to use the WeBenefit Services and the Documentation solely for the Customer's internal business operations.

### 7. WEBENEFIT PLATFORM ACCEPTABLE USE

- 7.1 In relation to the Authorised Users, the Customer undertakes that:
- 7.1.1 each Authorised User shall keep a secure password for his/her use of the WeBenefit Services and Documentation, that such password shall be changed no less frequently than every two months and that each Authorised User shall keep his password confidential;
  - 7.1.2 it will not allow an individual to use the secure password of another Authorised User unless it has been reassigned in its entirety to the individual and the individual is registered as an Authorised User, in which case the prior Authorised User shall no longer have any right to access or use the Services and/or Documentation;
  - 7.1.3 it shall maintain a written, up to date list of current Authorised Users and provide such list to WeBenefit on written request from WeBenefit;
- 7.2 Authorised Users shall not access, store, distribute or transmit any Viruses, or any material during the course of its use of the WeBenefit Services that:
- 7.2.1 is unlawful, harmful, threatening, defamatory, obscene, infringing, harassing or racially or ethnically offensive;
  - 7.2.2 facilitates illegal activity;
  - 7.2.3 depicts sexually explicit images;
  - 7.2.4 promotes unlawful violence;
  - 7.2.5 is discriminatory based on race, gender, colour, religious belief, sexual orientation, disability; or
  - 7.2.6 in a manner that is otherwise illegal or causes damage or injury to any person or property;

and WeBenefit reserves the right, without liability or prejudice to its other rights to the Customer, to disable the Customer's access to any material that breaches the provisions of this clause.

- 7.3 Authorised Users or any other user shall not, except as may be allowed by any applicable law which is incapable of exclusion by agreement between the parties and except to the extent expressly permitted under these General Terms and Conditions,:
- 7.3.1 attempt to copy, modify, duplicate, create derivative works from, frame, mirror, republish, download, display, transmit, or distribute all or any portion of the WeBenefit Platform and/or Documentation (as applicable) in any form or media or by any means; or
  - 7.3.2 attempt to reverse compile, disassemble, reverse engineer or otherwise reduce to human-perceivable form all or any part of the WeBenefit Platform; or
  - 7.3.3 access all or any part of the WeBenefit Platform and Documentation in order to build a product or service which competes with the Services and/or the Documentation; or
  - 7.3.4 use the WeBenefit Services and/or Documentation to provide services to third parties; or
  - 7.3.5 license, sell, rent, lease, transfer, assign, distribute, display, disclose, or otherwise commercially exploit, or otherwise make the WeBenefit Services and/or Documentation available to any third party except the Authorised Users, or
  - 7.3.6 attempt to obtain, or assist third parties in obtaining, access to the WeBenefit Platform and/or Documentation, other than as provided under this clause 6; and
- 7.4 The Customer shall use all reasonable endeavours to prevent any unauthorised access to, or use of, the WeBenefit Services and/or the Documentation and, in the event of any such unauthorised access or use, promptly notify WeBenefit.
- 7.5 The rights provided under this clause 6 are granted to the Customer only.
- 7.6 At any time, the Customer can choose to stop using the WeBenefit Platform, with or without notice to WeBenefit.

### 8. ACCESSING THE WEBENEFIT PLATFORM

- 8.1 WeBenefit does not guarantee that the WeBenefit Platform, or any content on it, will always be available or be uninterrupted. Access to the WeBenefit Platform is permitted on a temporary basis. WeBenefit may suspend, withdraw, discontinue or change all or any part of the WeBenefit Platform without notice.

- WeBenefit will not be liable to the Customer if for any reason the WeBenefit Platform is unavailable at any time or for any period.
- 8.2 WeBenefit will use reasonable endeavours to maintain the availability of the WeBenefit Platform, except during scheduled maintenance periods, and reserve the right to discontinue providing the Website Platform or any part thereof with or without notice to the Customer.
- 8.3 The Customer and Authorised User are responsible for making all arrangements necessary for them to have access to the WeBenefit Platform.
- 8.4 The Customer and/or Authorised User are also responsible for ensuring that all persons who access the WeBenefit Platform through the Customer / Authorised User's internet connection are aware of these General Terms and Conditions and other applicable terms and conditions, and that they comply with them.
- 8.5 WeBenefit may in its sole discretion terminate, suspend and modify the WeBenefit Platform, with or without notice to the Customer or Authorised Users. The Customer agrees that WeBenefit will not be liable to the Customer in the event that it chooses to suspend, modify or terminate the WeBenefit Platform other than for processing any Orders made by the Customer prior to such time, to the extent possible.
- 8.6 If the Customer fails to comply with the Customer's obligations under these General Terms and Conditions, including any incident involving payment of the price of an Order for any Goods or Services, this may (in our sole discretion with or without notice to the Customer) lead to a suspension and/or termination of the Customer's access to the WeBenefit Platform without any prejudice to any claims for damages or otherwise that WeBenefit may have against the Customer.
- 8.7 WeBenefit reserves the right, for purposes of preventing suspected fraud and/or where it suspects that the Customer or a user abuse the WeBenefit Platform or is in breach of the General Terms and Conditions or any product/Service specific terms and conditions, to suspend or terminate the Customer's and/or particular user's access to the WeBenefit Platform or to cancel any Order concluded between the Customer and WeBenefit, in whole or in part, on notice to the Customer. WeBenefit shall only be liable to refund monies already paid by the Customer (see WeBenefit's Returns Policy (clause 12 below in this regard), and accepts no other liability which may arise as a result of such blacklisting and/or refusal to process any order.

## 9. WEBENEFIT PLATFORM CHANGES

- 9.1 WeBenefit do not guarantee that the WeBenefit Platform, or any content on it, will be free from errors or omissions.
- 9.2 WeBenefit may update the WeBenefit Platform from time to time, and may change the content at any time. However, please note that WeBenefit will endeavour to update the content regularly the content may be out of date at any given time, and WeBenefit are under no obligation to update it.
- 9.3 WeBenefit may in its sole discretion terminate, suspend and modify this WeBenefit Platform, with or without notice to the Customer / Authorised User. The Customer/Authorised User agrees that WeBenefit will not be liable to the Customer or any of its Authorised Users in the event that it chooses to suspend, modify or terminate the WeBenefit Platform other than for processing any orders made by the Customer prior to such time, to the extent possible.

## TERMS AND CONDITIONS OF SUPPLY

If the Customer purchases Goods or order Services from the WeBenefit Platform, the following terms and conditions (clauses 10 to 19) will apply, **unless otherwise agreed to under Goods or Services Specific T&C presented to the Authorised User just prior to submission of the Order.**

## 10. GOODS

- 10.1 The Goods are described in WeBenefit's catalogue, Documentation, on the WeBenefit Platform or as per WeBenefit's written Proposal as modified by any applicable Goods Specification.
- 10.2 WeBenefit reserves the right to amend the:-
- 10.2.1 specification of the Goods or Goods Specification if required by any applicable statutory or regulatory requirements.
- 10.2.2 WeBenefit's catalogue in its sole discretion without notice.

## 11. DELIVERY OF GOODS

- 11.1 Subject to availability and receipt of payment, accepted Orders will be delivered in accordance with the delivery policy presented to the Customer's Authorised User on submission of his/her Order;
- 11.2 WeBenefit shall deliver the Goods to the location set out in the Order or such other location as the parties may agree in writing ("Delivery Location"), during business hours (08:00 – 17:00, excluding Public Holidays and weekends);
- 11.3 Any dates quoted for delivery of the Goods ("Delivery Date") are approximate only, and the time of delivery is not of the essence. WeBenefit shall not be liable for any delay in delivery of the Goods that is caused by a

- Force Majeure Event or the Customer's failure to provide WeBenefit with adequate delivery instructions, or a delay as a result of any action or omission from the Third Party Provider or any other instructions that are relevant to the supply of the Goods.
- 11.4 It is the Customers responsibility to ensure that there is someone to take delivery of the Goods at the Delivery Location;
- 11.5 WeBenefit's obligation to deliver Goods to the Customer is fulfilled when WeBenefit delivers the Goods to the Delivery Location. WeBenefit is not responsible for any loss or unauthorised use of Goods, after it has delivered the Goods to the physical address nominated by the Authorised User on behalf of the Customer.
- 11.6 WeBenefit will endeavour that each delivery of the Goods is accompanied by a delivery note and/or tax invoice, which shows the date of the Order, all relevant Customer and Third Party Provider reference numbers, the type and quantity of the Goods and, if the Order is being delivered by instalments, the outstanding balance of Goods remaining to be delivered; and
- 11.7 if the Customer is required to return any packaging material to WeBenefit, that fact shall be stated on the delivery note. The Customer shall make any such packaging materials available for collection at such times as WeBenefit shall reasonably request. Returns of packaging materials shall be at WeBenefit's expense.
- 11.8 WeBenefit or the Third Party Provider will deliver the Goods to the Customer as soon as reasonably possible, but no later than 20 (twenty) days of receipt of payment ("Delivery Period"). WeBenefit will notify the Customer if WeBenefit is unable to deliver the Goods during the Delivery Period. The Customer may then, within 7 (seven) days of receiving such notification elect whether or not to cancel the Order for the Goods. If the Customer elect to cancel the Order, WeBenefit will reimburse the Customer for the purchase price.
- 11.9 The Customer shall not be entitled to reject the Goods if WeBenefit delivers up to and including 5 (five) per cent more or less than the quantity of Goods ordered, but a pro-rata adjustment shall be made to the Order invoice on receipt of notice from the Customer that the wrong quantity of Goods was delivered.

## 12. RETURN AND REFUNDS POLICY

- 12.1 Provision of Goods and Services by WeBenefit is subject to availability. In cases of unavailability, WeBenefit will refund the Customer in full within 30 (thirty) days.
- 12.2 Subject to clause 12.3, and notwithstanding anything to the contrary contained in General Terms and Conditions or Specific T&Cs, the Customer shall be entitled to cancel an Order prior to the relevant installation completion date or Delivery Date. Any such cancellation shall be by way of notice sent in writing by the Customer to WeBenefit and shall be effective on receipt or deemed receipt of such notice.
- 12.3 Upon cancellation as per clause 12.2, WeBenefit shall be entitled to:-
- 12.3.1 charge the Customer such costs and expenses as have been actually incurred by WeBenefit or obligations to which WeBenefit has become necessarily bound arising from the relevant Order, from the date of the Order concerned up to the date of receipt or deemed receipt of such notice of cancellation, as well as actual costs of the recovery of any equipment already installed; and
- 12.3.2 a reasonable administration fee.

## 13. QUALITY OF GOODS

- 13.1 WeBenefit warrants that on delivery, and for a period of [6] months from the date of delivery (warranty period), the Goods shall:
- 13.1.1 conform with their description and any applicable Goods Specification;
- 13.1.2 be free from material defects in design, material and workmanship;
- 13.2 Subject to clause 13.3, if the Customer gives notice in writing during the warranty period within a reasonable time of discovery that some or all of the Goods do not comply with the warranty set out in clause 13.1, WeBenefit is given a reasonable opportunity of examining such Goods and WeBenefit is allowed to collect the Goods from the Customer, WeBenefit shall, at its option, repair or replace the defective Goods, or refund the price of the defective Goods in full.
- 13.3 WeBenefit shall not be liable for the Goods' failure to comply with the warranty in clause 13.1 if:
- 13.3.1 the Customer makes any further use of such Goods after giving a notice in accordance with clause 13.2;
- 13.3.2 the defect arises because the Customer failed to follow WeBenefit's oral or written instructions as to the storage, installation, commissioning, use or maintenance of the Goods or (if there are none) good trade practice;
- 13.3.3 the defect arises as a result of WeBenefit following any drawing, design or Goods Specification supplied by the Customer;
- 13.3.4 the Customer alters or repairs such Goods without the written consent of WeBenefit;
- 13.3.5 the defect arises as a result of fair wear and tear, wilful damage, negligence, or abnormal working conditions;
- 13.3.6 the Goods differ from their description or the Goods Specification as a result of changes made to ensure they comply with applicable statutory or regulatory standards.

- 13.4 Except as provided in this clause 13, WeBenefit shall have no liability to the Customer in respect of the Goods' failure to comply with the warranty set out in clause 13.1.
- 13.5 The terms of these Conditions shall apply to any repaired or replacement Goods supplied by WeBenefit under clause 13.2.
- 13.6 This clause 13 shall not apply in terms of Good delivered and under contract between the Customer and the manufacturer or Goods provider directly, where the manufacturer warranty (if any) will apply.

#### 14. SERVICES

- 14.1 The Services to be performed by WeBenefit will be as selected by the Customer via the WeBenefit Platform or approved Order and described in the respective Services and/or Goods Contract.
- 14.2 Unless otherwise agreed to in writing, the provision of Services will only be provided to the Customer subsequent to acceptance of the Customer's offer by WeBenefit's and communication of the acceptance to the Customer;
- 14.3 WeBenefit shall use all reasonable endeavours to meet any performance dates for the Services specified in the acceptance of the Order, or the delivery policy specific to the Service (to be made available prior or during the Order process), but any such dates shall be estimates only and time shall not be of the essence for the performance of the Services.
- 14.4 WeBenefit shall have the right to make any changes to the Services which are necessary to comply with any applicable law or safety requirement, or which do not materially affect the nature or quality of the Services, and WeBenefit shall notify the Customer in any such event.
- 14.5 WeBenefit warrants to the Customer that the Services will be provided using reasonable care and skill.
- 14.6 The parties agree to provide one another such information, materials and resources as they may agree in a Services and/or Goods Contract or as may be reasonably required for the performance of the Services and/or Goods Contract.
- 14.7 **Excused performance:** WeBenefit's non-performance of any particular obligation under the Services and/or Goods Contract shall be excused where such failure to perform is directly caused by the Customer's failure (or the failure of a third party to provide services under an agreement between it and the Customer) to perform an express material obligation assigned to the Customer in a Service Specific T&Cs, provided that WeBenefit has provided the Customer with written notice of such non-performance and the Customer fails to remedy its non-performance within a reasonable period of time or WeBenefit's non-performance was caused by WeBenefit being obliged to follow the Customer's instructions or procedures in circumstances where WeBenefit advised the Customer in writing that such instructions or procedures should not be followed; and notwithstanding the foregoing, WeBenefit continues to use reasonable efforts to perform and to minimize the impact of such failure. WeBenefit shall not be liable to the Customer for any claims or adverse consequences that may arise as a result of the failure by WeBenefit to perform any obligation, where the failure to perform that obligation is a direct result of the Customer's non-performance of any matter as referred to in this clause 14.7 or as a result of non-performance by any 3<sup>rd</sup> party service provider product presented by WeBenefit (as a third party service aggregator) and selected by the Customer, which products are subject to their own warranties.
- 14.8 In providing any Service to the Customer, WeBenefit shall be entitled to utilise the technology and / or equipment which it has available and which it, in its sole discretion, considers the most suitable in each instance.

#### 15. DELIVERY, RISK AND TITLE (OWNERSHIP)

- 15.1 WeBenefit shall deliver, install and implement the Services and/or Goods as per the Project Plan (where required) and/or installation date as set out under the relevant Service and/or Goods Contract.
- 15.2 WeBenefit shall promptly notify the Customer in writing as soon as it becomes aware that a deliverable may not be delivered, installed and implemented in accordance with the Services and/or Goods Contract.
- 15.3 Unless otherwise specified under a Specific T&C, the risk in the Goods or any deliverable under any of the Services shall pass to the Customer on completion of the delivery at the agreed location.
- 15.4 Title to the Goods shall not pass to the Customer until WeBenefit receives payment in full (cleared funds) for the Goods. Where goods are made available under a rental agreement, no ownership shall pass to the Customer, unless otherwise agreed to in writing;
- 15.5 Until title to the Goods has passed to the Customer, the Customer shall:
- 15.5.1 store the Goods separately from all other goods held by the Customer so that they remain readily identifiable as the WeBenefit or selected Third Party Provider's property;
  - 15.5.2 not remove, deface or obscure any identifying mark or packaging on or relating to the Goods;
  - 15.5.3 maintain the Goods in satisfactory condition and keep them insured against all risks for their full price on the WeBenefit's behalf from the date of delivery;
  - 15.5.4 notify the WeBenefit immediately if it becomes subject to any of the events listed in clauses 31.1.2 to 31.1.5 below; and

15.5.5 give WeBenefit such information relating to the Goods as WeBenefit may require from time to time.

## 16. THIRD PARTY SERVICE/GOODS PROVIDERS

- 16.1 WeBenefit allows third party sellers to list and sell their Goods or Services on the WeBenefit Platform (each a "Third Party Provider"). WeBenefit will indicate on relevant Goods or Services pages and checkout pages when Goods are for sale or Services are made available by a Third Party Provider and where the contract gets concluded between the Customer and the Third Party Provider directly (if any). In such cases (Third Party signing up with the Customer directly) the following will apply:-
- 16.1.1 WeBenefit only provides the platform to facilitate transactions between Third Party Providers and the Customer. WeBenefit is neither the buyer nor the seller / service provider of these Goods or Services unless otherwise specified.
- 16.1.2 The sale formed on acceptance of the Customer Order for Goods or Services that are for sale by a Third Party Provider (and where WeBenefit has indicated that a contract between the Third Party Provider and the Customer will take place) is therefore solely between the Customer and such Third Party Provider. WeBenefit is not a party to that transaction, except monitoring of the Customer satisfaction with the Third party Seller and to enable the Customer to receive the benefit of utilising said Goods or Services via that WeBenefit Platform.
- 16.1.3 The Third Party Provider is solely responsible for fulfilment of delivery of the Goods or Services under contract as per clause 16.1.2 above . The Third Party Provider is also responsible to provide an invoice to the registered user if required.
- 16.2 Because WeBenefit wants the Customer to have a safe and consistent experience, WeBenefit will handle any returns in terms fo Goods under the ECT Act, by the Customer arising out of or in connection with the sale between the Customer and a Third Party Provider on behalf of the Third Party Provider according to WeBenefit's own Returns Policy. Should such claim escalate into being a dispute, although WeBenefit reserves the right to become involved in an attempt to resolve it, WeBenefit is not obliged to do so and any disputes must be resolved between the Customer and the relevant Third Party Provider alone.
- 16.3 Where the WeBenefit Platform contains links to Third Party provider sites and resources provided by Third Party Providers, these links are provided for the Customer's information only. WeBenefit has no control over the contents of those sites or resources.

## 17. IMPLEMENTATION PHASE

- 17.1 Where applicable, the parties shall agree under each relevant Services and/or Goods Contract, prior to the commencement of any project, the dates and milestones to be achieved during the implementation of the Services (where required). All project related information shall be captured in the Project Plan;
- 17.2 WeBenefit's standard project management services and methodology will apply during each project;
- 17.3 The Customer shall ensure that key personnel are available:-
- 17.3.1 to attend the necessary workshops and be able to make decisions with regard to the Customer's business to ensure a successful Implementation; and
- 17.3.2 to attend training where required;
- 17.4 All project constraints, issues and risks shall be addresses and captured in the Project Plan prior to the implementation of any Service;
- 17.5 The Customer shall ensure that from the date of order of a Service, the necessary hardware and software infrastructure at the Customer or its customer premises (as per specifications from WeBenefit) are available before any configuration, setup and training can commence. Any delay in the availability of the required infrastructure will delay the delivery date of the Project Plan;

## 18. LOAN EQUIPMENT AND WEBENEFIT EQUIPMENT

- 18.1 **No lien:** No lien over any Loan Equipment or WeBenefit Equipment shall be established in favour of the party in possession of such equipment.
- 18.2 During the period where Loan Equipment (as provided by WeBenefit) and WeBenefit Equipment ("The Equipment") are located at the Location for purposes of performing the Services (whether affixed or not), the Customer shall: (i) take proper and diligent care of The Equipment (ii) mark all items owned by WeBenefit uniquely; (iii) take all reasonable steps to exclude any landlord's hypothec over The Equipment, including by giving any landlord written notice that it is not the owner of The Equipment; (iv) accept all risk in The Equipment in which regard it shall take reasonable steps to protect The Equipment from loss and/or damage and shall insure the same against all risks, and (v) to ensure that The Equipment has not been acceded or become part of a structure belonging to / or under the control of the Customer. WeBenefit shall be entitled to make reasonable inspections of the Customer's premises to establish whether or not the Customer is complying with its obligations in terms of this clause and to be provided with proof of all risks insurance cover of The Equipment. WeBenefit shall remain owner of the WeBenefit Equipment at all times and may use the WeBenefit Equipment to provide other services to other properties or customers, provided that such use does not interfere with the provisioning of the Services to the Customer's premises as provided for under a Services and/or Goods Contract.

- 18.3 **Return:** Unless otherwise agreed to under any Services and/or Goods Contract or separate rental agreement, the Customer shall return The Equipment to WeBenefit on termination of the particular Services and/or Goods Contract in the same condition in which it was received, fair wear and tear excepted and shall remedy, to the reasonable satisfaction of the other, any damage to The Equipment sustained whilst under its care; alternatively, in the event of The Equipment being damaged beyond repair the Customer shall upon written demand by WeBenefit, forthwith replace The Equipment with new equipment of equal or better standard, quality and specification.

## 19. CHARGES, PAYMENT AND TAXES

- 19.1 Unless otherwise agreed to in writing between the Parties. the use of the WeBenefit Platform is for free;
- 19.2 The price for Services and/or Goods shall be the price set out on the WeBenefit Platform / in the Order or, where required, the accepted Proposal from time to time.
- 19.3 Where additional costs are applicable, i.e. packaging or delivery, the WeBenefit Platform will confirm same prior to payment.
- 19.4 Unless otherwise notified on the WeBenefit Platform, payments can be made via:
- 19.4.1 Electronic Fund Transfers**
- 19.4.1.1 details to be provided to the Authroised User during the Order / payment process;
- 19.4.1.2 Order will only be processed on receipt of cleared funds, this might take up to 24 hours and receipt of proof of payment from the Customer.
- 19.4.2 Credit Card Payments**
- 19.4.2.1 Credit card transactions will be acquired for WeBenefit via PayGate (Pty) Ltd ("PayGate") who is the approved payment gateway for all South African Acquiring Banks.
- 19.4.2.2 PayGate allows for payment via Visa and Mastercard credit cards
- 19.4.2.3 PayGate uses the strictest form of encryption, namely Secure Socket Layer 3 (SSL3) and no credit card details are stored on the WeBenefit Platform. Users may go to [www.paygate.co.za](http://www.paygate.co.za) to view their security certificate and security policy.
- 19.4.2.4 The Customer details will be stored by WeBenefit separately from card details which are entered by the Authorised User of the Customer on PayGate's secure site. For more detail on PayGate refer to [www.paygate.co.za](http://www.paygate.co.za);
- 19.4.2.5 The merchant outlet country at the time of presenting payment options to the cardholder is South Africa. Transaction currency is
- 19.4.2.6 South African Rand (ZAR).
- 19.4.3 WeWallet payments**
- 19.4.3.1 A WeWallet account will be created when the Customer register to the WeBenefit Platform;
- 19.4.3.2 The WeWallet payment option will only be available if there are funds available on the Customer's WeWallet account. It is the responsibility of the Customer to fund the Customer's WeWallet account by way of Electronic Funds Transfer to the account as made available by WeBenefit to the Customer on written request. WeBenefit will not charge the Customer for any deposit on the WeWallet;
- 19.4.3.3 The Customer is responsible to ensure that its representatives keep the WeWallet pin confidential and not share it with any third party;
- 19.4.3.4 The WeWallet account is hosted by Kineto Mobile Africa (Pty) Limited (Kineto) and maintained by WeBenefit. It is important to note that neither Kineto or WeBenefit take any deposits;
- 19.4.3.5 No interest will be paid to the Customer on WeWallet account;
- 19.4.3.6 The Customer will have access to the WeWallet account history and mini statements;
- 19.4.3.7 Please take note that we can change the WeWallet rules from time to time, if the Customer don't agree to the changes then the Customer and its representatives must not use the WeWallet payment option anymore.
- 19.5 Services and/or Goods will be delivered subsequent to receipt of full payment (cleared funds) from the Customer to WeBenefit.
- 19.6 the Customer may not, for any reason whatsoever, defer, adjust, set-off or withhold any payment due to WeBenefit in terms of or arising out of the Agreement unless scope of work in the relevant Services and/or Goods Contract has not been signed-off for a valid reason by the Customer;
- 19.7 WeBenefit may, in its sole discretion and notwithstanding any instructions by the Customer, appropriate any payment received from or on behalf of the Customer, to any indebtedness of the Customer to WeBenefit arising from any cause whatsoever.

- 19.8 Any benefit that the Customer may earn from the provision of any of the Services or purchasing of any of the Goods or any benefits that may result from other WeBenefit users/consumers, associated with the Customer, and making use of any Service or purchase any Goods, will be reflected on the Customers WeWallet account.;
- 19.9 All prices and/or costs quoted by WeBenefit shall be inclusive of all applicable taxes but excluding Value Added Tax ("VAT"), which shall be shown clearly and separately to the agreed fees charged in terms of each Services and/or Goods Contract. Taxes or other charges, such as (but not limited to) transfer fees, bank charges, local taxes and value added taxes in other jurisdictions shall not be deducted from the payments due to WeBenefit but shall be paid in addition to the fees due to WeBenefit;
- 19.10 It is agreed that should there be a subsequent price increase on components of the Services or Goods, beyond the control of WeBenefit, including but not limited to foreign exchange fluctuations, increased third party products or services, surcharges, taxes, rates or levies, delay caused by any instruction of Customer, WeBenefit shall be entitled to increase the affected Services Charges accordingly, by the rand value of the increase but in proportion to the Services provided after written notification to Customer.

## 20. WEBENEFIT SHARE

- 20.1 As part of the WeBenefit Services, WeBenefit agrees to make available to the Customer the **WeBenefit Share** subject to the following conditions:-
- 20.1.1 The Customer has been selected as a beneficiary by a Consumer;
- 20.1.2 The Consumer has successfully acquired Services and/or Goods via the WeBenefit Services and payment was received by WeBenefit;
- 20.1.3 The WeBenefit Share will be paid to the Customer's WeWallet on a monthly basis, which the Customer can utilised for payment as set out under clause 19.4.3 above, or select to pay to a nominated bank account as per WeBenefit agreed procedures.
- 20.1.4 The Customer's WeBenefit Share payment as per clause 20.1.3 above shall be the total of the Customer's WeBenefit Share on Consumer transactions during the previous month;
- 20.2 WeBenefit will determine in its sole discretion the WeBenefit Share percentages on each Services and/or Goods from time to time, and may amend these WeBenefit Share percentages without notice to the Customer.

## 21. WEBENEFIT OBLIGATIONS

WeBenefit shall:

- 21.1 render the Services and/or Goods, as stipulated under each Services and/or Goods Contract, with due and proper care;
- 21.2 perform such Services or delivery ordered Goods at agreed Location(s) or other locations as may be advised by the Customer from time to time;
- 21.3 maintain professional standards of conduct in relation to the Customer's representatives and employees with whom WeBenefit has contact;
- 21.4 employing suitably qualified and competent persons in the execution of General Terms and Conditions and the provision of the Services;
- 21.5 refrain from any action, which may prejudice or be adverse to the business interests of the Customer or its customers (parents or learners);
- 21.6 have a communication facility available to be reached by the Customer at all agreed times prior to the completion of the Services;
- 21.7 be solely responsible for the administration of its own business affairs and payment of all relevant taxes of whatsoever nature;
- 21.8 WeBenefit shall ensure that all licenses and support arrangements that it has with third parties for the provision of the Services in a Services and/or Goods Contract are maintained in force.

## 22. THE CUSTOMER'S OBLIGATIONS

- 22.1 The Customer shall:
- 22.1.1 ensure that the terms of the Order and (if submitted by the Customer) the Services and/or Goods Specification are complete and accurate;
- 22.1.2 pay WeBenefit for the Services in accordance with each Services and/or Goods Contract;
- 22.1.3 provide WeBenefit with such information and materials as WeBenefit may reasonably require to supply the Services and/or Goods, and ensure that such information is accurate in all material respects;
- 22.1.4 where applicable, prepare the Customer's premises and provide sufficient facilities (in the reasonable opinion of WeBenefit) to enable WeBenefit to perform the Services or deliver the Goods, including (but not limited to) sport grounds or facilities, clean, uninterrupted power, adequate cabling, electricity, air conditioning (where required);

- 22.1.5 providing WeBenefit and its Personnel a safe and healthy workplace in accordance with Occupational Safety and Health Act 1984 (the OSH Act) and the Occupational Safety and Health Regulations 1996 (the OSH regulations) supported by codes of practice and guidance notes.
- 22.1.6 Where applicable, obtaining adequate insurance and/or lightning protection for any WeBenefit Equipment utilised at the Location at the direction of WeBenefit;
- 22.1.7 promptly reporting any incident or fault in the delivery of the Services and/or Goods;
- 22.1.8 promptly responding to any queries or requests from WeBenefit and providing its full cooperation in the troubleshooting and resolution of any incident or fault or outage;
- 22.1.9 provide WeBenefit with whatever information may be required to execute the selected Services or Goods;
- 22.1.10 promptly and properly informing WeBenefit of any and all equipment that may now or in future interfere and/or compromise the WeBenefit Equipment and/or Service / Goods delivery.
- 22.2 The Customer will, and will ensure that its employees, staff and subcontractors will at all times:
- 22.2.1 co-operate with WeBenefit in all matters relating to the Services;
- 22.2.2 comply with WeBenefit's reasonable instructions regarding i) use of the WeBenefit Equipment and regarding types and specifications of equipment to be connected and ii) the Services;
- 22.2.3 comply with WeBenefit's reasonable instructions regarding physical and network security, and regarding security, health and safety when accessing any WeBenefit Equipment.
- 22.2.4 Refrain from any interfering that may hinder performance of the Services or damage WeBenefit Equipment.
- 22.3 The Customer will not, and will ensure that its own employees or subcontractors will not, use any of the Services or Goods for any illegal or immoral purpose, and will comply at all times with any applicable laws in respect of it.
- 22.4 If WeBenefit's performance of any of its obligations in respect of the Services or Goods is prevented or delayed by any act or omission by Customer or failure by Customer to perform any relevant obligation (Customer Default):
- 22.4.1 WeBenefit shall without limiting its other rights or remedies have the right to suspend performance of the Services or delivery of the Goods until Customer remedies Customer Default, and to rely on Customer Default to relieve it from the performance of any of its obligations to the extent Customer Default prevents or delays WeBenefit's performance of any of its obligations;
- 22.4.2 WeBenefit shall not be liable for any costs or losses sustained or incurred by Customer arising directly or indirectly from WeBenefit's failure or delay to perform any of its obligations as set out in this clause 22.4; and
- 22.4.3 Customer shall reimburse WeBenefit on written demand for any costs or losses sustained or incurred by WeBenefit arising directly or indirectly from Customer Default.

### 23. PERSONNEL AT THE CUSTOMER'S PREMISES

- 23.1 The Customer shall afford to the Personnel such access to the Customer's premises/Location and afford to the Personnel such facilities as is reasonably required for the provision of the Services or delivery of the Goods, subject to the Customer's applicable policies, requirements, codes and/or regulations, as made available by the Customer.
- 23.2 WeBenefit cannot be held liable for any failure to perform any of the Services timeously or at all should WeBenefit not be allowed the required access and failure to perform is not the direct result of WeBenefit actions.
- 23.3 Where for any reason the Customer is not satisfied with the conduct or performance of any of WeBenefit's Personnel, the Customer must immediately inform WeBenefit thereof in writing, to enable WeBenefit to institute appropriate action. The Customer shall provide WeBenefit with all information, documentation and assistance as may be reasonably required by WeBenefit to effectively conduct any disciplinary or incapacity hearings where required;
- 23.4 WeBenefit shall be responsible at its own risk and expense for the delivery to, unloading at, storage at and removal from the Customer's premises of all WeBenefit Equipment and other items that WeBenefit may require for the provision of the Services, unless it was specifically requested by the Customer in the Services and/or Goods Contract, that such items be stored on the Customer premises, then in such case the Customer will be responsible for the risk thereof. The Customer shall further be liable for all damages, theft or misappropriation thereof as a result of the Customer's gross negligence or wilful misconduct. Unless otherwise agreed in writing all such items shall remain the responsibility of WeBenefit who shall be liable for the care, safety and storage thereof and shall remove them at the end of each visit and leave the Customer's premises in a clean, tidy and safe condition.

### 24. NON CIRCUMVENTION

- 24.1 The Customer and Authorised User undertake, as it/he/she hereby does, in favour of WeBenefit that it shall abide by business principles regarding non-circumvention and shall not at any time, whether directly or indirectly, endeavour or to actually circumvent WeBenefit by dealing or negotiating directly or endeavouring to deal or negotiate directly, or indirectly, with specific suppliers and business contacts/partners whose

details are disclosed to the Customer by WeBenefit or with whom the Customer might have become acquainted with in the course of the implementation of Services and/or Goods Contracts, or to take any action which would result in the Customer dealing with such specific suppliers and business contacts/partners to the exclusion of WeBenefit,,

- 24.2 Where the Customer has obtained better pricing on Services and/or Goods from Third Party Providers or a Third Party Provider has contacted the Customer or engaged with the Customer directly with better pricing, taking into account the quality, volumes, service levels, term, commencement dates and/or technical specifications of the relevant Services and/or Goods, then Customer shall notify WeBenefit in writing and allow WeBenefit to consult with the Third Party Provider and reply to the Customer in writing prior to any engagement by the Customer with any said Third party Seller.

## 25. CONFIDENTIAL INFORMATION

- 25.1 For the purpose of General Terms and Conditions, Confidential Information shall not include:
- 25.1.1 information which is required by law or a court of competent jurisdiction to be publicly released, to the extent only that it is necessary to comply with such law or with the order of such court; or
  - 25.1.2 any information which the receiving Party can prove by substantial written evidence was already in its possession, without breach of General Terms and Conditions, or which is already or becomes public knowledge through no wrongful act of the receiving Party.
- 25.2 Each Party hereby undertakes to the other that it shall:
- 25.2.1 keep confidential the existence and terms and conditions of General Terms and Conditions;
  - 25.2.2 keep confidential the Confidential Information and not disclose any of the same or any part thereof to any third party (other than its professional advisors, auditors, bankers and Personnel executing the Services) without the prior written permission of the disclosing party;
  - 25.2.3 not use the Confidential Information or any part thereof except for the performance of its obligations under General Terms and Conditions;
  - 25.2.4 without prejudice to the obligations contained herein, ensure that its employees, agents or sub-contractors are under the same obligations of confidence as set out herein prior to the receipt of such Confidential Information; and
  - 25.2.5 upon the termination of General Terms and Conditions for whatever reason, return to the disclosing party (and procure the return from any employees, agents or sub-contractors of) all Confidential Information in whatever format (including all copies) belonging to the disclosing Party, which is capable of being so returned.
  - 25.2.6 not to derive any benefit, whether directly or indirectly, from the Confidential Information, nor, without limiting the generality of the foregoing, be engaged, involved, concerned or interested, whether directly or indirectly, in the economic exploitation, whether by marketing, promoting, advertising, changing, adapting, reverse-engineering, publishing or selling in any manner whatsoever, the Confidential Information;
- 25.3 Any documents or records (including written instructions, drawings, notes or memoranda) relating to the Confidential Information of the Customer which are made by WeBenefit or which come into WeBenefit's possession during the currency of General Terms and Conditions, shall be deemed to be the property of the Customer and shall be surrendered to the Customer on demand, and in any event on the termination of WeBenefit's appointment by the Customer and WeBenefit will not retain any copies thereof or extracts thereof. The Customer warrants that it has obtained the necessary consent and authorisation to such Confidential Information that may belong to a third party, which are handed to WeBenefit to enable WeBenefit to perform the agreed Services.
- 25.4 The disclosing party may, at a time by way of written notice to the receiving party, require the receiving party to return any material containing, pertaining to or relating to Confidential Information from any word processor, computer or any other similar device into which it was entered or programmed, and may, in addition, require the receiving party to furnish a written statement (certified as correct by a director of receiving party) to the effect that upon such a return, receiving party has not retained in its possession, or under its control, either directly or indirectly, any such material;
- 25.5 As an alternative to the return of the material contemplated above, the receiving party and / or its representatives shall at any instance of disclosing party, destroy such material and furnish disclosing party with a written statement (certified as correct by a director of receiving party) to the effect that such material has been destroyed;
- 25.6 the Parties indemnify and agree to keep each other indemnified against all costs, claims, demands, liabilities, losses and expenses arising out of any breach on the part of the receiving party (including its agents, employees and sub-contractors) of the provisions of this clause 24.
- 25.7 The obligations in this clause shall survive in perpetuity.

## 26. THE CUSTOMER MATERIAL, CUSTOMER DATA AND PERSONAL INFORMATION OWNERSHIP

- 26.1 Ownership in all Customer Material and Customer Data, whether under its control or not, shall continue to vest in the Customer and WeBenefit shall use it for the purposes of providing the Services or as directed by the Customer and shall not obtain any proprietary rights in the Customer Material and Customer Data.

- 26.2 Any new information that may result from the processing of the Customer Data (no identifiable Personal Information) is the property of WeBenefit and is deemed to be owned by WeBenefit.
- 26.3 The Customer hereby grants to WeBenefit (and WeBenefit's contractors as necessary) a non-exclusive, royalty free licence to use, reproduce and modify any of the Customer Material and Customer Data provided to WeBenefit for the purposes of providing the Services or as directed by the Customer for the duration of the Agreement.

### PERSONAL INFORMATION

- 26.4 This section relates to Personal Information, or any part of such Personal Information:-:-
- 26.4.1 of which the Customer is the Responsible Party;
  - 26.4.2 which the Customer has provided to WeBenefit directly; and
  - 26.4.3 in relation to which WeBenefit (as Operator) is providing WeBenefit Services under General Terms and Conditions.
- 26.5 This section does not relate to the i) engagement between WeBenefit and a consumer where the consumer acquires the provision of Services or delivery of Goods directly from WeBenefit or ii) the WeBenefit and Authorised User interaction. For latter purposes the WeBenefit Privacy Policy shall apply;
- 26.6 The Customer and WeBenefit acknowledge that for the purposes of the POPI Act, the Customer is the Responsible Party and WeBenefit is the Operator of any Personal Information where WeBenefit receives the Personal Information from the Customer directly or from a third party on behalf of the Customer.
- 26.7 WeBenefit shall process the Personal Information only to the extent, and in such a manner, as is necessary for the purposes specified under the relevant Services and/or Goods Contract and in accordance with the Customer's instructions from time to time and shall not process the Personal Information for any other purpose. WeBenefit will keep a record of any processing of personal information it carries out on behalf of the Customer.
- 26.8 The Customer acknowledges that WeBenefit is under no duty to investigate the completeness, accuracy or sufficiency of any Customer instruction in terms of Personal Information or Customer Data, unless investigation of completeness, accuracy and sufficiency forms part of the particular Service..
- 26.9 WeBenefit shall promptly comply with any request from the Customer requiring WeBenefit to amend, transfer or delete the Personal Information.
- 26.10 WeBenefit shall only collect Personal Information on behalf of the Customer on a form as agreed to between the Parties, which will contain a data protection notice informing the data subject of:-
- 26.10.1 the identity of the Responsible Party,
  - 26.10.2 the identity of any data protection representative it may have appointed,
  - 26.10.3 the purposes for which their Personal Information will be processed and any other information which is necessary having regard to the specific circumstances in which the information is, or is to be, processed to enable processing in respect of the data subject to be fair.
- WeBenefit shall not modify or alter the form in any way without the prior written consent of the Customer.
- 26.11 If WeBenefit receives any complaint, notice or communication which relates directly or indirectly to the processing of the Personal Information or to either party's compliance with the POPI Act and the data protection conditions set out therein, it shall immediately notify the Customer and it shall provide the Customer with full co-operation and assistance in relation to any such complaint, notice or communication.
- 26.12 At the Customer's request, WeBenefit shall provide to the Customer a copy of all Personal Information held by it in the format and on the media reasonably specified by the Customer.
- 26.13 The Customer hereby gives its consent for WeBenefit to transfer the Personal Information across any country border as necessary for the purposes of fulfilling WeBenefit's obligations under the Agreement without the need for the Customer's further written consent, subject to WeBenefit establishing that the same or similar conditions as per the POPI Act applies in the country where Processing takes place and that WeBenefit enters into the necessary data transfer agreements with third party service providers in said countries.
- 26.14 WeBenefit shall promptly inform the Customer if any Personal Information is lost or destroyed or becomes damaged, corrupted, or unusable.
- 26.15 WeBenefit shall ensure that access to the Personal Information is limited to:
- 26.15.1 those Personnel who need access to the Personal Information to meet WeBenefit's obligations under General Terms and Conditions; and
  - 26.15.2 in the case of any access by any Personnel, such part or parts of the Personal Information as is strictly necessary for performance of that Personnel's duties.
- 26.16 WeBenefit shall ensure that all Personnel:
- 26.16.1 are informed of the confidential nature of the Personal Information;
  - 26.16.2 have undertaken training in the laws relating to handling personal information; and

- 26.16.3 are aware both of WeBenefit's duties and their personal duties and obligations under such laws and General Terms and Conditions.
- 26.17 WeBenefit shall take reasonable steps to ensure the reliability of any of WeBenefit's Personnel who have access to the Personal Information.
- 26.18 WeBenefit shall notify the Customer within 3 (three) working days if it receives a request from a Data Subject for access to that person's Personal Information and WeBenefit shall provide the Customer with full co-operation and assistance in relation to any request made by a Data Subject to have access to that person's Personal Information.
- 26.19 Except for clause 26.20 below, WeBenefit shall not disclose the Personal Information to any Data Subject or to a third party other than at the request of the Customer or as provided for in General Terms and Conditions.
- 26.20 In the event that WeBenefit is required to disclose Personal Information as obtained from the Customer pursuant to a valid court order or request by a law enforcement agency, it will –
- 26.20.1 advise the Customer thereof in writing prior to disclosure, if possible;
  - 26.20.2 take such steps to limit the disclosure to the minimum extent required to satisfy such requirement and to the extent that it lawfully and reasonably can;
  - 26.20.3 afford the Customer a reasonable opportunity, if possible, to intervene in any relevant proceedings;
  - 26.20.4 comply with the Customer's reasonable requests as to the manner and terms of any such disclosure; and
  - 26.20.5 notify the Customer of the recipient of, and the form and extent of, any such disclosure or announcement immediately after it is made.
- 26.21 The Customer is entitled, on giving at least 10 (ten) days' notice to WeBenefit, to inspect or appoint representatives to inspect all facilities, equipment, documents and electronic data relating to the processing of Personal Information by WeBenefit.
- 26.22 Each party warrants to the other that it will process the Personal Information in compliance with all applicable laws, enactments, regulations, orders, standards and other similar instruments.
- 26.23 WeBenefit warrants that, having regard to the state of technological development and the cost of implementing any measures, it will:
- 26.23.1 take appropriate technical and organisational measures against the unauthorised or unlawful processing of Personal Information and against the accidental loss or destruction of, or damage to, Personal Information to ensure a level of security appropriate to:
    - 26.23.1.1 the harm that might result from such unauthorised or unlawful processing or accidental loss, destruction or damage; and
    - 26.23.1.2 the nature of the data to be protected.
  - 26.23.2 take reasonable steps to ensure compliance with those measures.
- 26.24 The Customer warrants that it has the right to submit the Personal Information to WeBenefit;
- 26.25 Each party agrees to indemnify and keep indemnified and defend at its own expense the other party against all costs, claims, damages or expenses incurred by the other party or for which the other party may become liable due to any failure by the first party or its employees or Personnel to comply with any of its obligations under this clause 26.
- 26.26 The Customer acknowledges that WeBenefit is reliant on the Customer for direction as to the extent to which WeBenefit is entitled to use and process the Personal Information. Consequently, WeBenefit will not be liable for any claim brought by a Data Subject arising from any action or omission by WeBenefit, to the extent that such action or omission resulted directly from the Customer's instructions.
- 26.27 WeBenefit shall be entitled to use any de-identified Personal information or other de-identified Customer Data for statistical purposes to enhance the Services available to the Customer and other WeBenefit customers or for such other WeBenefit purposes.

## 27. INTELLECTUAL PROPERTY RIGHTS

- 27.1 All existing and future IPR in relation to the WeBenefit Services, the support, the business, results as a result of the Services or Goods, related technologies and business methodology as recorded under the general understanding above are either owned by WeBenefit, alternatively by certain other license holders who have licensed the use thereof to WeBenefit. Customer acknowledges that it shall have no claim to the said IPR merely as a result of the Agreement or utilise the IPR unless specifically authorised under the Agreement;
- 27.2 WeBenefit warrants that the possession or use of the Services or Goods will not infringe the Intellectual Property Rights of any third party and hereby indemnifies and hold the Customer harmless against any third party claim arising out of intellectual property rights infringements.
- 27.3 **Use of third party Intellectual Property licensed to the Customer:**

- 27.3.1 Prior to the commencement date of the Services and/or Goods Contract, the Customer shall at its own expense procure the grant of such licenses or permissions to WeBenefit as are necessary under the terms of any third party licenses, lease, rental or other agreement in respect of WeBenefit's use of third party software for the purpose of providing the Services or Goods during the Services and/or Goods Contract term.
- 27.3.2 Ownership of the third party software, including all Intellectual Property Rights in it, shall remain in the relevant third party.

## 28. LIMITATION OF LIABILITY

- 28.1 To the extent permitted by applicable law, in no event shall either Party or its Personnel be liable for any indirect, incidental, special or consequential damages or losses arising from the Goods and/or Services Contracts or damages caused as a result of events beyond its reasonable control.
- 28.2 WeBenefit cannot be held liable for any inaccurate information published on the WeBenefit Platform and/or any incorrect prices displayed on it, save where such liability arises from the gross negligence or wilful misconduct of WeBenefit, its employees, agents or authorised representatives. The Customer is encouraged to contact WeBenefit to report any possible malfunctions or errors by way of email to [support@webenefit.co.za](mailto:support@webenefit.co.za) or by contacting 087 551 1001.
- 28.3 Although all endeavours will be made by WeBenefit to ensure that the Services and/or Goods are delivered as Ordered by the Customer, WeBenefit will not be liable towards the Customer for any reason whatsoever, should the Customer suffer damages and / or injury and / or death, as a result of any actions or omissions of the Customer or its employees, or its agents or Third Party Provider where the Customer has concluded an agreement directly with the Third Party Provider;
- 28.4 **Direct damages limited.** To the extent permitted by applicable law, notwithstanding the form (whether in contract, delict, or otherwise) in which any legal action may be brought, unless otherwise agreed in a Services and/or Goods Contract, WeBenefit's aggregate liability for direct damages giving rise to any legal action shall be limited to the value of the Goods delivered or the value of affected Services to be performed for a performed for 6 (six) months.
- 28.5 **Exclusions.** The limitation contained in this clause 28 shall not apply to –
- 28.5.1 any breach by a Party of the other Party's proprietary or Confidential Information or Intellectual Property;  
or
- 28.5.2 Fraudulent actions;
- 28.5.3 a Party's indemnification obligations in terms of General Terms and Conditions;
- 28.5.4 gross negligence or wilful misconduct.
- 28.6 **Indemnity.**
- 28.6.1 Each Party agrees to indemnify, defend and hold the other Party (and its Personnel) harmless against any (i) claim or and loss or damage to any property or injury to or death of any person; and (ii) loss, damage (including attorneys' fees on an attorney and own client basis), costs and expenses which the other Party may suffer or incur arising directly or indirectly from caused by any wilful misconduct or fraud of such Party or its Personnel or the infringement of any third party's intellectual property rights.
- 28.6.2 the Indemnifying Party shall pay any costs and damages awarded or agreed to in settlement of a claim, provided that the Indemnified Party furnishes the Indemnifying Party with prompt written notice of the claim and provides the Indemnifying Party with all reasonable assistance, for which the Indemnifying Party shall reimburse all expenses properly incurred by the Indemnified Party in providing such assistance, and shall grant the Indemnifying Party sole authority to defend or settle the claim.
- 28.6.3 The indemnified Party may, but is not obligated to, participate in the defence of such claims at its own expense.
- 28.6.4 Without in any way detracting from the rights of WeBenefit in terms of the Services and/or Goods Contract, the Customer hereby indemnifies and holds WeBenefit harmless from any and all losses which may be suffered as a result of any breach of the provisions of the Services and/or Goods Contract by the Customer or its employees or contractors.

## 29. WARRANTIES

- 29.1 In addition to those warranties given in any Services and/or Goods Contract, WeBenefit warrants that in relation to each Service provided or Goods delivered in terms of an Services and/or Goods Contract-
- 29.1.1 It, and where applicable WeBenefit Personnel, will possess and have the right to use knowledge and expertise sufficient to enable WeBenefit to provide the Services;
- 29.1.2 the Services shall be provided in a proper and professional manner by suitably qualified Personnel.
- 29.1.3 WeBenefit will provide the Services and deliver the Goods in accordance with all applicable laws and regulations.
- 29.1.4 (where applicable) the Goods will conform to the specification as described in the technical manuals accompanying same.
- 29.2 Although Goods sold from the WeBenefit Platform may, under certain Specific T&Cs, be under warranty, the WeBenefit Platform itself and all information provided on the WeBenefit Platform is provided "as is" without warranty of any kind, either express or implied, including, but not limited to, the implied warranties of

- merchantability, fitness for a particular purpose, completeness, or non-infringement, as may be allowed in law.
- 29.3 WeBenefit has undertaken to use its best efforts to provide the Services to the Customer, but it does not warrant the availability, performance, capacities or capability of the WeBenefit Equipment in circumstances beyond WeBenefit's control.
- 29.4 The Parties respectively warrants that the signing, execution, delivery and performance of General Terms and Conditions has been duly authorised by the directors or members of each Party;
- 29.5 The Customer warrants that it has not been induced to enter into General Terms and Conditions by any prior representations, warranties or guarantees, whether oral or in writing, except as expressly contained in this clause 29 or a Services and/or Goods Contract.
- 29.6 The Customer warrants that -
- 29.6.1 in the event that WeBenefit Personnel are required to use software owned or operated by the Customer, the Customer warrants that all necessary user licenses have been obtained in advance;
- 29.6.2 the use of Customer Material provided by the Customer to WeBenefit does not and will not infringe the Intellectual Property Rights of any other person;
- 29.6.3 and the Customer hereby indemnifies and holds WeBenefit harmless from any claim for damages by any third party as a result of the breach of this warranty, including all costs incurred on an attorney and own client basis.
- 29.7 In addition to the disclaimers contained elsewhere in General Terms and Conditions, WeBenefit also makes no warranty or representation, whether express or implied, that the information or files available on the WeBenefit Platform are free of viruses, spyware, malware, trojans, destructive materials or any other data or code which is able to corrupt, destroy, compromise, disrupt, disable, harm, jeopardise or otherwise impede in any manner the operation, stability, security functionality or content of the Customer computer system, computer network, hardware or software in any way. The Customer accept all risk associated with the existence of such viruses, destructive materials or any other data or code which is able to corrupt, compromise, jeopardise, disrupt, disable, harm or otherwise impede in any manner the operation or content of a computer system, computer network, any handset or mobile device, or the Customer's hardware or software, save where such risks arise due to the gross negligence or wilful misconduct of WeBenefit, its Personnel or authorised representatives. WeBenefit thus disclaims all liability for any damage, loss or liability of any nature whatsoever arising out of or in in connection with the Customer's access to or use of the WeBenefit Platform.
- 29.8 Except as expressly stated in General Terms and Conditions or any subsequent Services and/or Goods Contract, all conditions and warranties whether express or implied, statutory or otherwise (including but not limited to any conditions or warranty for, fitness for particular purpose, satisfactory quality, usefulness or timeliness) are excluded to the extent permitted by law.

### 30. FLOW DOWN WARRANTIES

WeBenefit may from time to time provide certain Goods or Services for which WeBenefit is entitled to warranties and indemnities from the manufacturers, lessors, licensors of such items or third party service providers. Without limiting the generality of or diminishing WeBenefit's other warranties and indemnities under the Services and/or Goods Contract, WeBenefit shall: (i) pass through to the Customer the benefits of such warranties and indemnities to the extent that WeBenefit is permitted to do so under any agreements between WeBenefit and such manufacturers, lessors, licensors and third party service providers, and (ii) enforce such warranties and indemnities as directed by the Customer. WeBenefit shall comply with all terms and conditions of agreements with such manufacturers, lessors, licensors and third parties.

### 31. BREACH AND TERMINATION

#### In terms of any Services provided under a Services and/or Goods Contract

- 31.1 Should either party;
- 31.1.1 breach any of its obligations in terms of a Services and/or Goods Contract and fails to remedy such breach (where capable of remedy) within a period of 7 (seven) calendar days. If the breach cannot reasonably be remedied within 7 (seven) calendar days, the Party in default shall be entitled to an extension, not exceeding a further 7 (seven) calendar days (total of 14 (fourteen) days), to remedy the breach, on condition that the Party in default provides evidence to the reasonable satisfaction of the party within the 7 (seven) days that effective steps to remedy the breach have been initiated and continues to provide such evidence on an ongoing basis that the steps are being expeditiously pursued; or
- 31.1.2 be placed in liquidation or under judicial management or curatorship (in either case, whether provisionally or finally); or
- 31.1.3 effect a compromise with its creditors; or
- 31.1.4 commit any act or omission which would, in the case of an individual, be an act of insolvency; or
- 31.1.5 fail to satisfy any final judgement against it within 21 days of the date when it should have become aware of such judgement; or

the non-defaulting party shall, without prejudice to any other remedies which it may otherwise have in terms of the Agreement or at law, be entitled to terminate the General terms and Conditions and/or any Services and/or Goods Contracts or any part of a Services under a Services and/or Goods Contract or claim specific performances, in which event such termination shall be without prejudice to, and shall not constitute a release or waiver of, any claims which the non-defaulting party may have for damages against the defaulting party occasioned by the termination of General Terms and Conditions and/or any Services and/or Goods Contract (as the case may be) in terms of this clause.

- 31.2 Should WeBenefit be obliged to institute legal action against the Customer to enforce any provisions of the Services and/or Goods Contract, in order to take possession of the Loan Equipment or WeBenefit Equipment and / or to collect outstanding monies (undisputed monies) which is in arrears (where applicable), then the Customer will be responsible for all legal costs on an attorney and own client basis, including such tracing fees and collection commission which such attorneys are entitled to charge, on successful judgement of WeBenefit claim. All other legal costs shall be on a party to party scale and the party successful in its claim and has obtained judgment shall be entitled to said costs.
- 31.3 Any allowed voluntary termination shall be confirmed under the Specific T&Cs.

### 32. CONSEQUENCES OF TERMINATION

- 32.1 At the early termination of General Terms and Conditions all rights and obligations of the parties pursuant to General Terms and Conditions (including all Services and/or Goods Contracts) shall be terminated, except those provisions hereof that expressly survive the expiration or earlier termination of General Terms and Conditions. However, at the termination of a particular Services and/or Goods Contract or any part thereof, General Terms and Conditions and all other Services and/or Goods Contracts will continue accordingly and not be affected by such termination.
- 32.2 Upon termination or expiry of any Services and/or Goods Contract:-
- 32.2.1 WeBenefit shall cease work as per the terminated Services and/or Goods Contract;
- 32.2.2 WeBenefit shall deliver upon request any work in process under the terminated Services and/or Goods Contract.
- 32.2.3 The Customer undertakes to return to WeBenefit any equipment, documentation, information or other materials of WeBenefit, which it has, no legal right to retain.
- 32.2.4 Removal of Loan Equipment or WeBenefit Equipment for the terminated Services by WeBenefit:-
- 32.2.4.1 Subject to prior notice to the Customer, WeBenefit will be entitled to remove Loan Equipment or WeBenefit Equipment where same have been provided or utilised under a Services and/or Goods Contract, as installed. WeBenefit shall restore any physical damage to the Customer premises caused by such removal to the extent that the premises is restored to the same condition as it was prior to the removal.
- 32.2.4.2 WeBenefit, will not be liable for any damages, injuries or death suffered by the Customer and/or any items brought onto the premises by the Customer or any persons on the premises during the time of removal unless caused as a result of gross negligence or wilful misconduct;
- 32.2.4.3 Should WeBenefit be refused and/or obstructed access to the premises onto which the Loan Equipment or WeBenefit Equipment have been installed, the Customer agrees and consents that WeBenefit may obtain the necessary from a Court with jurisdiction, to access and remove the equipment, in which event the Customer agrees to costs as in clause 31.2 above.
- 32.2.5 WeBenefit shall make available for decommissioning and collection by the Customer all the property of the Customer including the Customer's Material, - and Data relevant to the terminated Services. WeBenefit shall in consideration of the Data size and quantity return to the Customer their Data in an acceptable format that both parties agree to, and WeBenefit will be entitled to charge the Customer a reasonable fee based on a time and material basis.
- 32.3 Upon termination of General Terms and Conditions or any of the Services and/or Goods Contracts for whatever reason Customer shall pay to WeBenefit all sums due to the date of termination together with the cost of materials and goods ordered for the performance of the Services for which WeBenefit has paid or is legally bound to pay and such reasonable and necessary costs incurred in removing from the Customer's premises any property of WeBenefit and in removing and returning to the Customer any property of the Customer.
- 32.4 Any termination of a Services and/or Goods Contract shall not affect the remaining Services and/or Goods Contracts.
- 32.5 Any termination of General Terms and Conditions (howsoever occasioned) shall not affect any accrued rights or liabilities of either party nor shall it affect the coming into force or the continuance in force of any provision hereof which is expressly or by implication intended to come into or continue in force on or after such termination.

### 33. FORCE MAJEURE

- 33.1 Neither Party will be liable to the other for any default or delay in the performance of its obligations under General Terms and Conditions:

- 33.1.1 if and to the extent that such default or delay is caused by any act of God, war or civil disturbance, court order, or any other circumstance beyond its reasonable control including fluctuations in communications ("Circumstances of Force Majeure"); and
- 33.1.2 provided the non-performing Party is without fault in causing such default or delay, and such default or delay could not have been prevented by the non-performing Party through the use of alternative sources, workaround plans or other means.
- 33.2 Following any Circumstance of Force Majeure, the non-performing Party shall:
- 33.2.1 As soon as reasonably possible after the event occurring, notify the other Party by whichever way is available and if possible thereafter, confirm in writing ;
- 33.2.2 be excused from further performance or observance of its obligation(s) so affected for so long as such circumstances prevail and such Party continues to use its best efforts to recommence performance or observance whenever and to whatever extent possible without delay; and
- 33.2.3 co-operate with the other Party in implementing such contingency measures as that other Party may reasonably require.
- 33.3 Should either party be prevented from carrying out its contractual obligations by force majeure lasting continuously for a period of 14 (fourteen) days, the parties will consult with each other regarding the future implementation of General Terms and Conditions. If no mutually acceptable arrangement is arrived at within a period of 10 (ten) days thereafter, either Party will be entitled, forthwith on written notice, to terminate the Agreement.
- 33.4 If the agreed Services are to perform and deliver specific Services during Circumstances of Force Majeure, then clause 33.2.2 will not apply.

#### 34. DISPUTE RESOLUTION

Any dispute arising from the Agreement shall be subject to the following dispute resolution procedures

- 34.1 **Informal dispute resolution:** if a dispute has not been resolved via the WeBenefit complain channel (Talk to Us on the WeBenefit platform) made available then the Parties shall first attempt to resolve their dispute informally by referring a dispute to its senior management. Senior management of both Parties shall discuss the problem and attempt to resolve the dispute, without the necessity of any formal proceeding, within 14 (fourteen) days of the dispute having been referred.
- 34.2 **Informal dispute resolution does not reduce Parties' rights:** Proceedings in terms of this clause 34.2 shall not be construed to prevent a Party from instituting formal proceedings earlier to obtain urgent or interim relief, avoid the expiration of any applicable limitations period, or preserve a superior position with respect to other creditors.
- 34.3 **Institution of Formal Proceedings:** Subject to the provisions of clauses 34.1 and **Error! Reference source not found.**, the Parties agree that either Party may elect to refer any dispute which may arise to either the High Court of South Africa or to arbitration proceedings as contemplated in clause 34.4. Upon election by a Party initiating the relevant dispute proceedings, the other Party will be bound by such election for the purposes of the dispute in question.
- 34.4 **Arbitration:** If the Parties are unable to resolve any dispute informally and either Party has elected to commence arbitration proceedings to resolve the dispute in terms of clause 34.3 then such dispute shall on written demand by the electing Party be submitted to arbitration at the Arbitration Foundation of Southern Africa (AFSA).
- 34.5 **Status of arbitration ruling:** The decision of the arbitrator shall be binding on the Parties to the arbitration after the expiry of the period of 20 (twenty) days from the date of the arbitrator's ruling if no appeal has been lodged by any Party or upon the issue of determination by the appeal panel, as the case may be. A decision, which becomes final and binding in terms of this clause 34.5 may be made an order of court at the instance of any Party to the arbitration. The parties agree to keep the arbitration confidential and not to disclose it to anyone except for purposes of obtaining an order as contemplated herein.
- 34.6 **Continued performance:** Each Party agrees to continue performing its obligations under the Agreement while any dispute is being resolved.
- 34.7 **Rapid resolution of disputes:** The Parties shall use commercially reasonable efforts to resolve disputes arising as rapidly as possible.
- 34.8 **Excluded relief:** This clause 34 shall not preclude either Party from seeking urgent or interim relief from the High Court of South Africa or any other competent organs of state created for the specific purpose of regulating the business or industry activities in which the Parties are engaged.
- 34.9 **Agreed Jurisdiction:** the Parties hereby consent to the jurisdiction of the Western Cape High Court (Cape Town) in respect of proceedings referred to in clause 34.3..

#### 35. NOTICES AND LEGAL PROCESS / DOMICILIUM ET CITANDI

- 35.1 Each Party chooses as its address for all purposes under the Services and/or Goods Contract ("chosen address"), whether for serving any court process or documents, giving any notice, or making any other

communications of whatsoever nature and for any other purpose arising from the General Terms and Conditions ("notice"), as follows:

the Customer                      The Address as per the WeBenefit Application Form  
 Fax No: as per the WeBenefit Application Form  
 Email: as per the WeBenefit Application Form  
 (Marked for the attention of: chairperson)

WeBenefit                              Physical address: 3 Amber Place, Amber Close,  
 Bloemhof, Bellville, 7530  
 Postal Address: Po Box 263, Durbanville, 7550  
 Email: werner@webenefit.co.za  
 (Marked for the attention of: Managing Director)

- 35.2 Any notice required or permitted under General Terms and Conditions shall be valid and effective only if in writing.
- 35.3 Either Party shall be entitled from time to time, by written notice to the other, to vary its address to any other address which is not a post office box or poste restante.
- 35.4 Any notice to either party which is -
- 35.4.1 sent by prepaid registered post in a correctly addressed envelope to the address specified for it under clause 35.1 above shall be deemed to have been received, unless the contrary is proved, within 14 (fourteen) days from the date on which it was posted; or
- 35.4.2 delivered to the party by hand, shall be deemed to have been received on the day of delivery, provided that it has been delivered to a responsible person during ordinary business hours; or
- 35.4.3 sent by fax to a party at the telefax numbers specified above, shall be deemed to have been received, unless the contrary is proved, within 4 (four) hours of transmission if it is transmitted during normal business hours of the receiving party or within 12 (twelve) hours of the first business day of the receiving party after it is transmitted, if it is transmitted outside those business hours.
- 35.4.4 sent by a Data Message to the addressee shall be deemed to be received as set out under clause 36.1.3 below.
- 35.5 Notwithstanding anything to the contrary herein, a written notice actually received by a party, including a notice sent by telefax, shall be an adequate notice to it notwithstanding that it was not sent or delivered to its chosen address.

### 36. ELECTRONIC COMMUNICATIONS

- 36.1 Time and Place of communication, dispatch and receipt
- 36.1.1 Data Messages (as per the ECT Act) sent from WeBenefit to the Customer have been sent from WeBenefit place of business;
- 36.1.2 A Data Message is deemed to be sent:-
- 36.1.2.1 By WeBenefit, at the time shown on the message as having been sent, or if not so shown, at the time shown on WeBenefit's information system as having been sent;
- 36.1.2.2 By the Customer, at the time when WeBenefit confirm receipt thereof.
- 36.1.3 A data message is deemed to be received:-
- 36.1.3.1 By WeBenefit, only when an authorised WeBenefit representative responds thereto (excluding an automated response). Such acknowledgement further does not give legal effect to that message, unless specifically indicated by WeBenefit that it does give legal effect to the Data Message;
- 36.1.3.2 By the Customer, once it enters the Customer's information system.
- 36.1.4 Attribution of data messages to originator The Customer agrees and warrants that the Data Message sent, from any computer or device that is owned by the Customer or the Customer's employee or programmed by the Customer or on the Customer's behalf, to WeBenefit was sent by the Customer or an Authorised User or a person that had authority to act on the Customer's behalf in respect of the Data Message.

### 37. APPOINTMENT OF SUB-CONTRACTORS

- 37.1 As per the nature of the Services provisioned by WeBenefit to the Customer, WeBenefit shall be entitled to appoint third parties (sub-contractors) to provide the Services provided that the sub-contractor's contract:
- 37.1.1 is on terms which are substantially the same as those set out in General Terms and Conditions; and
- 37.1.2 terminates automatically on termination of General Terms and Conditions for any reason.
- 37.2 All communications to the sub-contractors in terms of General Terms and Conditions shall be executed by WeBenefit.

### 38. SUCCESSORS AND ASSIGNEES

38.1 General Terms and Conditions shall be binding upon, and endure to the benefit of the parties and their respective successors and permitted assignees, and references to a party in General Terms and Conditions shall include its successors and permitted assignees.

38.2 In General Terms and Conditions references to a party include references to a person:

38.2.1 Who for the time being is entitled (by assignment, novation or otherwise) to that party's rights under General Terms and Conditions (or any interest in those rights); or

38.2.2 Who, as administrator, liquidator or otherwise, is entitled to exercise those rights;

And in particular those references include a person to whom those rights (or any interest in those rights) are transferred or pass as a result of a merger, division, reconstruction or other reorganisation involving that party. For this purpose, references to a party's rights under General Terms and Conditions include any similar rights to which another person becomes entitled as a result of a novation of General Terms and Conditions.

## **39. GENERAL AND MISCELLANEOUS**

### **39.1 Sole record of agreement**

General Terms and Conditions constitutes the sole record of the agreement between the Parties with regard to the WeBenefit Platform. Apart from Specific T&Cs that may apply to specific Services and/or Goods Ordered, no Party shall be bound by any express or implied term, representation, warranty, promise or the like not recorded herein. General Terms and Conditions supersedes all previous agreements between the parties.

### **39.2 No amendment except in writing**

Apart from the provisions from clause 1.4 above, no alteration, cancellation, variation of, or addition to the General Terms and Conditions and the Specific T&Cs where the Order has been accepted, including this clause, shall be of any force or effect unless reduced to writing and signed by all parties to this agreement or their duly authorised representatives.

### **39.3 Indulgence / Waivers**

No relaxation or indulgence, which any Party may grant to any other, shall constitute a waiver of the rights of that Party and shall not preclude that Party from exercising any rights which may have arisen in the past or which might arise in future.

### **39.4 Survival of obligations**

Any provision of General Terms and Conditions, which contemplates performance or observance subsequent to any termination, or expiration of General Terms and Conditions shall survive any termination or expiration of General Terms and Conditions and continue in full force and effect.

### **39.5 Assignment.**

The Customer shall not assign or cede any rights or obligations under General Terms and Conditions, or any part thereof, without the written consent of WeBenefit, which consent shall not be unreasonably withheld or unduly delayed.

### **39.6 Approvals and consents**

An approval or consent given by a Party under General Terms and Conditions shall only be valid if in writing and shall not relieve the other Party from responsibility for complying with the requirements of General Terms and Conditions nor shall it be construed as a waiver of any rights under General Terms and Conditions except as and to the extent otherwise expressly provided in such approval or consent, or elsewhere in General Terms and Conditions.

### **39.7 Severability**

In the event that any of the terms of General Terms and Conditions are found to be invalid, unlawful or unenforceable, such terms will be severable from the remaining terms, which will continue to be valid and enforceable.

### **39.8 Governing law & jurisdiction**

The validity, construction and performance of this agreement shall be governed by the laws of the Republic of South Africa. Subject to clause 34 above, any dispute arising in connection with this agreement shall be subject to the exclusive jurisdiction of the Republic of South African courts.