



ECOMMERCE MADE EASY

Last updated on: 01 January, 2023

By signing up for a BeNimble Account (as defined in Section 1) or by using any BeNimble Services (as defined below), you are agreeing to be bound by the following terms and conditions (the "Terms of Service").

As used in these Terms of Service, "we", "us" and "BeNimble" means the applicable BeNimble Contracting Party (as defined in Section 4 below).

The services offered by BeNimble under the Terms of Service include various products and services to help you sell goods and services to buyers, whether online ("Online Services"), in person ("POS Services"), or both. Any such services offered by BeNimble are referred to in these Terms of Services as the "Services". Any new features or tools which are added to the current Services shall be also subject to the Terms of Service.. BeNimble reserves the right to update and change the Terms of Service by posting updates and changes to the BeNimble website. You are advised to check the Terms of Service from time to time for any updates or changes that may impact you. and if you do not accept such amendments, you must cease using the Services.

You must read, agree with and accept all of the terms and conditions contained or expressly referenced in these Terms of Service, including BeNimble's Acceptable Use Policy ("AUP") and Privacy Policy, and, if applicable, the Supplementary Terms of Service for E.U. Merchants ("EU Terms"), the BeNimble API License and Terms of Use ("API Terms") and the BeNimble Data Processing Addendum ("DPA") before you may sign up for a BeNimble Account or use any BeNimble Service. Additionally, if you offer goods or

services in relation to COVID-19, you must read, acknowledge and agree to the Rules of Engagement for Sale of COVID-19 Related Products.

Everyday language summaries are provided for convenience only and appear in bold under each section, but these summaries are not legally binding. Please read the Terms of Service, including any document referred to in these Terms of Service, for the complete picture of your legal requirements. By using BeNimble or any BeNimble services, you are agreeing to these terms. Be sure to occasionally check back for updates.

1. Account Terms

1. To access and use the Services, you must register for a BeNimble account (“Account”) by providing your full legal name, current address, phone number, a valid email address, and any other information indicated as required.
BeNimble may reject your application for an Account, or cancel an existing Account, for any reason, at our sole discretion.
2. You must be the older of: (i) 18 years, or (ii) at least the age of majority in the jurisdiction where you reside and from which you use the Services to open an Account.
3. You confirm that you are receiving any Services provided by BeNimble for the purposes of carrying on a business activity and not for any personal, household or family purpose.
4. You acknowledge that BeNimble will use the email address you provide on opening an Account or as updated by you from time to time as the primary method for communication with you.

5. You are responsible for keeping your password secure. BeNimble cannot and will not be liable for any loss or damage from your failure to maintain the security of your Account and password.
6. You are responsible for all activity and content such as photos, images, videos, graphics, written content, audio files, code, information, or data uploaded, collected, generated, stored, displayed, distributed, transmitted or exhibited on or in connection with your Account (“Materials”).
7. A breach or violation of any term in the Terms of Service, including the AUP, as determined in the sole discretion of BeNimble may result in an immediate termination of your Services.

WHICH MEANS

You are responsible for your Account and any Materials you upload to the BeNimble Service. Remember that if you violate these terms we may cancel your service.

If we need to reach you, we will send you an email.

2. Account Activation

2.1 Store Owner

1. Subject to section 2.1(2), the person signing up for the Service by opening an Account will be the contracting party (“Store Owner”) for the purposes of our Terms of Service and will be the person who is authorized to use any corresponding Account we may provide to the Store Owner in connection with the Service. You are responsible for ensuring that the name of the Store

Owner (including the legal name of the company that owns the Store, if applicable) is clearly visible on the Store's website.

2. If you are signing up for the Services on behalf of your employer, your employer shall be the Store Owner. If you are signing up for the Services on behalf of your employer, then you must use your employer-issued email address and you represent and warrant that you have the authority to bind your employer to our Terms of Service.
3. Your BeNimble Store can only be associated with one Store Owner. A Store Owner may have multiple BeNimble Stores. "Store" means the online store or physical retail location(s) associated with the Account.

2.2 Staff Accounts

1. Based on your BeNimble pricing plan, you can create one or more staff accounts ("Staff Accounts") allowing other people to access the Account. With Staff Accounts, the Store Owner can set permissions and let other people work in their Account while determining the level of access by Staff Accounts to specific business information (for example, you can limit Staff Account access to sales information on the Reports page or prevent Staff Accounts from changing general store settings).
2. The Store Owner is responsible and liable for the acts, omissions and defaults arising from use of Staff Accounts in the performance of obligations under these Terms of Service as if they were the Store Owner's own acts, omissions or defaults.
3. The Store Owner and the users under Staff Accounts are each referred to as a "BeNimble User".

2.3 PayPal Express Checkout and BeNimble Payments Accounts

1. Upon completion of sign up for the Service, BeNimble might create a PayPal Express Checkout account on your behalf, using your email address. Depending on your location, BeNimble may also create a BeNimble Payments account on your behalf.
2. You acknowledge that PayPal Express Checkout and/or BeNimble Payments will be your default payments gateway(s) should BeNimble choose so, and that it is your sole responsibility as the Store Owner to activate and maintain these accounts. If you do not wish to keep either of the payment accounts active, it is your responsibility to deactivate them. For the avoidance of doubt, PayPal Express Checkout is a Third Party Service, as defined in Section 17 of these Terms of Service.

2.4 Apple Pay for Safari Account

1. Upon completion of sign up for the Service, BeNimble might create an Apple Pay for Safari ("Apple Pay") account on your behalf, using the URL(s) and business name associated with your Account. Depending on your location, BeNimble may activate your Apple Pay account on your behalf, otherwise you will be required to activate your Apple Pay account within your Account admin. If you do not wish to keep your Apple Pay account active, it is your responsibility to deactivate it. For the avoidance of doubt, Apple Pay is a Third Party Service, as defined in Section 17 of these Terms of Service.
2. If you use an Apple Pay supported payment gateway and your customers have enabled Apple Pay on their device, customers may purchase goods and services from your Store using Apple Pay.

3. By using Apple Pay on your Store, you are agreeing to be bound by the [Apple Pay Platform Web Merchant Terms and Conditions](#), as they may be amended by Apple from time to time. Such amendments to the Apple Pay Platform Web Merchant Terms are effective as of the date of posting. Your continued use of Apple Pay on your Store after the amended Apple Pay Platform Web Merchant Terms are posted constitutes your agreement to, and acceptance of, the amended Apple Pay Platform Web Merchant Terms. If you do not agree to any changes to the Apple Pay Platform Web Merchant Terms, de-activate your Apple Pay account and do not continue to use Apple Pay on your Store.

2.5 Google Payment

1. Upon completion of sign up for the Service, if you have been enrolled in BeNimble Payments, BeNimble might also create a Google Payment account on your behalf. If you do not wish to keep your Google Payment account active, it is your responsibility to deactivate it. For the avoidance of doubt, Google Payment is a Third Party Service, as defined in Section 17 of these Terms of Service.
2. If you use a Google Payment supported payment gateway and your customers have enabled Google Payment, customers may purchase goods and services from your Store using Google Payment.
3. By using Google Payment on your Store, you are agreeing to be bound by the [Google Payment API Terms of Service](#), as they may be amended by Google from time to time. If Google amends the [Google Payment API Terms of Service](#), the amended and restated version will be posted here: <https://payments.developers.google.com/terms/sellertos>. Such amendments to the Google Payment API Terms of Service are effective as of

the date of posting. Your continued use of Google Payment on your Store after the amended Google Payment API Terms of Service are posted constitutes your agreement to, and acceptance of, the amended Google Payment API Terms of Service. If you do not agree to any changes to the Google Payment API Terms of Service, deactivate your Google Payment account and do not continue to use Google Payment on your Store.

2.6 Domain Names

1. Upon purchasing a domain name through BeNimble, domain registration will be preset to automatically renew each year so long as your BeNimble Account remains active. You acknowledge that it is your sole responsibility to deactivate the auto-renewal function should you choose to do so. You furthermore agree that all renewal fees and related fees will be paid by yourself.
2. Should you wish to move your domain name purchased through benimble.co.za to another registrar, you will be liable for an administrative fee of R499 or 2% of your transaction values over the course of your store lifetime with BeNimble, whichever is the greatest.

WHICH MEANS

Only one person can be the “Store Owner”, usually the person signing up for the BeNimble Service. The Store Owner is responsible for the Account, is bound by these Terms of Service and is responsible for the actions of others accessing the Account. If

you sign up on behalf of your employer, your employer is the Store Owner responsible for your Account.

We automatically create certain accounts for you to accept payments. You are responsible for activating and deactivating these accounts and complying with their terms, which are with various third parties.

Any domain you purchase through us will automatically renew unless you opt out.

3. General Conditions

You must read, agree with and accept all of the terms and conditions contained in these Terms of Service, including the AUP, the Privacy Policy, and, if you operate a E.U. based Store, the EU Terms, before you may become a BeNimble User.

Additionally, you acknowledge and agree to the Rules of Engagement for the Sale of COVID-19 Related Products if you sell such products.

1. Technical support in respect of the Services is only provided to BeNimble Users.
2. The Terms of Service shall be governed by and interpreted in accordance with the laws of the Province of Ontario and the laws of Canada applicable therein, without regard to principles of conflicts of laws. The United Nations Convention on Contracts for the International Sale of Goods will not apply to these Terms of Service and is hereby expressly excluded.
3. You acknowledge and agree that BeNimble may amend these Terms of Service at any time by posting the relevant amended and restated Terms of Service on BeNimble's website and such amendments to the Terms of Service are effective as of the date of posting. Your continued use of the Services after the amended Terms of Service are posted to BeNimble's

website constitutes your agreement to, and acceptance of, the amended Terms of Service. If you do not agree to any changes to the Terms of Service, do not continue to use the Service. If the EU Terms apply to your Store, then amendments to these Terms of Service will be provided in accordance with the EU Terms.

4. You may not use the BeNimble Services for any illegal or unauthorized purpose nor may you, in the use of the Service, violate any laws in your jurisdiction (including but not limited to copyright laws), the laws applicable to you in your customer's jurisdiction, or the laws of Canada and the Province of Ontario. You will comply with all applicable laws, rules and regulations in your use of the Service and your performance of obligations under the Terms of Service.
5. The BeNimble API License and Terms of Use govern your access to and use of the BeNimble API (as defined therein). You are solely responsible for the activity that occurs using your API Credentials (as defined in the API Terms) and for keeping your API Credentials secure.
6. You agree not to reproduce, duplicate, copy, sell, resell or exploit any portion of the Service, use of the Services, or access to the Services without the express written permission by BeNimble.
7. You shall not purchase search engines or other pay per click keywords (such as Google Ads), or domain names that use BeNimble or BeNimble trademarks and/or variations and misspellings thereof.
8. Questions about the Terms of Service should be sent to BeNimble Support.
9. You understand that your Materials (not including credit card information), may be transferred unencrypted and involve (a) transmissions over various networks; and (b) changes to conform and adapt to technical requirements of connecting networks or devices. Credit card information is always encrypted during transfer over networks.

10. The Services allow you to send certain communications to your customers by short message service (SMS) messaging (for example, sending order confirmation notifications via SMS) (the "SMS Services"). You will only use the SMS Services in compliance with these Terms of Service and the laws of the jurisdiction from which you send messages, and in which your messages are received.
11. You acknowledge and agree that your use of the Services, including information transmitted to or stored by BeNimble, is governed by its privacy policy
12. The Terms of Service may be available in languages other than English. To the extent of any inconsistencies or conflicts between these English Terms of Service and BeNimble's Terms of Service available in another language, the most current English version of the Terms of Service will prevail. Any disputes arising out of these Terms of Service will be resolved in English unless otherwise determined by BeNimble (acting in its sole discretion) or as required by applicable law.
13. All the terms and provisions of the Terms of Service shall be binding upon and inure to the benefit of the parties to the Terms of Service and to their respective heirs, successors, permitted assigns and legal representatives. BeNimble shall be permitted to assign these Terms of Service without notice to you or consent from you. You shall have no right to assign or otherwise transfer the Terms of Service, or any of your rights or obligations hereunder, to any third party without BeNimble's prior written consent, to be given or withheld in BeNimble's sole discretion.
14. If any provision, or portion of the provision, in these Terms of Service is, for any reason, held to be invalid, illegal or unenforceable in any respect, then such invalidity, illegality or unenforceability will not affect any other provision (or the unaffected portion of the provision) of the Terms of Service, and the Terms of Service will be construed as if such invalid, illegal or unenforceable

provision, or portion of the provision, had never been contained within the Terms of Service.

15. Sections 1, 3(2)-(5), 4, 6-8, 14-15, 17(8)-(10), 19, 21 and 22 will survive the termination or expiration of these Terms of Service.

WHICH MEANS

The BeNimble service belongs to us. You are not allowed to rip it off or use it for any illegal or sketchy purpose. If you or your employees or contractors use BeNimble's APIs, you will comply with our API terms.

Your Materials may be transferred unencrypted and may be altered, but credit card information is always encrypted.

4. BeNimble Contracting Party

1. These apply to you:
 - a. You irrevocably and unconditionally agree to submit to the jurisdiction of Irish courts, which have jurisdiction to settle any disputes which may arise out of or in connection with the validity, effect, interpretation or performance of these Terms of Service and you similarly irrevocably and unconditionally waive any objection to any claim that any suit, action or proceeding has been brought by BeNimble in any other jurisdiction. The United Nations Convention on Contracts for the International Sale of Goods will not apply to these Terms of Service and is hereby expressly excluded.

2. All legal disputes will be handled by the relevant court under the jurisdiction of the South Africa law.

WHICH MEANS

If a dispute arises you may bring an action, in the courts of the Republic of South Africa

5. BeNimble Rights

1. We reserve the right to modify or terminate the Services for any reason, without notice at any time. Not all Services and features are available in every jurisdiction and we are under no obligation to make any Services or features available in any jurisdiction.
2. We reserve the right to refuse service to anyone for any reason at any time.
3. We may, but have no obligation to, remove Materials and suspend or terminate Accounts if we determine in our sole discretion that the goods or services offered via a Store, or the Materials uploaded or posted to a Store, violate our Acceptable Use Policy (“AUP”) or these Terms of Service.
4. Verbal or written abuse of any kind (including threats of abuse or retribution) of any BeNimble customer, BeNimble employee, member, or officer will result in immediate Account termination.
5. BeNimble does not pre-screen Materials and it is in our sole discretion to refuse or remove any Materials from the Service, including your Store.
6. We reserve the right to provide our services to your competitors and make no promise of exclusivity in any particular market segment. You further acknowledge and agree that BeNimble employees and contractors may also be BeNimble customers/merchants and that they may compete with you,

although they may not use your Confidential Information (as defined in Section 6) in doing so.

7. In the event of a dispute regarding Account ownership, we reserve the right to request documentation to determine or confirm Account ownership. Documentation may include, but is not limited to, a scanned copy of your business license, government issued photo ID, the last four digits of the credit card on file, your status as an employee of an entity, etc.
8. BeNimble retains the right to determine, in our sole judgment, rightful Account ownership and transfer an Account to the rightful Store Owner. If we are unable to reasonably determine the rightful Store Owner, without prejudice to our other rights and remedies, BeNimble reserves the right to temporarily disable an Account until resolution has been determined between the disputing parties.

WHICH MEANS

We can modify, cancel or refuse the service at any time.

In the event of an ownership dispute over a BeNimble account, we can freeze the account or transfer it to the rightful owner, as determined by us.

6. Confidentiality

1. "Confidential Information" shall include, but shall not be limited to, any and all information associated with a party's business and not publicly known, including specific business information, technical processes and formulas, software, customer lists, prospective customer lists, names, addresses and other information regarding customers and prospective customers, product

designs, sales, costs (including any relevant processing fees), price lists, and other unpublished financial information, business plans and marketing data, and any other confidential and proprietary information, whether or not marked as confidential or proprietary. BeNimble's Confidential Information includes all information that you receive relating to us, or to the Services, that is not known to the general public including information related to our security program and practices.

2. Each party agrees to use the other party's Confidential Information solely as necessary for performing its obligations under these Terms of Service and in accordance with any other obligations in these Terms of Service including this Section 6. Each party agrees that it shall take all reasonable steps, at least substantially equivalent to the steps it takes to protect its own proprietary information, to prevent the duplication, disclosure or use of any such Confidential Information, other than (i) by or to its employees, agents and subcontractors who must have access to such Confidential Information to perform such party's obligations hereunder, who each shall treat such Confidential Information as provided herein, and who are each subject to obligations of confidentiality to such party that are at least as stringent as those contained herein; or (ii) as required by any law, regulation, or order of any court of proper jurisdiction over the parties and the subject matter contained in these Terms of Service, provided that, if legally permitted, the receiving party shall give the disclosing party prompt written notice and use commercially reasonable efforts to ensure that such disclosure is accorded confidential treatment. Confidential Information shall not include any information that the receiving party can prove: (A) was already in the public domain, or was already known by or in the possession of the receiving party, at the time of disclosure of such information; (B) is independently developed by the receiving party without use of or reference to the other party's Confidential Information, and without breaching any provisions of these

Terms of Service; or (C) is thereafter rightly obtained by the receiving party from a source other than the disclosing party without breaching any provision of these Terms of Service.

WHICH MEANS

Both you and BeNimble agree to use the Confidential Information of the other only to perform the obligations in these Terms of Service. Confidential Information must be protected and respected.

7. Limitation of Liability

1. You expressly understand and agree that, to the extent permitted by applicable laws, BeNimble shall not be liable for any direct, indirect, incidental, special, consequential or exemplary damages, including but not limited to, damages for loss of profits, goodwill, use, data or other intangible losses resulting from the use of or inability to use the Service.
2. To the extent permitted by applicable laws, in no event shall BeNimble or our suppliers be liable for lost profits or any special, incidental or consequential damages arising out of or in connection with our site, our Services or these Terms of Service (however arising including negligence). You agree to indemnify and hold us and (as applicable) our parent, subsidiaries, affiliates, BeNimble partners, officers, directors, agents, employees, and suppliers harmless from any claim or demand, including reasonable attorneys' fees, made by any third party due to or arising out of your breach of these Terms of Service or the documents it incorporates by reference (including the AUP), or your violation of any law or the rights of a third party.

3. Your use of the Services is at your sole risk. The Services are provided on an “as is” and “as available” basis without any warranty or condition, express, implied or statutory.
4. BeNimble does not warrant that the Services will be uninterrupted, timely, secure, or error-free.
5. BeNimble does not warrant that the results that may be obtained from the use of the Services will be accurate or reliable.
6. BeNimble does not warrant that the quality of any products, services, information, or other materials purchased or obtained by you through the Services will meet your expectations, or that any errors in the Services will be corrected.

WHICH MEANS

We are not responsible if you break the law, breach this agreement or go against the rights of a third party, especially if you get sued.

Service is “as is” so it may have errors or interruptions and we provide no warranties and our liability is limited.

8. Waiver, Severability, and Complete Agreement

The failure of BeNimble to exercise or enforce any right or provision of the Terms of Service shall not constitute a waiver of such right or provision. If any provision of the Terms of Service, including all terms and conditions and other documents it incorporates by reference, is held by a court of competent jurisdiction to be contrary to law, such provision shall be changed and interpreted so as to best accomplish the objectives of the original provision to the fullest extent allowed by

law, and the remaining provision of the Terms of Service shall remain in full force and effect.

The Terms of Service, including the documents it incorporates by reference, constitute the entire agreement between you and BeNimble and govern your use of the Services and your Account, superseding any prior agreements between you and BeNimble (including, but not limited to, any prior versions of the Terms of Service).

WHICH MEANS

If BeNimble chooses not to enforce any of these provisions at any time, it does not mean that we give up that right later.

These Terms of Service make up the agreement that applies to you. This means that any previous agreements between you and BeNimble don't apply if they conflict with these terms.

9. Intellectual Property and Customer Content

1. We do not claim any intellectual property rights over the Materials you provide to the BeNimble Service. All Materials you upload remain yours. You can remove your BeNimble Store at any time by requesting that we delete your Account.
2. By uploading Materials, you agree: (a) to allow other internet users to view the Materials you post publicly to your Store; (b) to allow BeNimble to store, and in the case of Materials you post publicly, display and use your Materials; and (c) that BeNimble can, at any time, review and delete all the

Materials submitted to its Service, although BeNimble is not obligated to do so.

3. You retain ownership over all Materials that you upload to the Store; however, by making your Store public, you agree to allow others to view Materials that you post publicly to your Store. You are responsible for compliance of the Materials with any applicable laws or regulations.
4. BeNimble shall have the non-exclusive right and license to use the names, trademarks, service marks and logos associated with your Store to promote the Service.

WHICH MEANS

Anything you upload remains yours and is your responsibility.

10. POS Services

In addition to the terms applicable to Services generally, the following terms apply to your access and use of the POS Services. The POS Services include the BeNimble POS software ("POS Software"), the BeNimble POS website, located at /pos, programs, documentation, apps, tools, internet-based services and components, BeNimble's POS hardware ("POS Equipment") and any updates thereto provided to you by BeNimble.

1. Access to and use of the POS Services requires that you have an active and valid Account.
2. If your POS Services are enabled with BeNimble Payments, you cannot concurrently use any other payment processing service. The payment

gateway used for your POS Services must be the same as that used for your Online Services, if applicable.

3. You can terminate your POS Services without terminating your Account or any other Services you subscribe to, and in such case, you will continue to be billed, and will pay for, the Services (other than the terminated POS Services).
4. You agree to use the POS Services in accordance with all procedures that may be provided by BeNimble from time to time.
5. While the POS Services use encryption technology, and the law generally prohibits third parties from monitoring transmission, we cannot guarantee security with respect to the connection to the POS Services, and we will not be liable for any unauthorized access to or use of data transmitted via the POS Services.
6. POS Equipment is purchased, and not leased. Purchase of the POS Equipment is subject to the POS Equipment Agreement. Upon payment by you for the POS Equipment, and confirmation to you of shipment of the POS equipment, you will acquire ownership of and title to the hardware components of the POS Equipment, and you will be licensed to access and use all POS Software installed in the POS Equipment (and any updates thereto), on a limited, non-exclusive, revocable, non-sublicensable, non-transferable basis, solely for the purposes of using the POS Services. POS Equipment is subject to our Return Policy. Returns and refunds are not available for the Chip & Swipe Reader, Swipe (Audio Jack) and physical gift cards purchased from the BeNimble Hardware Store.
7. The Fees for POS Services shall be determined based on the number of locations at which you are using the POS Services. Locations are defined by business address and are used for associating orders with a specific business address. Locations are added through the BeNimble web administrative console associated with your Account. The number of locations using POS Services will also be detected by us and billed

accordingly as part of your regular billing cycle. In the event of any discrepancy between the number of locations added by you through the BeNimble web administrative console and the number of locations detected by Nimbl, the number of locations detected by BeNimble shall be deemed to be correct.

WHICH MEANS

If you use our POS Services, you must use the same payment processor that you use for the Online Services. You can cancel your POS Services at any time and still keep your Online Services active. We take data security very seriously, but we can't guarantee that all transmissions using the POS Equipment are 100% secure. All transactions transmitted using the POS Equipment are at your own risk. Remember that the POS equipment is purchased, not leased. Our POS Equipment return policy applies to all POS equipment, except Chip & Swipe Reader, Swipe (Audio Jack) and physical gift cards.

11. BeNimble Shipping

You can purchase shipping labels from within your BeNimble administrative console ("BeNimble Shipping") for delivery of goods purchased from your BeNimble Store. In addition to these Terms of Service, your access to and use of BeNimble Shipping is subject to the BeNimble Shipping Terms of Service.

WHICH MEANS

If you use BeNimble Shipping you must comply with the BeNimble Shipping Terms of Service.

12. Theme Store

1. You may establish the appearance of your BeNimble Store with a design template from BeNimble's Theme Store ("a Theme"). If you download a Theme, you are licensed to use it for a single Store only. You are free to transfer a Theme to a second one of your own Stores if you close your first Store. To initiate a transfer of a Theme to a second one of your Stores, please contact BeNimble Support. You are not permitted to transfer or sell a Theme to any other person's Store on BeNimble or elsewhere. Multiple Stores require multiple downloads and each download is subject to the applicable fee. BeNimble gives no assurance that a particular Theme will remain available for additional downloads.
2. You may modify the Theme to suit your Store. BeNimble may add or modify the footer in a Theme that refers to BeNimble at its discretion. BeNimble may modify the Theme where it contains, in our sole discretion, an element that violates the BeNimble AUP or other provisions of the Terms of Service, even if you received the Theme in that condition. BeNimble may modify the Theme to reflect technical changes and updates as required.
3. The intellectual property rights of the Theme remain the property of the designer. If you exceed the rights granted by your purchase of a Theme, the designer may take legal action against you, and, without prejudice to our other rights or remedies, BeNimble may take administrative action such as modifying your Store or closing your Store.
4. Technical support for a Theme is the responsibility of the designer, and BeNimble accepts no responsibility to provide such support. BeNimble may be able to help you contact the designer.

5. It is the responsibility of the user, and not BeNimble, to ensure that the installation of a new theme does not overwrite or damage the current or preexisting theme, or UI, of the user.

WHICH MEANS

You can purchase our Themes to use for one Store at a time. Feel free to modify our Theme, but respect that the designers own their Themes, so don't infringe on their rights. For Theme-related problems, contact the designer. Note that Themes may disappear over time and are subject to change.

13. BeNimble Email

You may generate or send email from your Account using the BeNimble email services (the "Email Services"). In addition to the terms applicable to the Services generally (including BeNimble's Acceptable Use Policy, and Privacy Policy), the following terms apply to your access and use of the Email Services:

1. BeNimble employs certain controls to scan the content of emails you deliver using the Email Services prior to delivery ("Content Scanning"). Such Content Scanning is intended to limit spam, phishing, or other malicious content that contravenes these Terms of Service, or BeNimble Acceptable Use Policy (collectively, "Threats"). By using the Email Services, you explicitly grant BeNimble the right to employ such Content Scanning. BeNimble does not guarantee that the Email Services will be free from Threats, and each BeNimble merchant is responsible for all content generated by their respective Stores.

2. BY GENERATING OR SENDING EMAIL THROUGH THE EMAIL SERVICES, YOU AGREE TO COMPLY WITH THE FOLLOWING REQUIREMENTS (THE "EMAIL SERVICES REQUIREMENTS"). BeNimble, OR ITS THIRD PARTY PROVIDERS, MAY SUSPEND OR TERMINATE YOUR ACCESS TO AND USE OF THE EMAIL SERVICES IF YOU DO NOT COMPLY WITH THE EMAIL SERVICES REQUIREMENTS.

1. Your use of the Email Services must comply with all applicable laws. Examples of applicable laws include laws relating to spam or unsolicited commercial email ("UCE"), privacy, security, obscenity, defamation, intellectual property, pornography, terrorism, homeland security, gambling, child protection, and other applicable laws. It is your responsibility to know and understand the laws applicable to your use of the Email Services and the emails you generate or send through the Email Services.
2. Your use of the Email Services must comply with BeNimble's Privacy Policy. It is your responsibility to read and understand the Privacy Policy applicable to your use of the Email Services and the emails you generate or send through the Email Services.
3. You will use commercially reasonable efforts not to send sensitive personal data, including information regarding an individual's medical or health condition, race or ethnic origin, political opinions, religious or philosophical beliefs, or other sensitive data (collectively, "Sensitive Data") through the Email Services. It is your responsibility to read and understand your obligations in relation to Sensitive Data.
4. Your use of the Email Services must follow all applicable guidelines established by BeNimble. The guidelines below are examples of practices that may violate the Email Services Requirements when generating, or sending emails through the Email Services:

- using non-permission based email lists (i.e., lists in which each recipient has not explicitly granted permission to receive emails from you by affirmatively opting-in to receive those emails);
- using purchased or rented email lists;
- using third party email addresses, domain names, or mail servers without proper permission;
- sending emails to non-specific addresses (e.g., webmaster@domain.com or info@domain.com);
- sending emails that result in an unacceptable number of spam or UCE complaints (even if the emails themselves are not actually spam or UCE);
- failing to include a working “unsubscribe” link in each email that allows the recipient to remove themselves from your mailing list;
- failing to comply with any request from a recipient to be removed from your mailing list within 10 days of receipt of the request;
- failing to include in each email a link to the then-current privacy policy applicable to that email;
- disguising the origin or subject matter of any email or falsifying or manipulating the originating email address, subject line, headers, or transmission path information for any email;
- failing to include in each email your valid physical mailing address or a link to that information; or
- including “junk mail,” “chain letters,” “pyramid schemes,” incentives (e.g., coupons, discounts, awards, or other incentives) or other material in any email that encourages a recipient to forward the Email to another recipient.

3. If You or a customer knows of or suspects any violations of the Email Services Requirements, please notify BeNimble at abuse@benimble.com. BeNimble will determine compliance with the Email Services Requirements in its discretion.
4. BeNimble's Email Services utilize Third Party Providers, including SendGrid (a Twilio Company). Your use of the Email Services is subject to SendGrid's [Acceptable Use Policy](#) as it may be amended by SendGrid from time to time.

WHICH MEANS

By using the Email Services, you agree that BeNimble may use certain tools to ensure the content of the emails sent through the service is safe and compliant with our policies.

14. Payment of Fees

1. You will pay the Fees applicable to your subscription to Online Service and/or POS Services ("Subscription Fees") and any other applicable fees, including but not limited to applicable fees relating to the value of sales made through your Store when using all payment providers other than BeNimble Payments ("Transaction Fees"), and any fees relating to your purchase or use of any products or services such as BeNimble Payments, POS Equipment, shipping, apps, Themes, domain names, Experts Marketplace, or Third Party Services ("Additional Fees"). Together, the Subscription Fees, Transaction Fees and the Additional Fees are referred to as the "Fees".
2. You must keep a valid payment method on file with us to pay for all incurred and recurring Fees. BeNimble will charge applicable Fees to any valid

payment method that you authorize (“Authorized Payment Method”), and BeNimble will continue to charge the Authorized Payment Method for applicable Fees until the Services are terminated, and any and all outstanding Fees have been paid in full. Unless otherwise indicated, all Fees and other charges are in U.S. dollars, and all payments shall be in U.S. currency.

3. Subscription Fees are paid in advance and will be billed in 30 day intervals (each such date, a “Billing Date”). Transaction Fees and Additional Fees will be charged from time to time at BeNimble’s discretion. You will be charged on each Billing Date for all outstanding Fees that have not previously been charged. Fees will appear on an invoice, which will be sent to the Store Owner via the email provided. As well, an invoice will appear on the Account page of your Store’s administration console. Users have approximately two weeks to bring up and settle any issues with the billing of Subscription Fees.
4. If we are not able to process payment of Fees for whatever reason, we may suspend and revoke access to your Account and the Services. Your Account will be reactivated upon your payment of any outstanding Fees, plus the Fees applicable to your next billing cycle. You may not be able to access your Account or your storefront during any period of suspension. If the outstanding Fees remain unpaid for 60 days following the date of suspension, BeNimble reserves the right to terminate your Account.
5. All Fees are exclusive of applicable federal, provincial, state, local or other governmental sales, goods and services (including Goods and Sales Tax under the Goods and Services Tax Act, Chapter 117A of Singapore), harmonized or other taxes, fees or charges now in force or enacted in the future (“Taxes”).
6. You are responsible for all applicable Taxes that arise from or as a result of your subscription to or purchase of BeNimble’s products and services. To the extent that BeNimble charges these Taxes, they are calculated using the tax

rates that apply based on the billing address you provide to us. Such amounts are in addition to the Fees for such products and services and will be billed to your Authorized Payment Method. If you are exempt from payment of such Taxes, you must provide us with evidence of your exemption, which in some jurisdictions includes an original certificate that satisfies applicable legal requirements attesting to tax-exempt status. Tax exemption will only apply from and after the date we receive evidence satisfactory to BeNimble of your exemption. If you are not charged Taxes by BeNimble, you are responsible for determining if Taxes are payable, and if so, self-remitting Taxes to the appropriate tax authorities in your jurisdiction.

7. For the avoidance of doubt, all sums payable by you to BeNimble under these Terms of Service shall be paid free and clear of any deductions or withholdings whatsoever. Other than Taxes charged by BeNimble to you and remitted to the appropriate tax authorities on your behalf, any deductions or withholdings that are required by law shall be borne by you and paid separately to the relevant taxation authority. BeNimble shall be entitled to charge the full amount of Fees stipulated under these Terms of Service to your Authorized Payment Method ignoring any such deduction or withholding that may be required.
8. You must maintain an accurate location in the administration menu of your BeNimble Store. If you change jurisdictions you must promptly update your location in the administration menu.
9. BeNimble does not provide refunds.

WHICH MEANS

A valid payment method (like a credit card) is required for all stores. You will be billed for your Subscription Fees every 30 days. Any Transaction Fees or Additional Fees will

be charged to your payment method. If we are not able to process payment of Fees using your payment method, we will try again in 3 days. If we are unable to process payment of Fees on the second attempt, we will make a third and final attempt three days later. If payment of Fees is unsuccessful after three attempts, BeNimble may freeze your store. You may be required to remit Taxes to BeNimble or to self-remmit to your local taxing authority. No refunds.

15. Cancellation and Termination

1. You may cancel your Account and terminate the Terms of Service at any time by contacting BeNimble Support and then following the specific instructions indicated to you in BeNimble's response.
2. Upon termination of the Services by either party for any reason:
 1. BeNimble will cease providing you with the Services and you will no longer be able to access your Account;
 2. unless otherwise provided in the Terms of Service, you will not be entitled to any refunds of any Fees, pro rata or otherwise;
 3. any outstanding balance owed to BeNimble for your use of the Services through the effective date of such termination will immediately become due and payable in full; and
 4. your Store website will be taken offline.
3. If you purchased a domain name through BeNimble, upon cancellation your domain will no longer be automatically renewed. Following termination, it will be your sole responsibility to handle all matters related to your domain with the domain provider.
4. If at the date of termination of the Service, there are any outstanding Fees owing by you, you will receive one final invoice via email. Once that invoice has been paid in full, you will not be charged again.
5. We reserve the right to modify or terminate the BeNimble Service, the Terms of Service and/or your Account for any reason, without notice at any time

(unless otherwise required by applicable law). Termination of the Terms of Service shall be without prejudice to any rights or obligations which arose prior to the date of termination.

6. Fraud: Without limiting any other remedies, BeNimble may suspend or terminate your Account if we suspect that you (by conviction, settlement, insurance or escrow investigation, or otherwise) have engaged in fraudulent activity in connection with the use of the Services.

WHICH MEANS

To initiate a termination contact Support. BeNimble will respond with specific information regarding the termination process for your account. Once termination is confirmed, domains purchased through BeNimble will no longer be automatically renewed. If you cancel in the middle of your billing cycle, you'll have one last email invoice.

We may change or terminate your account at any time. Any fraud and we will suspend or terminate your account.

16. Modifications to the Service and Prices

1. Prices for using the Services are subject to change upon 30 days' notice from BeNimble. Such notice may be provided at any time by posting the changes to the BeNimble Site (benimble.co.za) or the administration menu of your BeNimble Store via an announcement.
2. BeNimble reserves the right at any time, and from time to time, to modify or discontinue, the Services (or any part thereof) with or without notice (unless otherwise required by applicable law).

3. BeNimble shall not be liable to you or to any third party for any modification, price change, suspension or discontinuance of the Service.

WHICH MEANS

We may change or discontinue the service at anytime, without liability.

17. NOT APPLICABLE

18. Beta Services

From time to time, BeNimble may, in its sole discretion, invite you to use, on a trial basis, pre-release or beta features that are in development and not yet available to all merchants (“Beta Services”). Beta Services may be subject to additional terms and conditions, which BeNimble will provide to you prior to your use of the Beta Services. Such Beta Services and all associated conversations and materials relating thereto will be considered BeNimble Confidential Information and subject to the confidentiality provisions in this agreement. Without limiting the generality of the foregoing, you agree that you will not make any public statements or otherwise disclose your participation in the Beta Services without BeNimble’s prior written consent. BeNimble makes no representations or warranties that the Beta Services will function. BeNimble may discontinue the Beta Services at any time in its sole discretion. BeNimble will have no liability for any harm or damage arising out of or in connection with a Beta Service. The Beta Services may not work in the same way as a final version. BeNimble may change or not release a final or commercial version of a Beta Service in our sole discretion.

19. Feedback and Reviews

BeNimble welcomes any ideas and/or suggestions regarding improvements or additions to the Services. Under no circumstances shall any disclosure of any idea, suggestion or related material or any review of the Services, Third Party Services or any Third Party Provider (collectively, "Feedback") to BeNimble be subject to any obligation of confidentiality or expectation of compensation. By submitting Feedback to BeNimble (whether submitted directly to BeNimble or posted on any BeNimble hosted forum or page), you waive any and all rights in the Feedback and that BeNimble is free to implement and use the Feedback if desired, as provided by you or as modified by BeNimble, without obtaining permission or license from you or from any third party. Any reviews of a Third Party Service or Third Party Provider that you submit to BeNimble must be accurate to the best of your knowledge, and must not be illegal, obscene, threatening, defamatory, invasive of privacy, infringing of intellectual property rights, or otherwise injurious to third parties or objectionable. BeNimble reserves the right (but not the obligation) to remove or edit Feedback of Third Party Services or Third Party Providers, but does not regularly inspect posted Feedback.

20. DMCA Notice and Takedown Procedure

BeNimble supports the protection of intellectual property and asks BeNimble merchants to do the same. It's our policy to respond to all notices of alleged copyright infringement. If someone believes that one of our merchants is infringing their intellectual property rights, they can send a DMCA Notice to BeNimble's designated agent using our form. Upon receiving a DMCA Notice, we may remove or disable access to the Materials claimed to be a copyright infringement. Once provided with a notice of takedown, the merchant can reply with a counter notification using our form if they object to the complaint. The original complainant has 14 business days after we receive a counter notification to seek a court order

restraining the merchant from engaging in the infringing activity, otherwise we restore the material.

WHICH MEANS

BeNimble respects intellectual property rights and you should too. If we receive a DMCA Notice, we may disable access or remove the allegedly infringing content from your website. If you don't think the claim is valid, you can proceed with a counter notification.

If you believe one of our merchants is infringing your intellectual property rights, you can send BeNimble a DMCA Notice. We will expeditiously disable access or remove the content and notify the merchant.

21. Rights of Third Parties

Save for BeNimble and its affiliates, BeNimble Users or anyone accessing BeNimble Services pursuant to these Terms of Service, unless otherwise provided in these Terms of Service, no person or entity who is not a party to these Terms of Service shall have any right to enforce any term of these Terms of Service, regardless of whether such person or entity has been identified by name, as a member of a class or as answering a particular description. For the avoidance of doubt, this shall not affect the rights of any permitted assignee or transferee of these Terms.

WHICH MEANS

Only BeNimble, BeNimble Users and persons accessing BeNimble Services have any rights under these Terms of Service.

22. Privacy & Data Protection

BeNimble is firmly committed to protecting the privacy of your personal information and the personal information of your customers. By using the Service, you acknowledge and agree with BeNimble's collection, usage and disclosure of this personal information.

WHICH MEANS

BeNimble's use and collection of personal information is allowed.