



## User Agreement

This User Agreement ("Agreement") is entered into by and between Benefit Communications Inc. ("BCI"), a Tennessee corporation, and you, the user ("you", "your", or "user"), and governs your use of the BCI Internet web sites ("BCI Sites") available on the World Wide Web at the Uniform Resource Locator ("URL") <http://www.electbenefits.com> ("electbenefits.com") and <http://benefitcommunications.com/> ("benefitcommunications.com"). This Agreement defines the terms and conditions that apply to all users of the BCI Sites, including but not limited to office administrators, benefit plan administrators, employers, client employees, and registered users.

By using the BCI Sites or the services available on the BCI Sites, you agree to the terms of this agreement just as if you had signed the agreement. If you do not agree to be bound by this agreement, you may not use any of the services available through the BCI Sites.

### 1. Agreement.

The BCI Sites are Internet services operating under the name of and ownership of BCI. BCI grants you a limited, non-exclusive, non-assignable and non-transferable license to access and use the on-line services available at the BCI Sites if you acknowledge and agree that access and use is governed by each term and condition in this Agreement.

### 2. Information Use.

A. The term "Information" means all content, data and the related services and information provided by BCI or obtained through the BCI Sites. BCI may have agreements with certain sponsors, third-party web site operators and other third-party providers whereby BCI displays information, products, goods, or services offered by the third-party providers, either independently or in conjunction with BCI, and provides links from the BCI Sites to third-party web sites. The term "Information" also refers to Information of the same nature described in the Agreement that is offered by Third-Party Providers and in this Agreement, the term "BCI" shall also include Third-Party Providers.

B. Although BCI facilitates services and the use of Information from Third-Party Providers, there is no legal affiliation, nor any intent for affiliation, between BCI and such Third-Party Providers. BCI is not liable, directly or indirectly for any loss or damage caused by your use of any external site, Third-Party Provider Information, product or service.

### 3. Ownership.

A. All pages of the BCI Sites are considered exclusive property of BCI or its licensors, licensees or Third-Party Providers and are copyrighted material.

B. Unless you have prior permission you may not copy, reproduce, republish, upload, post, transmit, adapt, distribute, commercially exploit, or publicly display any portion of the Information contained in the BCI Sites. Additionally, you may not remove, alter, use, display, modify, copy or obscure any copyright, Trademarks, legal or proprietary notices in or on any portions of the Information.

### 4. Restrictions.

Information from the BCI Sites may not be stored in your computer's memory and neither can it be manipulated in any manner inconsistent with this Agreement. Information cannot be redistributed or used in a searchable, machine-readable database or file. Unless you have separate and specific written authorization signed by BCI, you may not rent, lease, sublicense, distribute, transfer, copy,



reproduce, publicly display, publish, adapt, store or time-share any portion of the BCI Sites. You agree to use the BCI Sites and the Information for lawful purposes only. You agree not to post or transmit any information through the BCI Sites which (1) infringes the rights of others or violates their privacy or publicity rights, (2) is unlawful, threatening, abusive, defamatory, libelous, vulgar, obscene, profane, indecent or otherwise objectionable, or (3) is protected by copyright, trademark or other proprietary right without the express permission of the owner of such right. You are solely liable for any damages resulting from any infringement of copyright, trademark or other proprietary right, or any other harm resulting from any uploading, posting or submission and shall indemnify BCI for any claims or actions brought by third-parties who allege that you have violated this Section.

### **5. Separate Web Site Links**

BCI may offer direct links to other separate and individual Web sites, which may offer information considered helpful to registered users. Since these direct links are separate Web sites independent of the BCI Sites, they may not follow the same privacy guidelines described in this User Agreement and BCI's separate Privacy Policy. BCI assumes no responsibility or control over the acts or the privacy policies of the third-party Web sites to which BCI provides direct links. We suggest that you contact the appropriate controlling authorities of these sites or review their privacy policy.

### **6. Agreement Revisions.**

BCI reserves the right to revise this Agreement and the BCI Sites. Our revisions may include but are not limited to changes in services, implementation of user priorities or rules, and discontinuance of functional aspects of the BCI Sites. BCI may also add, withdraw or change Information within the BCI Sites or services provided throughout the BCI Sites at any time in its sole discretion or cancel any link to a Third-Party Provider web site.

### **7. Important Information about your Password.**

If at any time you learn or suspect that your user name or login password has been disclosed or otherwise made known to any person other than yourself, you agree to immediately notify your employer via e-mail or in writing within twenty-four (24) hours. Upon receiving such notice, your employer will assign a new password to you within a reasonable period of time.

### **8. Service Delays.**

Neither BCI nor any of its licensors, licensees and Third-Party Providers (including their officers, directors, employees, affiliates, agents, representatives or subcontractors) will be liable for any loss or liability resulting, directly or indirectly, from delays or interruptions due to system failures, data-processing failures, telephone problems, utility failures or problems, defects, weather, strikes, walkouts, fire, acts of God, riots, armed conflicts, acts of war, or to other like causes. BCI will make every reasonable effort to provide access to the BCI Sites while any such interruption continues.

### **9. Agreement Cancellation or Termination.**

Termination or cancellation of this Agreement will not affect any legal or equity right or relief to which BCI may be entitled. If this Agreement is terminated all rights granted to you will immediately terminate and revert to BCI. BCI may immediately terminate this Agreement for any of the following reasons: (a) any unauthorized access or use by you including but not limited to: (i) concurrent access of the BCI Sites with identical user identification numbers; (ii) permitting another person or entity to use your user identification number or password to access the BCI Sites, except for human resources staff of client-employer; or (iii) any other access or use of the BCI Sites which is not authorized by this Agreement; (b) any assignment or transfer of, or attempt by you to assign or transfer, any rights



granted to you under this Agreement; (c) your failure to abide by the rules and regulations relating to the use of, or tamper with or alter any of the Information contained in, or accessed through, the BCI Sites; (d) any transmission or receipt of, or attempt by you to transmit or receive, submissions or “Ideas” using the BCI Sites. BCI will solely determine whether any information transmitted or received violates this provision); or (e) any violation of any of the other terms and conditions of this Agreement.

#### **10. Monitoring.**

BCI reserves the right to monitor all Information or transmissions sent or received through the BCI Sites. BCI has sole discretion and without further notice to you, to (but is not obligated to) review, censor or prohibit the transmission or receipt of any Information or transmission which BCI deems as inappropriate or as violating any term or condition of this Agreement. During monitoring, Information or transmission may be examined, recorded, copied, and used for authorized purposes. By using the BCI Sites, authorized or unauthorized, you consent to such monitoring. Unauthorized uses and unauthorized users of the BCI Sites will be prosecuted to the full extent of the law. Use of Information associated with monitoring the BCI Sites is subject to BCI’s Privacy Policy.

#### **11. Equipment and Operation.**

Registered user will provide and maintain all telephone, software, computer hardware and other equipment necessary to access the BCI Sites, and the costs of any necessary equipment and/or telephone connections or use, including applicable taxes, will be the registered user’s responsibility. You are responsible for operating your own equipment and for familiarity with the Information used with or available through the BCI Sites.

#### **12. Disclaimer of Warranties.**

Registered user acknowledges that the Third-Party Provider Information, web sites and links provided through the BCI Sites are sources, which are beyond the control of BCI. Though such information is recognized by the parties to be generally reliable, the parties acknowledge that inaccuracies may occur and BCI and its licensors and Third-Party Providers do not warrant the accuracy or suitability of the Information. For this reason, you acknowledge that the services available to you through the BCI Sites are provided to you on an “as is,” “where is” basis. BCI and its licensors and third-party providers expressly disclaim all warranties, whether express, oral, implied, statutory or otherwise, including any implied warranty of fitness for a specific purpose or application and any implied warranty of merchantability, any warranties arising by custom of trade or course of dealing and any implied warranties of title or non-infringement or adequacy to produce any result. BCI strives that the BCI Sites are uninterrupted and error-free. BCI will make every effort to correct any defects and to maintain the BCI Sites and/or serves so that it remains free of viruses or other harmful components.

Under this Agreement, you assume all risk of errors and/or omissions in the BCI Sites, including the transmission or translation of Information. You assume full responsibility for implementing sufficient procedures and checks to satisfy your requirements for the accuracy and suitability of the BCI Sites and its associated services, and for maintaining any means which you may require for the reconstruction of lost data or subsequent manipulations or analyses of the Information provided under the Agreement.

Some states do not allow certain limitations on implied warranties, including without limitation, the duration of effective warranties and/or their disclaimers, so the above limitation may not apply to



you. This warranty gives you specific legal rights, and you may also have other rights that vary from state-to-state.

### **13. Limitation of Liability.**

In no cases shall BCI's total liability for all damage, losses, and causes of action (whether in contract, tort or negligence, including without limitation, the negligence of BCI, or otherwise) exceed the amount paid by you, if any, for accessing the BCI Sites, even if BCI or its affiliates have been advised of the possibility of such damages. If the above limitation of liability should fail in its essential purpose for any reason, such liability is and shall be limited to a sum equal in amount to ten (10%) percent of the sums paid to BCI by you under the terms of this agreement, any agreement with an individual third-party provider or the sum of \$100.00, whichever is greater, as liquidated damages and not as a penalty, even if BCI or its affiliates have been advised of the possibility of such damages. This liability shall be complete and exclusive.

### **14. Indemnification.**

You agree to release, indemnify, defend and hold harmless BCI, its licensors, and third-party providers (including their officers, directors, employees, affiliates, agents, representatives or contractors) from and against all claims brought by any persons arising from or relating to your access and use of the BCI Sites, including but not limited to, the access to and use of the information, services and/or products obtained through or provided by the BCI Sites, including authorized access or use.

### **15. Privacy.**

You hereby acknowledge having read and accept and agree to all terms and conditions of BCI's Privacy Policy.

### **16. No Conflicting Terms.**

If there is any conflict between this Agreement and any other documents regarding the subject matter of this Agreement or the services, products or Information you access, acquire or receive through the BCI Sites, then the provisions of this Agreement govern, whether other documents are prior to or after this Agreement, or are signed or acknowledged by any director, officer, employee, representative or agent of BCI.

### **17. Minors.**

If you have agreed to allow your minor child or a child for whom you are legal guardian ("Minor") to access the BCI Sites or any of the services or Information offered or through the BCI Sites, you agree that you are solely responsible for: (a) the on-line conduct of such Minor; (b) monitoring such Minor's access to and use of the BCI Sites; and (c) the consequences of any use of the BCI Sites by such Minor.

### **18. Attorney's Fees.**

If BCI acts and prevails (by itself or through its representatives) to enforce any of the provisions of this Agreement, including collection of damages or any amounts due hereunder, BCI shall be entitled to recover from you (and you agree to pay), in addition to all sums to which it is entitled or any other relief, at law or in equity, reasonable and necessary attorney's fees and any costs of any litigation.

### **19. Governing Law; Limitations; Venue.**



This Agreement is governed by the laws of the State of Tennessee excluding any rule or principle that would refer to and apply the substantive law of another state or jurisdiction. To the extent allowed by applicable law, any claims or causes of action arising from or relating to your access and use of the BCI Sites contemplated by this Agreement must be instituted within one (1) year from the date upon which such claim or cause arose or accrued. Further, any such claim or cause of action may only be brought in the state or federal courts located in Nashville, Davidson County, Tennessee and you agree to submit to the exclusive personal jurisdiction of such courts and hereby appoint the Secretary of State of the State of Tennessee as your agent for service of process. You agree to waive any objection that the state or federal courts of Tennessee are an inconvenient forum.

#### **20. Jurisdictional Issues.**

Unless otherwise specified, the materials in the BCI Sites are presented solely for providing employee self-service benefit enrollment programs for client-employers. The BCI Sites are controlled and operated by BCI from its offices within the State of Tennessee, United States of America. BCI makes no representation that material and Information found at or accessible through the BCI Sites are appropriate or available for use in other locations. Those who choose to access the BCI Sites from other locations do so on their own initiative and are responsible for compliance with local laws, if and to the extent local laws are applicable. Software from the BCI Sites is further subject to United States export controls.

#### **21. Assignment.**

You may not assign any of your rights, obligations or privileges hereunder without the prior written consent of BCI. Any assignment other than as provided for in this Section shall be null and void, ab initio.

#### **22. Severability.**

If any provision of this Agreement is found to be unlawful or unenforceable in any respect, the court shall reform such provision to render it enforceable or, if it is not possible to reform such provision to make it enforceable, then delete such provision. As so reformed or modified, the court shall fully enforce this Agreement.

#### **23. Entire Agreement.**

This agreement is complete and effective at the time you agree to it by clicking on the button indicated for acceptance with the user registration procedures or, in the event such registration does not occur, at the time you attempt to enroll in or make changes to a benefit(s) through the BCI Sites. This agreement constitutes the entire agreement between the parties, and no other agreement, written or oral, exists between you and BCI with respect to the subject matter addressed herein.

#### **24. Child Online Protection Act Notification.**

Pursuant to 47 U.S.C. Section 230(d) as amended, BCI hereby notifies you that parental control protections (such as computer hardware, software, or filtering services) are commercially available that may assist you in limiting access to material that is harmful to minors.

#### **25. Notice and Procedure for Copyright Infringement Claim.**

BCI, pursuant to 17 U.S.C. Section 512, as amended by Title II of the Digital Millennium Copyright Act (the "Act"), reserves the right, but not the obligation, to terminate your license to use the BCI Sites and any services or Information provided through the BCI Sites, if it determines in its sole and absolute discretion that you are involved in any activity which may be infringing, including alleged



acts of first time or repeat infringement, regardless of whether the material or activity is ultimately determined to be infringing.

**26. Consent to Electronic Signatures.**

You consent to use of electronic signatures with documents related to this agreement. You acknowledge that you have the right to receive the record on paper or non-electronic form, and you have the right to withdraw your consent to the use of electronic signatures. You are aware that such consent to the use of electronic signatures is applicable to transactions consummated using the BCI Sites. You may withdraw your consent to use of electronic signatures by providing an in-person, non-electronic signed writing withdrawing such consent to the human resources representative of the applicable client-employer. You may also obtain a paper copy of any electronic record by visiting your human resources department and requesting such a paper document. You are aware that you are responsible for all hardware and software reasonably necessary to access the service and use the electronic signature function.

For the purpose of this Agreement, “Electronic Signature” means an electronic symbol or process attached to or logically associated with a document or record and executed or adopted by you with the intent to sign the record.

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