

## CELBOX WALLET DISBURSEMENT TERMS AND CONDITIONS

**WHEREAS** Celbux SA Proprietary Limited (herein referred to as “Celbux”, “we” or “our”) is the licensed holder of the exclusive rights to the Celbux software for South Africa, including the Celbux Wallet, which is a cashless value disbursement and payment solution (the “Celbux Wallet”). The Celbux Wallet enables payers to load funds and instruct Celbux to disburse funds or vouchers, on the payer’s behalf, to designated recipients, which recipients may be individuals or other organisations. The Celbux Wallet enables the recipients of funds or vouchers (herein referred to as “Users” of the Service) to spend or withdraw at registered merchants (the “Service”).

**AND WHEREAS** you (herein referred to as the “Payer”, “you” or “your”) intend to utilise the Service to instruct Celbux to disburse funds and/or vouchers to Users on its behalf, allowing the Users to spend or to withdraw at registered Celbux Wallet merchants.

Now therefore the Parties agree as follows:

### 1. THE AGREEMENT

- a. These terms and conditions, together with its Annexures (together, the “Agreement”), are the contract between you, the Payer, and Celbux, the provider of the Service. The Payer and Celbux are collectively referred to as “the Parties”. This Agreement is applicable to your use of the Service as set out in this Agreement.
- b. This Agreement is effective when you click the accept button on our website, located at any domain or subdomain of Celbux.co.za or Celbux.com (as updated from time to time) (the “Website”) as part of your online application (the “Effective Date”). If you are accepting on behalf of the Payer, you represent and warrant that (i) you have full legal authority to bind the Payer to this Agreement; (ii) you have read and understand this Agreement; and (iii) you agree, on behalf of the Payer, to the terms and conditions set out in this Agreement.
- c. We may update or amend this Agreement from time to time. We will provide you with at least 30 (thirty) days prior notice of any such change. If you continue to use the Service after the notice period elapses, you will be deemed to have consented to such changes. We will post a revised version of this Agreement on our Website, and the revised version will be effective at the time we post it. If you disagree with any proposed amendments, you may cease your use of the Service prior to the end of the notice period or elect to cancel this Agreement at any time in accordance with its terms.

### 2. BECOMING A CELBOX WALLET PAYER

- a. You become a Celbux Wallet Payer and acquire a Celbux Wallet account (herein referred to as the “Account”) at no cost to you with no obligation to make use of the Service by:
  - i. completing the online Payer Application on our Website, at <https://celbuxwallet.co.za/register/wage-payer>. As part of your application, you may be required by Celbux to provide certain Know Your Client (“KYC”) information to facilitate the opening of your Account, and
  - ii. submitting the completed Payer Application to Celbux for review and approval, together with:
    1. where the Payer is a company, a current CIPC Disclosure Certificate not older than 3 (three) months; or
    2. where the Payer is an individual, a copy of the Payer’s identity document.
- b. Celbux will review and may, in its discretion, approve your application to become a Celbux Wallet Payer. Upon approval, Celbux will:
  - i. set-up and configure your Account;
  - ii. provide you with your Account username and password; and
  - iii. provide you with details of the process to fund your Account, including the relevant bank account information.
- c. By successfully completing the above application process, you:
  - i. appoint Celbux as agent to disburse funds and/or vouchers to Users on your behalf;
  - ii. will be able to manually transact using the Service by loading funds into your Account and disbursing or transferring funds and vouchers to Users; and
  - iii. are also then able to integrate with Celbux and access the Service through the integration with Celbux.
- d. The Service is a cashless value disbursement and payment service, and no partnership, joint venture, employee-employer, franchisor-franchisee or other similar relationship is intended or created by this Agreement.

### 3. HOW TO ACCESS THE SERVICE

- a. You can access the Service by way of the Website link provided to you by Celbux during the course of your application and registration process. Log on to the Website by entering your Account username and Account password provided to you at registration.
- b. Alternatively, you may access the Service by logging on through your operational system if you have integrated with Celbux into the Service.

### 4. SERVICE PROVISIONING

- a. The Service operates using either a Mobile Network Operator’s or an Internet Service Provider’s service (in either case, the “Carrier”), which services are provided to you and the User through a separate contractual relationship. This Agreement and the use of the Services do not modify or replace the terms of any agreement applicable between you and your Carrier. By using the Service, you acknowledge that the Carrier service charges incurred are for your and the User’s own account when accessing the Service.
- b. Celbux bears no responsibility or liability for Carrier failure, uncompleted transactions as a result of Carrier disruption or delay, or the unavailability of the Carrier service, which is a prerequisite for the Service, at any time.
- c. It is your duty to ensure that your operational system, transactional system, computer or mobile device is compatible with the use of the Service.

### 5. DISBURSEMENT

- a. You must fund your Account prior to the disbursement of funds or vouchers to Users pursuant to an obligation of payment existing between you and such Users. Funding your Account by electronic funds transfer (“EFT”) carries no charge. Funding your Account by physically depositing cash at a bank carries a fee levied by Celbux of 3% (three percent) of the value deposited.

- b. You can utilise available funds in your Account to disburse funds or vouchers to Users. The value of the disbursement will, at the time of the disbursement, be transferred from your Account to the User's account. Inadequate funds in your Account will result in transaction failure.

## 6. VOUCHER AND CELBUX WALLET BALANCE EXPIRY AND REVERSAL

- a. The balance of a Celbux Wallet or Celbux Wallet voucher will automatically expire if unspent within 3 (three) years of the date of creation of that Celbux Wallet and/or Celbux Wallet voucher.
- b. Should you require, at any time before the expiry of a Celbux Wallet balance or Celbux Wallet voucher that you have created and/or disbursed, for that balance to be reversed to you or that voucher to be cancelled and any unspent value on that voucher reversed to your Account, Celbux will reverse to your Account the unspent value within the relevant User's Celbux Wallet or on the relevant cancelled voucher, as the case may be, and Celbux will levy a fee payable by you in the amount of 3% (three percent) (including VAT) of the unspent value on that balance to be reversed or on the cancelled voucher, as the case may be, ("Reversal Fee") and will reverse to your Account the unspent value within the relevant User's Celbux Wallet or on the cancelled voucher, as the case may be, less the Reversal Fee.

## 7. OBLIGATIONS OF THE PAYER

- a. You acknowledge that the procurement, promotion, supply of goods and services, including your use of the Service, are subject to relevant South African legislation, including (but not limited to) the Consumer Protection Act, 2008 (the "CPA") and the Protection of Personal Information Act, 2013 ("POPIA") and you undertake and warrant that you will comply with relevant legislation and the provisions of the Act and POPIA in relation to the promotion and supply of goods and services, including your use of the Service.
- b. You are obliged to take all reasonable measures to detect and prevent any abuse or circumvention of the terms of this Agreement and, generally, the use of the Service other than in the manner intended.
- c. You will notify Celbux in writing immediately if you become aware of any suspected abuse or circumvention as contemplated in this Agreement.
- d. All transactions concluded between Users and you must be conducted lawfully and on an arm's length basis. Under no circumstances will you allow any fraudulent transaction or any form of corrupt practices to occur in relation to transactions concluded between you and Users.

## 8. PAYMENT, COMMISSION AND CHARGES

Using the Service for funds or voucher disbursement attracts no charge, other than as contemplated in clauses 5a and 6.

## 9. BALANCES AND TRANSACTION STATEMENTS

- a. You may access your Account balance and transactional statement by accessing the Service as described in clause 3.
- b. Transactional information will include details for each transaction processed on your Account, which includes funds loaded and all vouchers disbursed.

## 10. SUPPORT

- a. You will have access to the suite of Celbux support, which includes, but is not limited to:
- bulk voucher distribution,
  - standard reports,
  - reconciliations, and
  - balance and statement enquiries.
- b. You will be supported by Celbux's customer support services, which you may contact via [support@celbux.com](mailto:support@celbux.com).

## 11. PRIVACY, DATA PROTECTION AND DATA PROCESSING

- a. Each Party undertakes to ensure that:
- it will maintain the privacy and confidentiality of any personal information as defined by relevant applicable laws (including POPIA) ("Personal Information") pertaining to the other Party and/or the Users as required by all relevant applicable laws (including POPIA), which Personal Information may be provided by one Party to the other for the purpose of the provision or use, as the case may be, of the Service as contemplated in this Agreement;
  - it will comply with its obligations under all relevant applicable laws regarding privacy and data protection in the provision or use, as the case may be, of the Service, including POPIA, and that it is, amongst others, aware of the rights afforded to it (including the rights to access, rectify or object to the processing, as defined by relevant applicable laws, including POPIA ("Processing"), of any Personal Information by the other Party) and the obligations imposed upon it in terms of privacy and data protection laws, including POPIA; and
  - Personal Information of, and provided by, the other Party is complete, accurate, up to date, relevant and necessary and is used only for the purpose of giving effect to the provisions of this Agreement and for no other purpose, or as may otherwise be agreed from time to time in writing between the Parties and/or the relevant User concerned where necessary.
- b. The Payer will, and undertakes in favour of Celbux, where required in terms of applicable laws (including POPIA), to obtain all consents and authorisations as may legally be required from Users or third parties, where applicable, in order to permit the Parties (or their subcontractors or agents) to Process any Personal Information for the purpose of giving effect to the provisions of this Agreement.
- c. Without limiting the generality of this clause 11, the Parties agree that Personal Information provided by one Party to the other for the purpose of the provision or use, as the case may be, of the Service as contemplated in this Agreement will be processed in accordance with the terms and conditions of the Data Processing Agreement set out in Annexure A.

## 12. PAYER INFORMATION

- a. You agree to provide true, accurate and complete information requested by Celbux in order to utilise the Service and to maintain and promptly update your information as applicable. You agree not to impersonate any other person or company or to use a name that you are not authorised to use. If any information provided to Celbux is untrue, inaccurate, not current, or incomplete, without limiting any other remedies available to it, Celbux has the right to terminate your use of the Service and to recover from you any costs or losses incurred as result of the inaccurate or incomplete information.

- b. You authorise Celbux, directly or through third parties, to make any inquiries we consider necessary to validate your application details.
- c. Celbux may be legally obliged to conform to prevailing legislation for the prevention of money laundering and accountability for the origins of funds in accordance with applicable laws and/or current global banking practices. In this regard, Celbux may be obliged, in accordance with applicable laws, to collect and maintain the records of your application and to request you to provide specific information in this regard. You must provide complete information when requested to do so, failing which you shall be precluded from using the Service.

### 13. PROHIBITED TRANSACTIONS

You agree that you will not use the Service, or permit the Service to be used, to make or accept or receive payment for illegal or unlawful products, goods or services. You will not use the Service, the Celbux Wallet website or any of the services offered therein for any unlawful or fraudulent activity. If Celbux has reason to believe that you may be engaging in or have engaged in fraudulent, unlawful, or improper activity, including without limitation any violation of any terms and conditions of this Agreement, your access to the Service may be suspended or terminated. You undertake to cooperate fully with Celbux to investigate any suspected unlawful, fraudulent or improper activity.

### 14. ACCESS CREDENTIALS

You may not reveal your Account password or, where you have integrated with Celbux, bearer token or any other access credentials to any unauthorised person. Celbux is not responsible for losses incurred by you as a result of your misuse of your password, bearer token or any other access credentials, including but not limited to incorrect password or bearer token insertion when required or losses suffered as a result of the password, bearer token or any other access credentials being obtained (whether legally or illegally) by third parties. The correct use and protection of a password, bearer token and any other access credentials is your responsibility.

### 15. MISUSE

If you use, or attempt to use the Service for purposes other than those provided for in this Agreement, including but not limited to tampering, hacking, modifying or otherwise corrupting the security or functionality of the Service, your Account will be terminated, without prejudice to Celbux's right to claim damages or any other remedy to which it may be entitled in law.

### 16. CHOICE OF LAW AND JURISDICTION

- a. This Agreement is governed by and interpreted under the laws of the Republic of South Africa.
- b. The Parties agree that the High Court of South Africa, Gauteng Provincial Division, Pretoria is to have jurisdiction for all purposes relating to this Agreement in respect of any dispute or matter that may arise between the Parties in relation to this Agreement.

### 17. INTELLECTUAL PROPERTY

- a. All right, title and interest, including but not limited to any and all intellectual property rights in and to the Service and the Celbux software will remain vested in Celbux, including (but not limited to) copyright in and ownership of any material or documentation relating to the Service or the Celbux Software made available to the Payer by Celbux from time to time, and, save with the written consent of Celbux, which consent may be withheld at the sole discretion of Celbux, the Payer will not at any time, copy, duplicate or reproduce in any manner or form, any material or documentation provided by Celbux or any part thereof or make any adaptations or translations of such any material or documentation.
- b. Celbux and the Celbux Wallet related logos, its products and the Services described in this Agreement and contained in any Celbux or Celbux Wallet authorised website or those of affiliated or related parties are either trademarks or registered trademarks of Celbux, or its affiliates, licensors or related parties, and may not be copied, imitated or used, in whole or in part, without the prior written permission of Celbux. In addition, all page headers, custom graphics, button icons and scripts are service marks, trademarks, and/or trade dress of Celbux and may not be copied, imitated, or used, in whole or in part, without the prior written permission of Celbux. These logos may not be altered, modified, or changed in any way, or used in a manner that could be disparaging to Celbux or the Service.

### 18. MISCELLANEOUS DISCLAIMERS

- a. Any verification of a registered Celbux Wallet merchant is only an indication of the increased likelihood that such merchant's identity is correct. Celbux shall not be responsible for any fraud, deception or misrepresentations by any registered Celbux Wallet merchant, whether or not such merchant's details have been verified.
- b. Celbux will not have any liability in connection with any unauthorised interception or use of data relating to you or the Service; any inability by you to use or access the Service for any reason; any actions or transactions by an individual who uses your username and password with or without your consent or any cause over which Celbux does not have direct control, including problems attributable to computer hardware or software (including computer viruses), telephone or other communications, or Internet service providers.
- c. The Service is hosted on the Google platform and Google Cloud. The use of the Google platform means that Personal Information provided to Celbux by you is Processed on Google's servers and facilities, which may be located in countries or regions outside of South Africa, including the United States of America and/or the European Union. The transfer of any Personal Information by Celbux to Google Cloud is subject to Google's privacy policy (which privacy policy may be found at <https://policies.google.com/privacy>). You accordingly acknowledge and agree to the use of the Google platform and Google Cloud by Celbux for the purpose of providing the Service and agree to the transfer of any Personal Information provided to Celbux by you to Google Cloud.

### 19. LIMITATION OF LIABILITY

Neither Celbux nor its affiliates nor subsidiaries be liable for:

- a. any transactions, agreements and/or arrangements between the Payer and any User;
- b. any damages caused or any indirect, special, incidental, consequential or punitive losses, liabilities, costs, expenses, fines, penalties, damages or claims whatsoever and all related costs and expenses (including reasonable legal fees on the scale as between attorney and own client, tracing and collection charges, costs of investigation, interest and penalties), including, but not limited to, damages for lost profits, disclosure

of confidential information or loss of privacy arising out of or in any way related to your use of or inability to use the Service, even if Celbux has been advised of the possibility of such damages; or

- c. any act or omission of any third party (for example, any provider of telecommunications services, internet access or computer equipment or software, including Google services, in connection with the Service) or any circumstances beyond its control (for example, fire, flood, or other natural disaster, epidemic, pandemic, war, riot, strike, act of civil or military authority, equipment failure, computer virus, or failure or interruption of electrical, telecommunications or any other utility in connection with the Service).

## 20. INDEMNITY

- a. You agree to indemnify and hold Celbux, its directors, officers, employees, agents and contractors harmless from any claim, action, demand, loss, or damages (including attorneys' fees) incurred by any third party arising out of or relating to your use of the Service.
- b. You will be liable for and hereby indemnify and hold Celbux, its directors, officers, employees, agents and contractors harmless against all loss, liability, damage or expense of whatever nature which Celbux, its directors, officers, employees, agents or contractors may suffer (including, but not limited to, any claims by Users or any third party) as a result of your failure to perform any of your obligations in terms of this Agreement including, without limitation, any loss or damage caused by or arising from:
  - i. any failure by you to comply with the terms of any sale or supply transaction concluded with any User;
  - ii. the acts or omissions of your agents, representatives and/or sub-contractors;
  - iii. any breach by you of any of any representation or warranty given by or obligations imposed on you in terms of this Agreement; or
  - iv. a breach of any applicable law occasioned by or due to the unauthorised or improper use of the Service, save, in each case, to the extent that such loss or damage was caused by or arose from the gross negligence, fraud or wilful misconduct of Celbux, its directors, officers, employees, agents or contractors.
- c. The indemnities provided by you in terms of this clause 20 include all costs and damages that may be suffered by Celbux, its directors, officers, employees, agents or contractors, including all legal costs (on an attorney and own client scale) that may be incurred in order to defend any claims and/or to engage in litigation.

## 21. BREACH AND TERMINATION

If either Party (the "Defaulting Party") commits a breach of the provisions of this Agreement, which breach (where capable of remedy) is not remedied within 10 (ten) business days of the date of written notice from the other Party (the "Non-defaulting Party") to the Defaulting Party of such breach, the Non-defaulting Party will be entitled to immediately terminate this Agreement, without prejudice to its rights to claim damages or any other remedy to which it may be entitled in law. In the event of such termination, funds held on your behalf will be returned within 14 (fourteen) days.

## 22. SECURITY FEATURES

Celbux will ensure that it complies with the generally accepted industry standard security requirements in providing the Service. However, Celbux does not guarantee that data transmitted is always secure and/or will not be intercepted by third parties.

## 23. ASSIGNMENT

This Agreement may be assigned by either Party with the written consent of the other Party, which consent will not be unreasonably withheld or delayed.

## 24. PRUDENTIAL LIMITS

Celbux may be required by applicable laws or regulatory requirements to place limits on the value of the Service, in which case the Payer and the Users will be restricted to operate within those limits.

## 25. TERMINATION BY NOTICE

Notwithstanding anything to the contrary herein, this Agreement may be terminated by either Party on not less than 1 (one) calendar month written notice, provided that notwithstanding the termination of this Agreement in accordance with this clause 25, any amounts due and owing by the Payer to Celbux at the date of termination will remain due and owing by the Payer to Celbux. In the event of such termination, funds held on your behalf will be returned within 14 (fourteen) days of the date of termination.

## 26. NOTICES

- a. Any communication to be made under or in connection with this Agreement shall be made in writing and, unless otherwise stated, may be made by letter or electronic mail.
- b. Celbux nominates the addresses set out below as the addresses it will receive all communications required in terms of this Agreement:
  - i. Physical: Ground Floor, Building 7, 48 Oak Avenue, Highveld Technopark, Centurion, 0169
  - ii. Postal: Ground Floor, Building 7, 48 Oak Avenue, Highveld Technopark, Centurion, 0169
  - iii. E-mail: support@celbux.com
- c. You nominate the addresses provided to us in your Payer Application as the addresses you will receive all communications required in terms of this Agreement.
- d. Either Party may nominate a substitute address(es) for purposes of this clause 26 by not less than 5 (five) business days' written notice to the other Party.
- e. Any communication or document made or delivered by one person to another under or in connection with this Agreement will only be effective:
  - i. if by way of letter, when it has been delivered at the relevant address or 5 (five) business days after being deposited for delivery by prepaid courier in an envelope addressed to it at that address; or
  - ii. if by way of electronic mail, when actually received (or made available) in readable form.
- f. Any communication or document which becomes effective, in accordance with clause 26e, after 5:00 p.m. will be deemed only to become effective on the following day.

- g. Any reference in this Agreement to a communication being sent or received will be construed to include that communication being made available in accordance with this clause 26.

## **27. GENERAL**

- a. This Agreement constitutes the whole of the agreement between the Parties relating to the matters dealt with herein and no undertaking, representation, term or condition relating to the subject matter of this Agreement not incorporated in this Agreement will be binding on either of the Parties.
- b. This Agreement supersedes and replaces any and all agreements between the Parties (and other persons, as may be applicable) and undertakings given to or on behalf of the Parties (and other persons, as may be applicable) in relation to the subject matter hereof.
- c. No latitude, extension of time or other indulgence which may be given or allowed by either Party to the other in respect of the performance of any obligation hereunder, and no delay or forbearance in the enforcement of any right of either Party arising from this Agreement and no single or partial exercise of any right by either Party under this Agreement will in any circumstances be construed to be an implied consent or election by that Party or operate as a waiver of or otherwise affect any of its rights in terms of or arising from this Agreement or estop or preclude it from enforcing at any time and without notice, strict and punctual compliance with each and every provision or term of this Agreement. Failure or delay on the part of either Party in exercising any right, power or privilege under this Agreement will not constitute or be deemed to be a waiver thereof, nor will any single or partial exercise of any right, power or privilege preclude any other or further exercise thereof or the exercise of any other right, power or privilege.
- d. The expiration or termination of this Agreement will not affect such of the provisions of this Agreement as expressly provide that they will operate after any such expiration or termination or which of necessity must continue to have effect after such expiration or termination, notwithstanding that the clauses themselves do not expressly provide for this.

**DATA PROCESSING AGREEMENT****1. DEFINITIONS**

- 1.1. In this Data Processing Agreement, unless expressly stated to the contrary:
- 1.1.1. **“Data Processing Agreement”** means this written Annexure A to the Agreement, including any Appendix hereto;
  - 1.1.2. **“Data Subjects”** means the Users to whom Personal Information relates and **“Data Subject”** means any one of them as the context requires;
  - 1.1.3. **“Operator”** means the Party that Processes Personal Information for a Responsible Party in terms of the Agreement, without coming under the direct authority of that Party;
  - 1.1.4. **“Personal Information”** means any information relating to an identified or identifiable living, natural person and, where applicable, an identifiable, existing juristic person that is Processed by the Operator as a result of, or in connection with, the Agreement;
  - 1.1.5. **“Personal Information Breach”** means a breach or compromise of security leading to the accidental or unlawful destruction, loss, alteration, unauthorised disclosure of, or access to, Personal Information that is Processed;
  - 1.1.6. **“Processing”** means any operation or activity or any set of operations, whether or not by automatic means, concerning Personal Information, including:
    - (a) the collection, receipt, recording, organisation, collation, storage, updating or modification, retrieval, alteration, consultation or use;
    - (b) dissemination by means of transmission, distribution or making available in any other form; or
    - (c) merging, linking, as well as restriction, degradation, erasure, or destruction of Personal Information,and **“Process”, “Processes”** and **“Processed”** shall have a corresponding meaning;
  - 1.1.7. **“Records”** bears the meaning ascribed to it in clause 2.11.1 (Records) below; and
  - 1.1.8. **“Responsible Party”** means the Party which, alone or in conjunction with others, determines the purpose of and means for Processing the Personal Information.
- 1.2. All words and phrases used in this Data Processing Agreement shall be ascribed the same meanings as were ascribed to such words and phrases in the Agreement.
- 1.3. All provisions of the Agreement shall continue to apply, mutatis mutandis, to this Data Processing Agreement, which Data Processing Agreement shall be read together with and form part of the Agreement.

**2. DATA PROCESSING****2.1. Personal Information types and Processing purposes**

- 2.1.1. The Parties acknowledge, that depending on the type of Personal Information being Processed, either Party may constitute an Operator or the Responsible Party.
- 2.1.2. The Responsible Party retains control of the Personal Information and remains responsible for its compliance obligations under POPIA, including providing any required notices and obtaining any required consents and authorisations, and for the Processing instructions it gives to the Operator.
- 2.1.3. Appendix A (Personal Information Processing purposes and details) describes the subject matter, duration, nature and purpose of Processing and the Personal Information categories and Data Subject types in respect of which the Operator may Process in order to deliver the Service.

**2.2. Operator's Processing obligations**

- 2.2.1. The Operator will only Process the Personal Information to the extent, and in such a manner, as is necessary for the purposes of the Agreement in accordance with the Responsible Party's written instructions. The Operator will not Process the Personal Information for any other purpose or in a way that does not comply with the Agreement or POPIA. The Operator must promptly notify the Responsible Party if, in its opinion, the Responsible Party's instruction would not comply with POPIA.
- 2.2.2. The Operator must promptly comply with any Responsible Party request or instruction requiring the Operator to amend, transfer, delete or otherwise Process the Personal Information, or to stop, mitigate or remedy any unauthorised Processing.
- 2.2.3. The Operator will maintain the confidentiality of all Personal Information and will not disclose Personal Information to third parties unless the Responsible Party or the Agreement specifically authorises the disclosure, the disclosure is required by law, or the disclosure is required in the course of the proper performance of the Operator's duties. If a law, court or regulator requires the Operator to Process or disclose Personal Information, the Operator must first inform the Responsible Party of the legal or regulatory requirement and give the Responsible Party an opportunity to object or challenge the requirement, unless the law prohibits such notice.
- 2.2.4. Taking into account the nature of the Processing, the Operator will reasonably assist the Responsible Party with meeting the Responsible Party's compliance obligations under POPIA, taking into account the nature of the Operator's Processing and the information available to the Operator, including in relation to Data Subject rights and reporting to and consulting with the regulator under POPIA.
- 2.2.5. The Operator must, on becoming aware of same, promptly notify the Responsible Party of any changes to POPIA that may adversely affect the Operator's performance of the Agreement.



### 2.3. Operator's employees

- 2.3.1. The Operator shall ensure that all employees:
  - 2.3.1.1. are informed of the confidential nature of the Personal Information and are bound by confidentiality obligations and use restrictions in respect of the Personal Information;
  - 2.3.1.2. have undertaken training on POPIA relating to handling Personal Information and how it applies to their particular duties; and
  - 2.3.1.3. are aware both of the Operator's duties and their personal duties and obligations under POPIA and the Agreement.
- 2.3.2. The Operator will take reasonable steps to ensure the reliability, integrity and trustworthiness of all of the Operator's employees with access to the Personal Information.

### 2.4. Security

- 2.4.1. The Operator must at all times implement appropriate technical and organisational measures against the risks identified, including unauthorised or unlawful Processing, access, disclosure, copying, reproduction, or display of Personal Information, and against accidental or unlawful loss, destruction, alteration, disclosure or damage of Personal Information.
- 2.4.2. The Operator must implement reasonable measures to identify all reasonably foreseeable internal and external risks to Personal Information in its possession or under its control and to ensure a level of security appropriate to the risk involved.
- 2.4.3. The Operator must:
  - 2.4.3.1. ensure that the safeguards are continually updated in response to new risks or deficiencies in previously implemented safeguards; and
  - 2.4.3.2. have due regard to generally accepted information security practices and procedures which may apply to the Operator generally or be required in terms of specific industry or professional rules and regulations.

### 2.5. Personal Information Breach

- 2.5.1. The Operator will promptly notify the Responsible Party if any Personal Information is lost or destroyed or becomes damaged, corrupted, or unusable.
- 2.5.2. The Operator will immediately notify the Responsible Party if it becomes aware of:
  - (a) any accidental, unauthorised or unlawful Processing of the Personal Information; and/or
  - (b) any Personal Information Breach.
- 2.5.3. Where the Operator becomes aware of (a) and/or (b) above, it shall, without undue delay and if the information is readily available to the Operator, also provide the Responsible Party with the following information:
  - 2.5.3.1. a description of the nature of (a) and/or (b), including the categories and approximate number of both Data Subjects and Personal Information records concerned;
  - 2.5.3.2. the likely consequences; and
  - 2.5.3.3. description of the measures taken, or proposed to be taken, to address (a) and/or (b), including measures to mitigate its possible adverse effects.
- 2.5.4. Immediately following any unauthorised or unlawful Personal Information Processing or Personal Information Breach, the Parties will co-ordinate with each other to investigate the matter. The Operator will reasonably co-operate with the Responsible Party in the Responsible Party's handling of the matter, including:
  - 2.5.4.1. assisting with any investigation;
  - 2.5.4.2. facilitating interviews with the Operator's employees, former employees and others involved in the matter;
  - 2.5.4.3. making available all relevant records, logs, files, data reporting and other materials required to comply with POPIA or as otherwise reasonably required by the Responsible Party; and
  - 2.5.4.4. taking reasonable and prompt steps to mitigate the effects and to minimise any damage resulting from the Personal Information Breach or unlawful Personal Information Processing.
- 2.5.5. The Operator will not inform any third party of any Personal Information Breach without first obtaining the Responsible Party's prior written consent, except when required to do so by law.
- 2.5.6. Subject to clause 2.5.5 above, the Operator agrees that the Responsible Party has the sole right to determine:
  - 2.5.6.1. whether to provide notice of the Personal Information Breach to any Data Subjects, regulator, law enforcement agencies or others, as required by law or regulation or in the Responsible Party's discretion, including the contents and delivery method of the notice; and
  - 2.5.6.2. whether to offer any type of remedy to affected Data Subjects, including the nature and extent of such remedy.

### 2.6. Cross-border transfer of Personal Information

- 2.6.1. The Operator (or any subcontractor) must not transfer or otherwise Process Personal Information outside the Republic of South Africa without obtaining the Responsible Party's prior written consent.
- 2.6.2. Where such consent is granted, the Processor may only Process, or permit the Processing, of Personal Information outside the Republic of South Africa if the transfer otherwise complies with POPIA.
- 2.6.3. Notwithstanding the provisions of clauses 2.6.1 and 2.6.2 above, where the Operator is Celbux (or any subcontractor of Celbux):
  - 2.6.3.1. the Responsible Party hereby consents to the transfer of Personal Information outside the Republic of South Africa by Celbux pursuant to clause 18(c) of the Agreement; and

- 2.6.3.2. Celbux may only Process, or permit the Processing of, Personal Information outside the Republic of South Africa if the transfer otherwise complies with POPIA for the reasons set out in Appendix A (Personal Information Processing purposes and details).

## 2.7. Subcontractors

- 2.7.1. The Operator may only authorise a third party (subcontractor) to Process the Personal Information if:
  - 2.7.1.1. the subcontractor has been approved at the commencement of the Agreement or the Responsible Party is provided with an opportunity to object to the appointment of each subcontractor within 5 (five) days after the Operator supplies the Responsible Party with full details regarding such subcontractor;
  - 2.7.1.2. the Operator enters into a written contract with the subcontractor that contains terms substantially the same as those set out in this Data Processing Agreement in particular, in relation to requiring appropriate technical and organisational data security measures, and, upon the Responsible Party's written request, provides the Responsible Party with copies of such contracts;
  - 2.7.1.3. the Operator maintains control over all Personal Information it entrusts to the subcontractor; and
  - 2.7.1.4. the subcontractor will cease Processing the Personal Information on termination of the Agreement for any reason.
- 2.7.2. Those subcontractors approved as at the commencement of the Agreement are as set out in Appendix A (Personal Information Processing purposes and details).
- 2.7.3. Where the subcontractor fails to fulfil its obligations under such written agreement, the Operator remains fully liable to the Responsible Party for the subcontractor's performance of its agreement obligations.
- 2.7.4. The Parties consider the Operator to control any Personal Information controlled by or in the possession of its subcontractors.
- 2.7.5. On the Responsible Party's written request and at the cost of the Responsible Party, the Operator will audit a subcontractor's compliance with its obligations regarding the Responsible Party's Personal Information and provide the Responsible Party with the audit results.

## 2.8. Complaints, Data Subjects and third party rights

- 2.8.1. The Operator must take such technical and organisational measures as may be appropriate, and promptly provide such information to the Responsible Party as the Responsible Party may reasonably require, to enable the Responsible Party to comply with:
  - 2.8.1.1. the rights of Data Subjects under POPIA, including Data Subject access rights, the rights to rectify and erase Personal Information, object to the Processing and automated Processing of Personal Information, and restrict the Processing of Personal Information; and
  - 2.8.1.2. information or assessment notices served on the Responsible Party by the regulator under POPIA.
- 2.8.2. The Operator must notify the Responsible Party without undue delay if it receives any complaint, notice or communication that relates directly or indirectly to the Processing of the Personal Information or to either Party's compliance with POPIA.
- 2.8.3. The Operator must notify the Responsible Party without undue delay if it receives a request from a Data Subject for access to their Personal Information or to exercise any of their related rights under POPIA.
- 2.8.4. The Operator will give the Responsible Party its reasonable co-operation and assistance in responding to any complaint, notice, communication or Data Subject request.
- 2.8.5. The Operator must not disclose the Personal Information to any Data Subject or to a third party other than at the Responsible Party's request or instruction, as provided for in this Agreement, as required by law, or where required in the course of the proper performance of the Operator's duties.

## 2.9. Termination and change in POPIA

- 2.9.1. Either Party's failure to comply with the provisions of this Data Processing Agreement will entitle the other Party to terminate the Agreement pursuant to and in accordance with clause 21 of the Agreement (Breach and Termination).
- 2.9.2. If any change in POPIA prevents either Party from fulfilling all or part of its obligations in this Data Processing Agreement, the Parties will suspend the Processing of Personal Information until that Processing complies with the new requirements.

## 2.10. Data return and destruction

- 2.10.1. At the Responsible Party's request, the Operator will give the Responsible Party a copy of or access to all or part of the Responsible Party's Personal Information in its possession or control in the format and on the media reasonably specified by the Responsible Party.
- 2.10.2. On termination of the Agreement for any reason, the Operator will securely delete or destroy or, if directed in writing by the Responsible Party, return and not retain, all or any Personal Information related to the Agreement in its possession or control.
- 2.10.3. If any law, regulation, or government or regulatory body requires the Operator to retain any documents or materials that the Operator would otherwise be required to return or destroy, it will notify the Responsible Party in writing of that retention requirement, giving details of the documents or materials that it must retain, the legal basis for retention, and establishing a specific timeline for destruction once the retention requirement ends.
- 2.10.4. The Operator will certify in writing that it has destroyed the Personal Information within 5 (five) days after it completes the destruction.

## 2.11. Records

- 2.11.1. The Operator will keep adequate, accurate and up-to-date written records ("Records") regarding any Processing of Personal Information it carries out for the Responsible Party.



2.11.2. The Operator will ensure that the Records are sufficient to enable the Responsible Party to verify Operator's compliance with its obligations in this Data Processing Agreement and the Operator will provide the Responsible Party with copies of necessary Records upon request.

2.11.3. The Parties must review the information listed in Appendix 1 (Personal Information Processing purposes and details) to confirm its current accuracy and update it when required to reflect current practices.

#### 2.12. **Warranties**

The Responsible Party warrants and represents that the Operator's expected use of the Personal Information for the purposes of performing the Service and as specifically instructed by the Responsible Party will comply with POPIA.

#### 2.13. **Indemnity**

The Responsible Party hereby fully defends, indemnifies and holds the Operator and its affiliates, directors, officers, employees, agents, consultants, contractors and other representatives ("**Representatives**") harmless against any and all liabilities, claims, suits, losses and/or damages which the Operator and/or its Representatives may suffer or incur in connection with, or incidental to, the breach or alleged breach by the Responsible Party of any of its obligations as set out in this Data Processing Agreement.

## **Appendix 1 - Personal Information Processing purposes and details**

### **Subject matter of Processing:**

Data Subjects' mobile phone numbers

### **Duration of Processing:**

The term of the Agreement and/or as may be authorised or required by law

### **Nature of Processing:**

The receipt, recording, organisation, dissemination, updating, storage and use of the abovementioned Data Subjects' Personal Information for the business purposes set out below

### **Business Purposes:**

Provision of the Service as contemplated in the Agreement

### **Personal Information Categories:**

Personal Information (which excludes special Personal Information)

### **Data Subject Types:**

Users (which excludes minors)

### **Identify the Operator's legal basis for Processing Personal Information outside the Republic of South Africa in order to comply with cross-border transfer restrictions:**

The transfer is necessary for the conclusion or performance of the Agreement concluded in the interest of the Data Subject between the Responsible Party and a third party (i.e. Celbux).

### **Approved Sub-Operators:**

Celbux Consulting Proprietary Limited (Registration number: 2013/167781/07) (South Africa)

Google Ireland Limited (Company number: 368047) (Ireland)