

brightstarr

BrightStarr Group Ltd
Unily - Standard Terms and Conditions

Schedule 1 Unily Standard Terms

1. Definitions and interpretation

1.1 In the Agreement and these Standard Terms:

"Access Service" means the service of making available the on-line Application via the Platform;

"Active User" in relation to any point in time means any user who has logged into the Platform during the previous three month period;

"Affiliate" of any person means any person that Controls, is controlled by, or is under common Control with the relevant person;

"Agreement" means the agreement between Brightstarr and the Licensee for the supply of the Services of which these Standard Terms form part, and any amendments to the Agreement from time to time;

"Application" means the intranet software application called Unily as updated and modified by Brightstarr from time to time;

"Business Day" means any week day, other than a bank or public holiday in England;

"Business Hours" means between 09:00 and 17:30 London time on a Business Day;

"Charges" means the amounts payable by the Licensee to Brightstarr under or in relation to the Agreement as set out in the Charges Schedule to the Agreement;

"Charges Schedule" the Schedule to the Agreement setting out the access and support charges (and any other charges) payable by the Licensee, and any specific payment terms agreed;

"Confidential Information" means the Licensee Confidential Information and Brightstarr Confidential Information;

"Control" means the power to control (directly or indirectly) the management of a person, whether by share ownership, control of the board, contractual terms or otherwise (and **"Controlled"** will be construed accordingly);

"Defect" means a defect, error or bug having a materially adverse effect on the appearance, operation or functionality of the Access Service, but excluding any defect, error or bug caused by or arising as a result of:

- (a) an act or omission of the Licensee, its employees, officers, agents, suppliers or sub-contractors; or
- (b) an incompatibility between the Services, the Application or the Platform and any other system, application, program or software not specified as compatible with the Services, in the Agreement;
- (c) a failure which is caused by defects or errors in the Platform, or by any updates or unplanned changes to the Platform;

"Documentation" means the documentation produced by Brightstarr and made available on the Platform to the Licensee specifying how the Services should be accessed and used;

"Effective Date" means the date of execution of the Agreement;

"Force Majeure Event" means an event, or a series of related events, that is outside the reasonable control of the party affected (including failures of or problems with the internet or a part of the internet, hacker attacks, virus or other malicious software attacks or infections, power failures, industrial disputes, changes to the law, disasters, explosions, fires, floods, riots, terrorist attacks and wars);

"Intellectual Property Rights" means all intellectual property rights wherever in the world, whether registered or unregistered, including any application or right of application for such rights (and the "intellectual property rights" referred to above includes copyright and related rights, database rights, confidential information, trade secrets, know-how, business names, trade names, trade marks, service marks, passing off rights, unfair competition rights, patents, petty patents, utility models, semi-conductor topography rights and rights in designs);

"Key Commercial Terms Schedule" the schedule to the Agreement setting out the specific commercial terms agreed, including Minimum Term, initial numbers of User Licences and identity of Representatives;

"Licensee Confidential Information" means

- (a) any information disclosed (whether disclosed in writing, orally or otherwise) by the Licensee to Brightstarr in connection with the Agreement or the Services that is marked as "confidential", described as "confidential" or which ought reasonably to have been understood by Brightstarr at the time of disclosure as being confidential;
- (b) the terms and conditions of the Agreement; and
- (c) the Licensee Materials;

"Licensee Materials" all data, information, works and materials of any kind:

- (a) uploaded to, stored on, processed using or transmitted via the Platform in connection with the Services by or on behalf of the Licensee or by any person or application or automated system using the Licensee's account; and
- (b) or which is otherwise held by or accessible to Brightstarr for the purposes of activation, provision and /or management of the Services;

"Licensee Representatives" means the person or persons identified as such in the Key Commercial Terms Schedule of the Agreement;

"Licensor" means Brightstarr Group Limited, company number 08804209;

"Licensor Confidential Information" means:

- (a) the Application and Documentation and all know-how, information and software code relating to it;

- (b) all information concerning the operation of the Application and the Services which is not in the public domain;
- (c) any information disclosed (whether disclosed in writing, orally or otherwise) by Brightstarr to the Licensee in connection with the Agreement or the Services that is marked as "confidential", described as "confidential" or which ought reasonably to have been understood by the Licensee at the time of disclosure as being confidential;
- (d) the terms and conditions of the Agreement;

"Licensor Representatives" means the person or persons identified as such in Schedule 1 of the Agreement;

"Minimum Term" means the period specified as such in the Key Commercial Terms Schedule of the Agreement;

"On Premise" means software installed and run on computers on the licensee's premises;

"Permitted Purpose" means access to and use of the Application and Services by the Licensee for its own internal business purposes only, as a business application to enhance Microsoft applications;

"Personal Data" has the meaning given to it in the Data Protection Act 1998;

"Platform" means the Microsoft SharePoint platform, hosted on; Microsoft office 365, private cloud or on premise which the Application is designed to work with;

"Platform Provider" the person contractually responsible for making the Platform available to the Licensee, whether Microsoft or its authorised reseller, or a 3rd party acting for and on behalf of the licensee (such as provider of a private cloud);

"Platform Terms" the contract terms governing the use of the Platform, as made between the Licensee and the Platform Provider;

"Representative(s)" means the Licensee Representative(s) and/or Brightstarr Representative(s) as the context requires;

"Schedule" means a schedule attached to or otherwise forming part of the Agreement;

"Services" means all the services provided or to be provided by Brightstarr to the Licensee under the Agreement, including the Access Services and the Support Services;

"Standard Web Browser" means Google Chrome and Mozilla Firefox and Microsoft Internet Explorer 11;

"Support Services" means support and maintenance services provided or to be provided by Brightstarr to the Licensee in accordance with Support Services Schedule of the Agreement;

"Support Services Schedule" the Schedule to the Agreement setting out the Support Services to be provided by Brightstarr;

"Upgrades" means new versions of, and updates to, the Application, whether for the purpose of fixing an error, bug or other issue in the Application [or enhancing the functionality of the Application];

"User Licences" means the licences purchased by the Licensee which entitle users to access and use the Services in accordance with the Agreement.

- 1.2 In these Standard Terms and in the Agreement, a reference to a statute or statutory provision includes a reference to:
 - (a) that statute or statutory provision as modified, consolidated and/or re-enacted from time to time; and
 - (b) any subordinate legislation made under that statute or statutory provision.
- 1.3 The clause headings do not affect the interpretation of these Standard Terms or the Agreement.
- 1.4 Unless expressly stated to the contrary in these Standard Terms or the Agreement:
 - 1.4.1 words denoting the singular include the plural and vice versa, words denoting any one gender include all genders and vice versa, and references to persons include individuals, partnerships, bodies corporate and unincorporated associations;
 - 1.4.2 a reference to a recital, clause or Schedule is a reference to a recital or clause of or Schedule to the Agreement and a reference to a sub-clause is a reference to a sub-clause of the clause in which the reference appears; and
 - 1.4.3 the words and phrases "other", "including" and "in particular" shall not limit the generality of any preceding words or be construed as being limited to the same class as the preceding words where a wider construction is possible.

2. Term

The Agreement will come into force on its Effective Date and subject to earlier termination in accordance with its terms, will continue in force for the Minimum Term. On the expiry of the Minimum Term, the Agreement will terminate automatically unless the parties have agreed in writing that it should continue, whether on the same or amended terms.

3. The Platform

- 3.1 The Licensee must at all times use the Platform in accordance with the Platform Terms.
- 3.2 The Licensee understands that:
 - 3.2.1 it can only use the Access Services by maintaining its right to use the Platform under its contractual relationship with the Platform Provider;
 - 3.2.2 the Agreement does not provide the Licensee with any independent right to use or access the Platform;
 - 3.2.3 the availability and functioning of the Platform is not the responsibility of Brightstarr and will affect the availability of, access to and the performance of the Access Services. Brightstarr is not responsible for any failure to provide the Services or any degradation of the Services which is caused wholly or partially by problems with the Platform.

4. The Access Services

4.1 Brightstarr will make the Services available to the Licensee by setting up an account for the Licensee on the Platform, and providing to the Licensee login details for that account as soon as practicable following the Effective Date.

4.2 Subject to the Licensee purchasing and paying for the requisite number of User Licences and subject to the limitations set out in clause 4.3 and the prohibitions set out in clause 4.4, Brightstarr hereby grants to the Licensee a non-exclusive licence to use and access the Application by use of the Services for the Permitted Purpose via any Standard Web Browser in accordance with the Documentation during the Agreement.

4.3 The licence granted by Brightstarr to the Licensee under clause 4.2 is subject to the following limitations:

- (a) the Licensee shall ensure that the Services are only used by the number of users covered by the User Licences purchased, [providing that it is agreed that the Licensee shall not be treated as in breach of this if it makes the required reconciliation payment for additional User Licences in accordance with clause 5.3];
- (b) the Services may only be used by the employees of the Licensee and:
 - (i) where the Licensee is a company, the Licensee's officers;
 - (ii) where the Licensee is a partnership, the Licensee's partners; and
 - (iii) where the Licensee is a limited liability partnership, the Licensee's members;

and users must be limited to persons with current Microsoft Office 365 registrations, the details of which will be provided to BrightStarr to establish the number of User Licences required; or in the case of an on premise installation of Microsoft SharePoint users must be limited to less than the current number of Microsoft SharePoint user licences

- (c) the Licensee shall ensure that no unauthorised person will or could access the Services using the Licensee's account;
- (d) the Licensee undertakes not to access, store, distribute or transmit any viruses, malicious software, Trojan horses or any similarly disruptive or destructive software or code, or any material during the course of its use of the Services that: (i) is unlawful, harmful, threatening, defamatory, obscene, infringing, harassing or racially or ethnically offensive; (ii) facilitates illegal activity; (iii) depicts sexually explicit images; (iv) promotes unlawful violence; (v) is discriminatory based on race, gender, colour, religious belief, sexual orientation, disability, or any other illegal activity; or (vi) causes damage or injury to any person or property and Brightstarr reserves the right, without liability to the Licensee, to suspend access to the Services if the Licensee is in breach the provisions of this clause until such breach is remedied to Brightstarr's satisfaction; and
- (e) the Licensee must ensure that all users of the Services comply with the

terms of the acceptable use policy applicable to the use of the Platform itself.

- 4.4 Except to the extent required by applicable law or expressly permitted in the Agreement, the licence granted by Brightstarr to the Licensee under this clause 4 is subject to the following prohibitions: the Licensee must not:
- (a) make the Services available to any person other than a user covered by the required User Licences and must not sub-license its right to access and use the Services or allow any unauthorised person to access or use the Services;
 - (b) frame or otherwise re-publish or re-distribute the Services or Application;
 - (c) alter or adapt or edit the Services or Application;
 - (d) access all or any part of the Application in order to build a product or service which competes with the Application;
 - (e) license, sell, rent, lease, transfer, assign, distribute, display, disclose, charge or otherwise deal in, encumber or commercially exploit the Application;
 - (f) copy the whole or any part of the Application or the Documentation;
 - (g) modify, merge, interface or combine the whole or any part of the Application with any other software or documentation otherwise than with the prior written consent of Brightstarr;
 - (h) adapt, translate, reverse engineer, de-compile or disassemble the whole or any part of the Application;
 - (i) use the Services in any way that causes, or may cause, damage to the Platform or impairment of the availability or accessibility of the Platform, or any of the areas of, or services on, the Platform.
 - (j) use the Services in any way that is, or in connection with any purpose that is unlawful, illegal, fraudulent or harmful.
- 4.5 For the avoidance of doubt, the Licensee has no right to access the object code or source code of the Application, either during or after the expiry or termination of the Agreement.
- 4.6 The Licensee shall be solely responsible for:
- 4.6.1 procuring and maintaining its network connections and telecommunications links from its systems to the Platform; and
 - 4.6.2 all problems, conditions, delays, delivery failures and all other loss or damage arising from or relating to the Licensee's network connections or telecommunications links or caused by the internet.
- 4.7 Brightstarr is not responsible for any delays, delivery failures, or any other loss or damage resulting from the transfer of data over communications networks and facilities, including the internet, and the Licensee acknowledges that the Services may be subject to limitations, delays and other problems inherent in the use of such communications facilities.
- 4.8 Any service activation dates given by Brightstarr are given in good faith but are

estimates only. Brightstarr will use its reasonable endeavours to meet such dates, but will not be liable for any costs or damages resulting from any delays. Time is not of the essence in respect of activation of the Services or any pre-activation activities.

5. Licence Fees

- 5.1 Licensee shall pay to Brightstarr the Charges in accordance with the terms set out in the Charges Schedule. All amounts stated are payable in British Pounds Sterling.
- 5.2 Brightstarr will provide the Licensee with a usage report on a quarterly basis on the normal quarter days (being 25th March, 24th June, 29th September and 25th December). The usage report will state the average number of Active Users over the previous quarter.
- 5.3 If a quarterly usage report shows that the number of Active Users is greater than the number of User Licences purchased by the Licensee under this Agreement, Brightstarr will be entitled to invoice the Licensee for the additional User Licences required, at any time after the end of the relevant quarter.
- 5.4 User Licences are purchased and access Charges and support Charges are payable for the entirety of the Minimum Term and cannot be cancelled. No refund of access, support or any other Charges will be given.
- 5.5 All Charges are due and payable within 30 days of the date of invoice. Amounts which are not paid on time are subject to a 1.5% per month service charge until paid in full.
- 5.6 All Charges stated in or in, relation to, the Agreement are stated exclusive of VAT (and all equivalent sales taxes in any jurisdiction). VAT (or equivalent sales tax) will be payable by the Licensee to Brightstarr in addition to the principal amounts.
- 5.7 Charges must be paid by bank transfer (using such payment details as are notified by Brightstarr to the Licensee from time to time).
- 5.8 If the Licensee does not pay any amount properly due to Brightstarr under or in connection with the Agreement in accordance with its terms, Brightstarr may:
 - (a) charge the Licensee interest on the overdue amount at the rate of 4% per year above the base rate of HSBC Bank Plc from time to time (which interest will accrue daily and be compounded quarterly); or
 - (b) claim interest and statutory compensation from the Licensee pursuant to the Late Payment of Commercial Debts (Interest) Act 1998; and
 - (c) suspend access to the Services if any amounts due to be paid by the Licensee to Brightstarr under this Agreement are overdue by more than 15 days.
- 5.9 The Licensee may not for any reason withhold, make deduction from, set off against or make abatement of any payment due to Brightstarr.

6. Usage Data

- 6.1 Licensee acknowledges that the Application collects information about Active Users including, without limitation, their user ID, the number and frequency of logins, details of the accessing device (type, version numbers, resolutions etc.) and track

feature usage statistics ("Usage Data"). The Application transmits this data to (and such data is stored on) the Microsoft Azure platform (or such other platform designated by Brightstarr) accessible by Brightstarr.

- 6.2 Licensee consents to the collection and use by Brightstarr of such data (including, without limitation, to calculate the reconciliation payment outlined in clause 5.3) and agrees not to attempt to disable, restrict or otherwise interfere therewith.

7. Support Services

- 7.1 For the duration of the Agreement, and subject to receipt of payment of the Charges applicable to support, Brightstarr will provide the Support Services to the Licensee.
- 7.2 Brightstarr may sub-contract the provision of any of the Support Services without obtaining the consent of the Licensee.
- 7.3 The Licensee agrees that Upgrades to the Application and the Services may be applied by Brightstarr from time to time and all such Upgrades must be accepted by the Licensee.

8. Management

- 8.1 The Licensee will ensure that all instructions in relation to this Agreement will be given by a Licensee Representative to a Licensor Representative, and Brightstarr may treat all such instructions as the fully authorised instructions of the Licensee.
- 8.2
- 8.3 The parties will liaise regularly concerning the operation of the Services and where necessary hold appropriate telephone or face-to-face meetings.
- 8.4 A party requesting a contract management meeting (whether face-to-face or otherwise) will give to the other party at least 5 Business Days' notice of the meeting.
- 8.5 Wherever necessary to enable the efficient conduct of business, the Licensee will be represented at a contract management meeting by at least one Licensee Representative and Brightstarr will be represented at a contract management meeting by at least one Licensor Representative.

9. Licensee Materials

- 9.1 The Licensee grants to Brightstarr at all times during the Agreement a non-exclusive licence to store, copy and otherwise use the Licensee Materials on the Platform but only to the extent necessary for the provision of the Services, fulfilling its other obligations and exercising its rights under the Agreement.
- 9.2 Subject to clause 9.1, all Intellectual Property Rights in the Licensee Materials will remain, as between the parties, the property of the Licensee.
- 9.3 The Licensee warrants and represents to Brightstarr that the Licensee Materials, and their use by Brightstarr in accordance with the terms of the Agreement, will not:
- (a) breach any laws, statutes, regulations or legally-binding codes;
 - (b) infringe any person's Intellectual Property Rights or other legal rights; or

- (c) give rise to any cause of action against Brightstarr or the Licensee or any third party,

in each case in any jurisdiction and under any applicable law.

9.4 Where Brightstarr reasonably suspects that there has been a breach by the Licensee of the provisions of this clause 8, Brightstarr may:

- (a) delete or amend the relevant Licensee Materials; and/or
- (b) suspend any or all of the Services and/or the Licensee's access to the Services while it investigates the matter.

9.5 Any breach by the Licensee of this clause 9 will be deemed to be a material breach of this Agreement for the purposes of clause 16.

9.6 Brightstarr shall ensure that the Licensee Materials stored and processed by the Platform are stored separately from, and are not co-mingled with, the materials of other Licensees of Brightstarr.

9.7 The Licensee acknowledges that although the Services are designed to enhance the way in which Licensee Materials can be used and stored on the Platform, the legal relationship governing the storage and hosting of Licensee's Materials on the Platform is governed by the Platform Terms and that this is not the role, responsibility or liability of Brightstarr under the Agreement.

9.8 Accordingly, [the Licensee should ensure that all Licensee Materials are properly backed up on its own systems and] Brightstarr shall have no responsibility or liability to the Licensee for any loss of or damage to Licensee Materials, whether caused by a malfunction of the Platform or any defect in the Services, or howsoever else arising.

10. Warranties

10.1 The Licensee warrants to Brightstarr that it has the legal right and authority to enter into and perform its obligations under the Agreement.

10.2 Brightstarr warrants to the Licensee:

- (a) that it has the legal right and authority to enter into and perform its obligations under the Agreement;
- (b) that it will perform its obligations under the Agreement with reasonable care and skill;
- (c) that the Services will perform substantially in accordance with the Documentation (subject to any Upgrades);
- (d) the Platform (excluding for the avoidance of doubt the Licensee Materials) will not infringe any person's Intellectual Property Rights in England and Wales and under English law;

10.3 Brightstarr shall have no liability under clause 10.2(c) or otherwise in respect of any Defect where the breach or Defect arises as a result of any use of the Services other than in accordance with the Documentation, the Agreement and other recommendations of Brightstarr.

- 10.4 The Licensee acknowledges that:
- (a) Services based on software applications are never wholly free from defects, errors and bugs, and Brightstarr gives no warranty or representation that the Services will be uninterrupted or wholly free from such defects, errors and bugs;
 - (b) Brightstarr does not warrant or represent that the Services will be compatible with any application, program or software not specifically identified as compatible in the Agreement.
- 10.5 Except as expressly set out in the Agreement, all warranties, conditions, terms and liabilities express or implied, statutory or otherwise, on the part of Brightstarr, in respect of compliance with descriptions, the quality or the fitness for purpose of the Application or the Services are excluded to the extent such exclusion is prohibited or limited by law.

11. Indemnities

- 11.1 Subject to Brightstarr's compliance with clause 11.3, the Licensee will indemnify and will keep indemnified Brightstarr against all liabilities, damages, losses, costs and expenses (including legal expenses and amounts paid with the agreement of the Licensee in settlement of any disputes) suffered or incurred by Brightstarr and arising as a result of any claim that:
- 11.1.1 the Licensee Materials infringe the Intellectual Property Rights or any other rights of any person, including any claim relating to the unauthorised access to or processing of personal data;
 - 11.1.2 otherwise arising from the Licensee's use of the Services or Documentation.
- 11.2 Subject to clause 11.4 and to the Licensee's compliance with clause 11.3, Brightstarr will indemnify and will keep indemnified the Licensee against all liabilities, damages, losses, costs and expenses (including legal expenses and amounts paid with the agreement of Brightstarr in settlement of any disputes) suffered or incurred by the Licensee and arising as a result of any breach by Brightstarr of clause 10.2(d).
- 11.3 If a party wishes to claim under clauses 11.1 or 11.2 (the "indemnified Party"), it will:
- (a) upon becoming aware of an actual or potential claim, notify the other party;
 - (b) provide to the other party all reasonable assistance in relation to it (including its investigation, defence and resolution);
 - (c) allow the other party the exclusive conduct of all disputes, proceedings, negotiations and settlements relating to the claim; and
 - (d) not admit liability in connection with or settle the claim without the prior written consent of the other party.
- 11.4 Brightstarr shall have no liability to the Licensee in respect of any claim based on the alleged infringement of any Intellectual Property Rights or any other third party rights (an IP Claim) if the claim results from any breach of the Licensee's obligations under the Agreement, from bespoke work based on the specific instructions or specifications of the Licensee or from the use of the Services or

Application in combination with any equipment or software not approved in writing by Brightstarr or use not in accordance with the Documentation.

- 11.5 In the event of an IP Claim, provided that the Licensee has complied with the provisions of this clause 11, Brightstarr shall be entitled at its own expense and option either to:
- 11.5.1 procure the right for the Licensee to continue using the Application and Services; or
 - 11.5.2 make such alterations, modifications or adjustments to the Application and Services so that they become non-infringing without incurring a material diminution in performance or function;
 - 11.5.3 replace the Application with non-infringing substitutes provided that such substitutes do not entail a material diminution in performance or function; or
 - 11.5.4 terminate the Agreement immediately by notice in writing to the Licensee and refund any of the Charges paid in advance by the Licensee as at the date of termination which relate to the period following termination and this clause 11 states the entire liability of Brightstarr to the Licensee in respect of any IP Claim. All other rights or remedies of the Licensee whether in contract, tort or otherwise are hereby excluded.

12. Limitations and exclusions of liability

- 12.1 Nothing in the Agreement will:
- (a) limit or exclude the liability of a party for death or personal injury resulting from its negligence;
 - (b) limit or exclude the liability of a party for fraud or fraudulent misrepresentation by that party;
 - (c) limit or exclude any liability of a party that may not be limited or excluded under applicable law.
- 12.2 The limitations and exclusions of liability set out in this clause 14 and elsewhere in the Agreement:
- 12.2.1 are subject to clause 12.1;
 - 12.2.2 govern all liabilities arising under or in connection with the Agreement, the Services or Application howsoever arising, including liabilities arising in contract, in tort (including negligence and misrepresentation) and for breach of statutory duty; and
 - 12.2.3 will not limit or exclude the liability of the parties under the express indemnities set out in clauses 11.1 and 11.2 of these Standard Terms.
- 12.3 Notwithstanding any other provision of this Agreement, but subject to clause 12.1, Brightstarr shall have no liability however arising in each case whether suffered by the Licensee or any third party for any:
- 12.3.1 direct or indirect loss of or damage to:
 - (a) profit;
 - (b) revenue;

- (c) production;
- (d) loss of bargain;
- (e) business;
- (f) contracts;
- (g) opportunities;
- (h) anticipated savings;
- (i) data;
- (j) goodwill;
- (k) reputation;
- (l) use; or

12.3.2 indirect or consequential loss or damage; or

12.3.3 loss or damage suffered by the Licensee as a result of a claim brought by any third party.

- 12.4 The parties agree that each of the sub-clauses in clause 12.3.1 and each of the sub-paragraphs (a) to (k) in sub-clause 12.3.1 constitute separate terms and the introductory wording of clause 12.3.1 shall be applied to each of them separately. If there is any claim or finding that any such individual sub-clause or sub-paragraph is unenforceable for any reason, such unenforceability shall not affect any other provision within clause 12.3.1 or otherwise.
- 12.5 Brightstarr will not will not be liable in respect of any loss or corruption of any data, database or software.
- 12.6 Brightstarr will not be liable for any losses arising out of a Force Majeure Event.
- 12.7 Brightstarr's liability in relation to any event or series of related events will not exceed an amount equal to the total Charges paid and payable by the Licensee to Brightstarr under the Agreement for an average 3 month period (being one quarter of all annual access and support Charges stated in the Agreement).
- 12.8 Brightstarr's aggregate liability under the Agreement in respect of all claims made in any twelve month period from the Effective Date (each a "Year") will not exceed the total amount of Charges paid and payable by the Licensee to Brightstarr under the Agreement in respect of that Year.

13. Data protection

- 13.1 In the event that the Licensee provides any Personal Data to Brightstarr or that Brightstarr has any access to Personal Data it is agreed that the Licensee shall be the data controller (as defined in the Data Protection Act 1998) and Brightstarr shall be a data processor (as defined in the Data Protection Act 1998) and in any such case:
- 13.1.1 the Licensee shall ensure that the Licensee is entitled to provide the relevant Personal Data to Brightstarr so that Brightstarr may lawfully process (as defined in the Data Protection Act 1998) the personal data in accordance with the Agreement on the Licensee's behalf;
- 13.1.2 the Licensee shall ensure that the relevant third parties have been informed of, and have given their consent to, such processing as required by all applicable data protection legislation;
- 13.1.3 Brightstarr shall only access the Personal Data as is incidentally required for the activation and operation of the Services and then only in accordance with the terms of the Agreement and any lawful instructions reasonably given by the Licensee from time to time;

- 13.1.4 Brightstarr shall take appropriate technical and organisational measures against unauthorised or unlawful processing of the Personal Data or its accidental loss, destruction or damage at all times when it has access to it.
- 13.2 The Licensee warrants that it has the legal right to disclose all Personal Data that it does in fact disclose to Brightstarr under or in connection with its and all users' use of the Services and the Agreement.
- 13.3 The Licensee acknowledges that except for any access obtained by Brightstarr and Brightstarr's obligations regarding such access as set out in clause 13.1, in respect of all the Personal Data stored or hosted on the Platform all responsibility for its security and data protection lies with the Platform Provider, as referred to in clause

14. Confidentiality and publicity

- 14.1 Each party will:
- (a) only use the Confidential Information of the other party as required to exercise its rights or perform its obligations under the Agreement;
 - (b) keep confidential and not disclose the Confidential Information of the other to any person save as expressly permitted by this clause 14;
 - (c) protect the Confidential Information of the other against unauthorised disclosure by using the same degree of care as it takes to preserve and safeguard its own confidential information of a similar nature, being at least a reasonable degree of care.
- 14.2 Confidential Information of a party may be disclosed by the other party to that other party's officers, employees, agents, insurers and professional advisers, provided that the recipient is bound in writing or by professional duties maintain the confidentiality of the Confidential Information disclosed.
- 14.3 The obligations set out in this clause 14 shall not apply to the information of a party:
- (a) that is or becomes publicly known (other than through a breach of the Agreement or other obligation of confidence);
 - (b) that is in the possession of the recipient prior to disclosure to it;
 - (c) that is received by the recipient from an independent third party who has a right to disclose the relevant information; or
 - (d) that is required to be disclosed by law, or court order, or by a governmental authority, stock exchange or regulatory body, provided that the party subject to such disclosure requirement must where permitted by law give to the other party prompt written notice of the disclosure requirement.
- 14.4 Neither party will make any public disclosure relating to the Agreement (including press releases, public announcements and marketing materials) without the prior written consent of the other party.

15. Intellectual Property

- 15.1 All Intellectual Property Rights in or arising out of the Application and the Services

shall, as between the parties, be and remain the exclusive property of Brightstarr.

- 15.2 No rights in or to the Application, Documentation or other Intellectual Property Rights of Brightstarr are transferred to Licensee and no rights are granted to the Licensee except for the limited licence to access the Access Services as set out in clause 4, on the terms of the Agreement.

16. Termination

- 16.1 Either party may terminate the Agreement immediately by giving written notice to the other party if the other party:

- (a) commits any material breach of any term of the Agreement, and:
 - (i) the breach is not remediable; or
 - (ii) the breach is remediable, but the other party fails to remedy the breach within 15 days of receipt of a written notice requiring it to do so; or
- (b) persistently breaches the terms of the Agreement (irrespective of whether such breaches individually or collectively constitute a material breach).

- 16.2 Either party may terminate the Agreement immediately by giving written notice to the other party if:

- (a) the other party:
 - (i) is dissolved;
 - (ii) ceases to conduct all (or substantially all) of its business;
 - (iii) is or becomes unable to pay its debts as they fall due;
 - (iv) is or becomes insolvent or is declared insolvent; or
 - (v) convenes a meeting or makes or proposes to make any arrangement or composition with its creditors;
- (b) an administrator, administrative receiver, liquidator, receiver, trustee, manager or similar is appointed over any of the assets of the other party;
- (c) an order is made for the winding up of the other party, or the other party passes a resolution for its winding up (other than for the purpose of a solvent company reorganisation where the resulting entity will assume all the obligations of the other party under this Agreement).

- 16.3 Brightstarr may terminate the Agreement immediately by giving written notice of termination to the Licensee where the Licensee fails to pay to Brightstarr any amount due to be paid under the Agreement by the due date.

17. Effects of termination

- 17.1 Notwithstanding the termination of the Agreement, all the provisions of the Agreement intended expressly or by implication to have effect after or notwithstanding termination will continue to have effect (in accordance with their

terms) including clauses [1, 4.4, 10.5, 13, 14, 16.1 to 16.[], 18 and[21].

- 17.2 Termination of the Agreement will not affect either party's accrued liabilities and rights as at the date of termination.
- 17.3 Upon termination or expiry of the Agreement:
- 17.3.1 all licences to use the Application and Services granted under the Agreement shall immediately terminate;
- 17.3.2 Brightstarr shall issue an invoice in respect of all outstanding Charges, and the Licensee shall pay such invoice in accordance with clause 5; and
- 17.3.3 the Licensee's (and all users') access to the Application and Services will terminate.
- 17.4 Subject to clause 17.6, within 30 days following the termination or expiry of the Agreement, Brightstarr will irrevocably delete from the Platform, the Application and all Licensee Confidential Information.
- 17.5 Subject to clause 17.6, within 30 days following the termination or expiry of the Agreement, the Licensee will:
- (a) permit Brightstarr such access to its systems and the Platform as necessary to allow Brightstarr to take the steps referred to in clause 17.4;
- (b) return to Brightstarr or dispose of as Brightstarr may instruct all documents and materials containing Licensor Confidential Information.
- 17.6 A party may retain any document (including any electronic document) containing the Confidential Information of the other party after the termination of the Agreement if:
- (a) that party is obliged to retain such document by any law or regulation or other rule enforceable against that party; or

18. Notices

- 18.1 Any notice given under this Agreement must be in writing (whether or not described as "written notice" in this Agreement) and must be delivered by hand (including commercial courier), sent first class by recorded or other registered post, or sent by fax [or email], for the attention of the relevant person, and to the relevant address or fax number [or email address] given or referred to below (or as notified by one party to the other in accordance with this clause).

Brightstarr
Paul Jackson
BrightStarr Group Ltd
Paul.Jackson@brightstarr.com

Notices details for the Licensee shall be as set out in the Key Commercial Terms Schedule.

- 18.2 A notice served in accordance with clause 18.1 will be deemed to have been received at the relevant time set out below (or where such time is not within Business Hours, when Business Hours next begin after the relevant time set out below):
- (a) where the notice is delivered by hand, at the time of delivery;
 - (b) where the notice is sent by post, 48 hours after posting; and
 - (c) where the notice is sent by fax [or email], at the time of the transmission (providing the sending party provides written evidence of the transmission).

19. Force Majeure Event

- 19.1 Where a Force Majeure Event gives rise to a failure or delay in a party (the affected party) performing its obligations under this Agreement (other than obligations to make payment), the affected party shall not be liable for any breach of the Agreement that results and the obligations affected will be suspended for the duration of the Force Majeure Event.
- 19.2 The affected party will where practicable:
- (a) notify the other of any Force Majeure Event as soon as possible; and
 - (b) will inform the other of the period for which it is estimated that the resulting failure or delay will continue.

20. General

- 20.1 The waiver by either party of a breach or default of any of the provisions of the Agreement by the other party shall not be construed as a waiver of any succeeding breach of the same or other provisions nor shall delay or omission on the part of either party to exercise or avail itself of any right power or privilege that it has or may have hereunder operate as a waiver of any breach or default by the other party.
- 20.2 If any provision of the Agreement is determined by any court or other competent authority to be unlawful and/or unenforceable, the other provisions of the Agreement will continue in effect. If any unlawful and/or unenforceable provision would be lawful or enforceable if part of it were deleted, that part will be deemed to be deleted, and the rest of the provision will continue in effect (unless that would contradict the clear intention of the parties, in which case the entirety of the relevant provision will be deemed to be deleted).
- 20.3 Nothing in the Agreement will constitute a partnership, agency relationship or contract of employment between the parties.
- 20.4 The Agreement may only be varied by a written document signed by or on behalf of each of the parties stating their intention to vary the terms of the Agreement.
- 20.5 The Licensee hereby agrees that Brightstarr may freely assign or otherwise transfer all of its contractual rights and obligations under the Agreement to any Affiliate of Brightstarr or to any successor to all or a substantial part of the business of Brightstarr to which the Agreement relates from time to time. The Licensee shall enter into such other documentation as Brightstarr may reasonably require to give effect to this. Save as expressly provided in this clause or elsewhere in this

Agreement, neither party may without the prior written consent of the other party assign, transfer, charge, license or otherwise dispose of or deal in the Agreement or any contractual rights or obligations under the Agreement.

- 20.6 Neither party will, without the other party's prior written consent, either during the term of the Agreement or within 6 months after the date of expiry or effective termination of the Agreement, engage, employ or otherwise solicit for employment any employee, agent or contractor of the other party who has been involved in the performance of this Agreement.
- 20.7 Each party agrees to execute (and arrange for the execution of) any documents and do (and arrange for the doing of) any things reasonably within that party's power, which are necessary to enable the parties to exercise their rights and fulfil their obligations under the Agreement.
- 20.8 The Agreement is made for the benefit of the parties, and is not intended to benefit any third party or be enforceable by any third party. The rights of the parties to terminate, rescind, or agree any amendment, waiver, variation or settlement under or relating to the Agreement are not subject to the consent of any third party.
- 20.9 The parties acknowledge and agree that:
- 20.9.1 in entering into the Agreement they do not rely on, and shall have no remedy in respect of, any statement, representation, warranty (in each case whether negligently or innocently made), or understanding of any person (whether party to the Agreement or not) which is not expressly set out in the Agreement; and
- 20.9.2 the only remedy available for breach of any statement, representation or other term that is expressly set out in the Agreement shall be for breach of contract under the terms of the Agreement.
- 20.10 The Agreement and any disputes or claims arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by, and construed in accordance with, the laws of England and Wales.
- 20.11 The parties irrevocably agree that the courts of England and Wales have exclusive jurisdiction to settle any dispute or claim that arises out of or in connection with the Agreement or its subject matter or formation (including non-contractual disputes or claims).