

Managed Services Agreement
between Brightsolid Online Technology
and
[CUSTOMER]

Customer	XXX
Project Title	XXX
Document ID	XXX
Version	XXX
Information Classification	Confidential
Status	XXX
Date	XXX

Table of Contents

1.	INTERPRETATION	1
2.	TERM OF AGREEMENT.....	2
3.	SERVICES	2
4.	EQUIPMENT	2
5.	CHARGES	4
6.	CONFIDENTIALITY	6
7.	WARRANTIES.....	7
8.	LIABILITY	8
9.	TERMINATION	8
10.	INTELLECTUAL PROPERTY	10
11.	DATA PROTECTION	11
12.	NOTICES	13
13.	FORCE MAJEURE.....	13
14.	AUDIT, ACCESS TO LOCATIONS	14
15.	INSURANCE	14
16.	ANTI-BRIBERY AND CORRUPTION.....	14
17.	DISPUTE RESOLUTION	15
18.	MISCELLANEOUS PROVISIONS.....	15

THIS AGREEMENT is dated [DATE]

PARTIES

- (1) **BRIGHTSOLID ONLINE TECHNOLOGY LIMITED**, a company incorporated under the Companies Act (Registered Number SC161678) and having its registered office at Gateway House, Luna Place, Dundee Technology Park, Dundee, DD2 1TP ("Brightsolid"); and
- (2) **[CUSTOMER]** having its registered office at **[INSERT ADDRESS]** (the "Customer"),

BACKGROUND

- (A) Brightsolid is a provider of colocation, managed hybrid cloud and other services.
- (B) The Customer wishes to appoint Brightsolid to supply the Services as set out in the Order Form which incorporates this Master Services Agreement on the terms and conditions of the Agreement.

AGREED TERMS

1. INTERPRETATION

- 1.1 The capitalised terms used in the Agreement have the meanings given to them in Brightsolid's Common Definitions document, a copy of which the Customer acknowledges has been provided to it.
- 1.2 In the Agreement, unless the context otherwise requires words denoting the singular shall include the plural and vice versa and references to the masculine shall include the feminine; words denoting persons shall include corporations, partnerships and unincorporated associations; and headings are included for convenience only and shall not be used in the interpretation of any provision of the Agreement.
- 1.3 In the Agreement:
 - (a) any reference to a statute, statutory provision or subordinate legislation ("legislation") shall (except where the context otherwise requires) be construed as referring to such legislation as amended and in force from time to time and to any legislation which re-enacts or consolidates (with or without modification) any such legislation;
 - (b) any phrase introduced by the terms "including", "include", "in particular" or any similar expression shall be construed as illustrative and shall not limit the sense of the words preceding those terms; and
 - (c) "subsidiary" and "holding company" have the meanings given in Section 1159 of the Companies Act 2006.
- 1.4 The Schedule and recitals form part of the Agreement and shall have effect as if set out in full in the body of the Agreement and any reference to the Agreement includes the Schedule and recitals.
- 1.5 In the event that any parts of the Agreement are inconsistent or ambiguous, then except where expressly stated otherwise, the conflict shall be resolved in accordance with the following order of precedence:
 - (a) the Order Form;
 - (b) main body of the Master Services Agreement;
 - (c) the Services Specification and the SLA;

- (d) any other of the Schedules; and
- (e) any other document referred to in the Agreement.

2. TERM OF AGREEMENT

- 2.1 Unless as otherwise stated in the Order Form:
- 2.2 This Agreement shall commence on the last date of signing of the Agreement by the parties and, unless otherwise terminated in accordance with its terms, continue in force thereafter for the Initial Term.
- 2.3 Following expiry of the Initial Term, the Agreement shall automatically renew for a period equal in duration to the Initial Term and shall continue to automatically renew for that period consecutively (the first and each subsequent period being a "Continuation Term") unless either party has provided the other with 90 days' prior written notice of its intention to terminate the Agreement at the end of the Initial Term or any Continuation Term.
[INTERNAL DRAFTING NOTE: the Initial Term can be set at the preferred length for different customers/arrangements in the Common Definitions document that accompanies this MSA. The rolling Continuation Terms do not need to match that (e.g. Initial Term can be 3 years and then have consecutive rolling 1 year terms)]

3. SERVICES AND EQUIPMENT

- 3.1 With effect from the Service Commencement Date, Brightsolid shall perform the Services for the Customer in accordance with the provisions of the Agreement including the SLA.
- 3.2 Brightsolid may from time-to-time make changes to the Service Specifications related to the Services. Where any change is not material, i.e. in Brightsolid's reasonable opinion, it does not adversely affect the scope of the Services, this may be done without notice. In the case of any material change, Brightsolid shall provide the Customer with 30 day's prior written notice. Changes to the Services which are requested by the Customer after the Service Commencement Date shall be governed by the contract variation and extension processes set out in the Change Control Procedure.
- 3.3 Brightsolid shall:
 - (a) allocate sufficient resources with the appropriate technical expertise to provide the Services in accordance with the Agreement;
 - (b) obtain, and maintain throughout the Term, all the consents, approvals, licences and permissions (statutory, regulatory contractual or otherwise) which are necessary for the provision of the Services;
 - (c) use its reasonable endeavours to minimise any disruption to the Services and/or the Customer's operations when carrying out its obligations under the Agreement;
 - (d) operate a staff vetting policy in respect of all individuals which it engages in relation to the Services; and
 - (e) maintain a BCDR Plan throughout the Term and test such BCDR Plan on a regular basis.
- 3.4 Save as set out in this Clause 4, any equipment used by Brightsolid shall be and remain the property of Brightsolid at all times. Where the Order Form provides that the Services are for, or include, the purchase of equipment for use solely by the Customer, including, but not limited to, servers and other hardware, Brightsolid shall retain ownership of such equipment unless it agrees to sell such equipment to the Customer and in any event title to such equipment shall not transfer until such time as Brightsolid has received full cleared funds in

respect of the sums due to it for such equipment the Agreement, including any one-off charges required for the decommissioning of such equipment.

- 3.5 Brightsolid undertakes, if applicable, to use its best endeavours to dispose of all equipment supplied by it for use by the Customer in accordance with all applicable legislation for the time being in force, including, but not limited to the Waste Electrical and Electronic Equipment (WEEE) Regulations 2013.

4. CUSTOMER OBLIGATIONS

- 4.1 The Customer shall ensure that any equipment provided or made available by it for use by Brightsolid in the provision of the Services is suitable for use, in good working order and that ongoing arrangements for its maintenance, refresh and/ or replacement have been made with relevant vendors. For so long as it is stored at a Data Centre, such equipment shall be held at Brightsolid's risk and Brightsolid shall make arrangements for insuring the same against physical destruction. Save as aforesaid, Brightsolid shall not be liable for any failure to provide the Services or otherwise to the extent caused by any non-availability or defects in Customer-owned equipment. Brightsolid shall co-operate with the Customer and its other suppliers to allow appropriate maintenance and support activities to be carried out provided the same does not disrupt or interfere with its operations. The Customer grants to Brightsolid a non-exclusive licence to use the Customer's assets solely for the purposes of performing the Services and for no other purpose whatsoever.

- 4.2 Unless otherwise provided for in a Services Specification:

- 4.2.1 Brightsolid shall only retain equipment provided to it by the Customer for so long as the same is necessary to enable provision of Services;
- 4.2.2 where the supply of Services and/ or the Agreement expires or terminates, or where the Agreement terminates (as appropriate), Brightsolid shall notify the Customer that it is required to uplift and make appropriate arrangements for the removal of such equipment within 30 days;
- 4.2.3 if the Customer does not remove the equipment within such period of 30 days, Brightsolid shall no longer be obliged to [insure and] maintain the security of such equipment and/ or any data stored thereon and may remove and dispose of such equipment and/ or in such manner as it considers appropriate; and
- 4.2.4 the Customer shall indemnify Brightsolid for the costs incurred by it in respect of such disposal.

- 4.3 The Customer warrants and undertakes to Brightsolid that:

- 4.3.1 it is free to enter into the Agreement and is not under any obligations to any third party which would or might conflict or interfere with the full and proper render of its obligations under the Agreement;
- 4.3.2 any and all Intellectual Property Rights in any and all materials supplied by the Customer to Brightsolid, for use by Brightsolid to provide the Services is the exclusive property of the Customer or that the Customer has the express permission of the beneficial owner of the Intellectual Property Rights in such materials to use same; and
- 4.3.3 it shall discharge or procure the discharge of all matters identified as "Customer Responsibilities" in the Order Form and/ or the SLA and offer Brightsolid such reasonable assistance as it may reasonably require in order to provide the Services;
- 4.3.4 it shall not use the Services nor shall it permit or tolerate the Services being used for any (i) criminally actionable activities including, but not limited to obscene, fraudulent, hateful, or racially objectionable activities, or any activity which is

regarded as direct encouragement or other inducement to the commission, preparation or instigation of acts of terrorism, or (ii) civilly actionable activities including, in particular, the use of unlicensed or so-called "underlicensed" third party software or other intellectual property without obtaining the correct licences or consents (all uses set out above in this Clause 4.3.4 being a "Prohibited Use"); and

- 4.3.5 it has assessed its licence requirements and satisfied itself that it is adequately licensed to use any third party software or products included in the Services and shall remain so licensed for the duration of receipt of such Services;
 - 4.3.6 it shall comply with any and all terms of use or conditions of licence of third party software or products included in the Service or requested by the Customer (including but not limited payment of any additional licence fees or other valid costs directed by such third party supplier for use of such products).
- 4.4 The Customer agrees and acknowledges that:
- 4.4.1 it is responsible for determining the volumes, quantities and user numbers of any Third Party Products;
 - 4.4.2 its use of Third Party Products within volumes procured may not be self-limited and may be subject to audit;
 - 4.4.3 in procuring or making available Third Party Products, it is not relying on advice provided by Brightsolid; and
 - 4.4.4 the Customer shall be liable for any determination by a supplier of any Third Party Products that the Customer is not adequately licensed and Brightsolid shall be entitled to adjust the Charges accordingly.
- 4.5 The Customer shall indemnify and keep Brightsolid indemnified in respect of any claims, losses, costs charges and/ or expenses, including all legal fees incurred in defending third party claims, brought by any third party as a direct consequence of either:
- 4.5.1 any Prohibited Use occurring on the part of the Customer; and /or
 - 4.5.2 any breach by the Customer of Clause 4.3.6 above.

5. CHARGES

- 5.1 In consideration of, and subject to, the provision of the Services, the Customer shall pay to Brightsolid the Charges as detailed in the Order Form and in accordance with the provisions set out in this Clause 5. For the avoidance of doubt, invoices will be rendered (and will be payable) in accordance with this Clause 5 in respect of the Services provided notwithstanding any delays in respect of third parties or third party services engaged by the Customer and outwith the scope of the Services. Brightsolid shall commence the rendering of invoices from the Service Commencement Date.
- 5.2 Unless as otherwise set out in the Order Form, Brightsolid shall render an invoice:
- (a) quarterly in advance to the Customer in respect of the Charges for the Services; and
 - (b) monthly in arrears in respect of any Charges relating to Services fulfilled by AWS or any other provider of Third Party Products based on actual usage during such month and which, in the case of amounts billed in overseas currencies, shall be converted by Brightsolid into the sterling equivalent amount at the Exchange Rate.

- 5.3 Where any element of the Charges is identified on the Order Form as being expressed as a sterling equivalent amount of a sum priced in a different currency (e.g. in the case of Charges applicable to Third Party Products) then the sterling amount is subject to variation in the event of an adverse fluctuation in the Exchange Rate at the date of invoice of 5% or more relative to the Exchange Rate as at the date of the Order Form then Brightsolid shall be entitled to vary the Charges in order to apply the then current Exchange Rate.
- 5.4 Brightsolid, in its sole discretion, shall be permitted to render an invoice (in accordance with this Clause 5) in respect of delivery of any individual element of the Service notwithstanding that any other element of the Service or other packaged product has not yet been delivered at such date.
- 5.5 Invoices shall be payable within 30 days from sending (which, for the avoidance of doubt, may include by email) by Brightsolid of an invoice to the Customer. Where the Customer has any queries on, or disputes, any invoice the Customer shall raise any such queries or advise Brightsolid of the dispute in writing (including email) within such 30-day period and the parties shall comply with Clause 17 to resolve any dispute.
- 5.6 The Charges and any other sums referred to in the Agreement are exclusive of VAT and any other applicable sales or other taxes and the Customer shall pay the Charges in full without deduction, set-off or counterclaim except and to the extent that the Customer, acting in good faith, disputes the Charges. No other costs and expenses shall be payable without the prior written consent of the Customer.
- 5.7 Brightsolid reserves the right to pass on to the Customer any additional actual costs (with no profit margin applied) that Brightsolid incurs as a result of changes to legislation or regulation or variations in the terms of supply of any Third Party Products during the Term. This includes, but is not limited to, legislation or regulation related to carbon trading/ reduction schemes and/ climate change levies. Brightsolid shall notify the Customer as soon as reasonably practicable upon becoming aware of any such additional costs.
- 5.8 Subject to any provisions set out in the Services Specification, Brightsolid reserves the right to pass on to the Customer:
- 5.8.1 increases in cost of certain commodity services or products (e.g. power); and;
- 5.8.2 any price increase(s) or changes to terms of supply having a cost impact, in either case as may be imposed by suppliers of Third Party Products;; and
- provided that Brightsolid will wherever possible give the Customer advance written notice of any such increase.
- 5.9 Brightsolid shall be entitled to charge at the overtime rate, as specified in the Order Form, for part days and for time worked by members of the Brightsolid Service delivery team outside the core working hours referred to in the Order Form on a pro-rata basis.
- 5.10 In the event that any amount payable under the Agreement remains outstanding, then without prejudice to its other rights and remedies (including but not limited to court action ongoing or planned) Brightsolid shall be entitled to:
- (a) either suspend the availability of the Services to the Customer (in whole or in part) or terminate the Agreement in accordance with Clause 9 (Termination); and
- (b) charge interest on the overdue amount from the due date for payment up to the date of receipt of cleared funds at a rate of three percent (3%) per annum above the base rate from time to time being of Lloyds Banking Group plc until the date of payment.
- 5.11 Where the Customer has informed Brightsolid that it wishes to receive Service Credits in respect of any Service Level Failure that has arisen in the three (3) preceding calendar months, the Service Credit will be shown as a deduction from the amount due from the

Customer to Brightsolid in the next invoice then due to be issued under the Agreement. The Customer shall not be entitled to claim any Service Credit in respect of any Service Credit Failure if it does not inform Brightsolid within three (3) calendar months of its entitlement to do so arising.

- 5.12 If no further payments fall due after Service Credits accrue, Brightsolid shall within five (5) days issue a credit note to the Customer for a sum equal to any such Service Credits then outstanding which shall be payable by Brightsolid to the Customer as a debt.
- 5.13 Without prejudice to the above provisions and the circumstances in which prices may be increased pursuant to this Agreement, Brightsolid shall have the right to increase any Charges no more frequently than once per year with effect from expiry of the Initial Term by the corresponding percentage increase in the Retail Prices Index over the immediately preceding 12 months.
- 5.14 In addition, and without prejudice, to the above provisions and the circumstances in which prices may be increased pursuant to this Agreement Brightsolid may, however, increase the Charges from time to time at its sole discretion to reflect increased costs and outlays in delivery of the Service, including but not limited to, increases in third party supplier costs, energy or equipment costs. Brightsolid will endeavour to give reasonable notice of any such increases. In the event that any such increase represents a material uplift to the Charges (being more than 20% of the annual Charges), the Customer may elect in its sole discretion to terminate this Agreement and the Services on 60 days prior written notice.

6. CONFIDENTIALITY

- 6.1 Subject to the other provisions of this Clause 6, each party undertakes at all times to keep confidential and not to disclose to any third party without the other party's prior written consent any Confidential Information belonging to the other party. Brightsolid further acknowledges that the Customer Data is the Confidential Information of the Customer.
- 6.2 Neither party shall use or exploit the other party's Confidential Information in any way except for the purposes anticipated under the Agreement.
- 6.3 Each party shall immediately notify the other party if it suspects or becomes aware of any unauthorised access, copying, use or disclosure in any form of any of the other party's Confidential Information.
- 6.4 The Customer may disclose Brightsolid's Confidential Information to any Regulator on request or where required to do so and, on a confidential basis, to any of its Group Companies, its auditors and its professional advisers. If the Customer makes any disclosure to a Regulator pursuant to the above it shall advise Brightsolid of such fact, if lawful to do so.
- 6.5 Brightsolid may disclose the Customer's Confidential Information to its agents and contractors who are directly involved in the provision or receipt of the Services and need to know the Confidential Information to enable performance of Brightsolid's obligations under the Agreement, its auditors and to its professional advisers for the purposes of obtaining advice in relation to the Agreement. Brightsolid shall remain responsible at all times for compliance with the confidentiality obligations set out in the Agreement by the persons to whom disclosure has been made.
- 6.6 Each party shall ensure that its officers, employees, agents and contractors who have access to Confidential Information of the other party keep such Confidential Information confidential at all times and shall be made aware of the fact that such Confidential Information or other information is held subject to these obligations.
- 6.7 Nothing in this Clause 6 shall prevent either party from disclosing any information which:
 - (a) is properly a matter of public knowledge at the time of disclosure;
 - (b) becomes a matter of public knowledge through no fault of the receiving party after disclosure;

- (c) was rightfully in the receiving party's possession before disclosure;
- (d) is rightfully received from a third party by the receiving party without a duty of confidentiality after disclosure; and
- (e) is required to be disclosed by law provided that the disclosing party shall, as soon as reasonably practicable, and to the extent permitted by law, notify the other party of the full circumstances of the required disclosure including the relevant law and/or regulatory body requiring such disclosure and the Confidential Information to which such disclosure would apply, using all reasonable endeavours to minimise the extent of the Confidential Information to be disclosed.

7. WARRANTIES

7.1 Brightsolid warrants and undertakes to the Customer that:

- (a) it is free to enter into the Agreement and is not under any obligations to any third party which would or might conflict or interfere with the full and proper render of its obligations under the Agreement;
- (b) it has all necessary consents and regulatory approvals to enter into the Agreement;
- (c) it shall provide the Services with reasonable care, skill and diligence, and in accordance with the terms of the Agreement;
- (d) the Agreement is executed by a duly authorised representative of Brightsolid;
- (e) its execution, delivery and performance of its obligations under the Agreement will not constitute a breach of any law or obligation applicable to it; and
- (f) it is entitled to use any and all Intellectual Property Rights required by Brightsolid to provide the Services.

7.2 Brightsolid undertakes that it will comply with all legal requirements and regulations relating to the provision of the Services.

7.3 Brightsolid does not warrant that the Services shall be uninterrupted or error free.

7.4 This Agreement sets out the full extent of Brightsolid's obligations and liabilities in respect of the provision of the Services. All conditions, warranties or other terms concerning the Services which might otherwise be implied into the Agreement, and to the fullest extent of the law, are hereby expressly excluded.

7.5 The warranties set out in this Clause shall not apply in relation to any Third Party Products, in respect of which Brightsolid's obligations shall be to use its commercially reasonable endeavours to obtain for the Customer the benefit of any warranties or remedial action from the provider of such Third Party Products as may be available to it from time to time.

7.6 In relation to any Third Party Products or Cloud Hosting Services, the following provisions shall apply:

- (a) Brightsolid shall be responsible for procuring the relevant Third Party Products or Cloud Hosting Services from the Third Party Supplier subject to the Third Party Supplier's standard terms and conditions and shall manage them for the Customer.
- (b) The Customer shall comply with any acceptable use policies or other requirements of the Third Party Supplier and shall not act or omit to act in a way which would cause Brightsolid to be in breach of the same.

- (c) Notwithstanding any other provision of the Agreement, Brightsolid's liability in the event the Third Party Supplier fails to discharge its responsibilities to Brightsolid as sub-contractor and also (where applicable) as a sub-processor of personal data shall be, at the Customer's election either: (a) to use commercially reasonable endeavours to enforce the terms of its agreement with the Third Party Supplier and to pass to the Customer the full benefit of any compensation, service credits or other remedy recovered by it from the Third Party Supplier as a result of such endeavours; or (b) to assign to the Customer any rights of action or accrued claims it may have against the Third Party Supplier and to provide to the Customer all reasonable assistance to enforce the same.
- (d) The parties agree and acknowledge that Third Party Suppliers may reserve the right to amend or vary the scope or terms of supply Third Party Products or Cloud Hosting Services under standard terms and conditions of business. Each party shall be responsible for keeping itself informed as to the current version of the terms of supply in force from time to time. Any updates shall be deemed automatically incorporated into the Agreement.

8. LIABILITY

8.1 Neither party excludes its liability to the other party for:

- (a) death or personal injury arising from its own negligence; or
- (b) fraud or fraudulent misrepresentation; or
- (c) any other liability that cannot be excluded or limited by applicable law.

8.2 Without prejudice to Clause 8.1:

- (a) neither party shall be liable to the other for any loss of profit, loss or corruption of data, loss of income, loss of goodwill, loss of business or loss of anticipatory savings or for any indirect or consequential loss howsoever arising; and
- (b) other than as specified in Clause 8.1 or Clause 7, Brightsolid's entire aggregate liability to the Customer, whether arising under the Agreement or otherwise (including under the laws of negligence) in connection with the matters envisaged by the Agreement shall not, in any period of twelve months, exceed one and a half times the sums paid or payable by the Customer under the terms of the Agreement in such period of twelve months.

9. TERMINATION

9.1 Either party may terminate the Agreement forthwith (without prejudice to any other right or remedy available):

- (a) on giving written notice to either party if the other party has materially breached any of its obligations hereunder and, in the case of a material breach capable of remedy, such breach shall not have been remedied by the defaulting party within either (i) five (5) days' of written notice specifying the breach in the case of a breach relating to non-payment of Charges; or (ii) thirty (30) days of written notice specifying the breach in any other case, in both cases requiring its remedy by the non-defaulting party within such period; or
- (b) on giving written notice to either party if the other party becomes apparently insolvent, bankrupt, has a receiver or administrator or similar officer appointed over the whole or any part of its assets (or a person becomes entitled to appoint any such officer), enters into any compound with its creditors, or has

an order made or resolution passed for it to be wound up (otherwise than for the purpose of amalgamation or reconstruction).

9.2 Unless as otherwise stated in the Order Form, Brightsolid may terminate the Agreement forthwith (without prejudice to any right or remedy available) on giving written notice to the Customer:

- (a) if Brightsolid becomes aware that the Customer is using the Services or permitting the Services to be used for any unauthorised or unlawful activities, including, but not limited to, obscene, fraudulent, hateful, or racially objectionable activities, or any activity which is regarded as direct or indirect encouragement or other inducement to the commission, preparation or instigation of acts of terrorism; or
- (b) if the Customer fails to pay any Charges on or before the due date provided that Brightsolid has provided the Customer with a reminder and at least 7 days' notice that it intends to exercise its right of termination if the outstanding amounts are not settled by the end of such 7 day period provided that the provisions of Clause 17 have been complied with in respect of any disputed invoice raised by the Customer in accordance with Clause 5.2.

9.3 Upon termination or expiry of the Agreement:

- (a) any and all sums, including the Charges due to Brightsolid hereunder in respect of the provision of Services up to the Expiry Date shall become immediately payable by the Customer;
- (b) any sums paid to Brightsolid by the Customer for Services which have not been carried out at the date of termination shall be repaid forthwith by Brightsolid;
- (c) Brightsolid shall, in the event of early termination and at the request of the Customer, continue to perform its obligations under the Agreement until a replacement supplier has entered into an agreement with the Customer, or for a period of no more than six (6) months, subject to the Customer paying in full and in advance, all applicable Charges as if the Agreement had not been terminated;
- (d) Brightsolid shall provide the Customer and its representatives (including any replacement supplier) with escorted, scheduled and controlled access to the Location(s) where necessary to remove any Customer property and/or equipment held there and any Customer Data stored thereon; and
- (e) if Brightsolid receives, no later than ten days after the effective date of the expiry or termination of this agreement for any reason, a written request for the delivery to the Customer of the most recent backup of the Customer Data, Brightsolid shall provide the Customer with reasonable assistance and co-operation to enable the Customer to migrate Customer Data or equipment to an alternative cloud environment or any successor arrangement to the Services, provided that the Customer has at that time paid all fees and Charges outstanding at (and including any resulting from) expiry or termination (whether or not due at the date of expiry or termination). Once such ten day period has expired or Brightsolid has, at the Customer's request, delivered to the Customer the most recent backup of the Customer Data (as applicable), Brightsolid shall (subject to any Regulatory Requirement (as defined below)) promptly expunge from Brightsolid's system and otherwise destroy or dispose of all of the Customer Data in its possession or control. The Customer shall pay all reasonable costs and expenses incurred by Brightsolid in returning and disposing of Customer Data and expunging it from the Brightsolid's system. If a party is required by any law, regulation, or government or regulatory body ("**Regulatory Requirement**") to retain any documents or materials which it would otherwise be obliged to return or destroy under this clause 9.3(e), it shall notify the other party in writing of

such retention, giving details of the documents or materials that it must retain. Clause 6 shall continue to apply to any such retained documents and materials for as long as any such requirement continues in force, subject to any disclosure mandated by any Regulatory Requirement. Brightsolid shall be considered to have satisfied its obligation to "expunge" or "destroy" or "dispose" of any electronic data, for the purposes of this clause 9.3(e), where it puts such electronic data beyond use.

The provisions of any Clause expressed or intended to continue beyond termination, including without limitation Clauses 1 (Definitions), 5 (Charges), 6 (Confidentiality), 8 (Liability), 9 (Termination), 10 (Intellectual Property), 11 (Data Protection), 12 (Notices), 14 (Audit, Access to Locations), 15 (Insurance), 17 (Dispute Resolution); and 18 (Miscellaneous Provisions) shall continue and remain in full force and effect.

10. INTELLECTUAL PROPERTY

- 10.1 Unless as otherwise set out in the Services Specification, all Intellectual Property Rights belonging to and used by Brightsolid in the provision of the Services, along with those Intellectual Property Rights arising from the provision of the Services, shall remain the exclusive property of Brightsolid; except that all Intellectual Property Rights relating to Customer Data and any other data and information provided by the Customer shall remain the exclusive property of the Customer.
- 10.2 Unless as otherwise set out in the Services Specification, Brightsolid shall be entitled to use any and all Intellectual Property Rights owned by Brightsolid, including but not limited to (and subject always to Clause 6 (Confidentiality)) know-how arising from the provision of the Services, in any other projects carried on by Brightsolid.
- 10.3 The Customer shall not be entitled to use any Intellectual Property Rights belonging to Brightsolid, without obtaining Brightsolid's prior written consent and on such terms and conditions as agreed between the parties
- 10.4 Subject to Clause 10.6 Brightsolid shall indemnify the Customer and hold the Customer harmless from and against all actions, claims, demands, costs, charges and expenses arising as a direct result of any infringement or alleged infringement of any Intellectual Property Rights arising out of or in connection with the performance of the Services by Brightsolid, its sub-contractors or suppliers except where such infringements arise out of information or express instructions received from the Customer in which case the Customer shall indemnify Brightsolid on the same terms, mutatis mutandis. This indemnity shall survive termination of the Agreement.
- 10.5 Each party shall promptly notify the other party if it is or becomes aware of any such infringement or alleged infringement, or any matter which may give rise to a claim for infringement to which the Customer is entitled to indemnification under Clause 10.4 above. In such event the Customer shall have the right to require Brightsolid, at no extra cost to the Customer, to amend or alter the work or its performance thereof in such manner as shall avoid the relevant infringement whether actual, alleged or potential. The Customer shall make no admission of liability and allow Brightsolid full conduct of any relevant claim.
- 10.6 The provisions of Clauses 10.4 and 10.5 do not apply in relation to Third Party Products and the parties acknowledge that Third Party Products are not generally made available on terms which are consistent with such provisions. In the case of any infringement or alleged infringement of Intellectual Property Rights arising out of or in connection with Third Party Products, the Customer's sole remedy shall be to require Brightsolid to use its commercially reasonable endeavours to obtain the benefit of any indemnification or other remedy available to it under the agreement in place with the supplier of the Third Party Products. Without prejudice to the foregoing, Brightsolid shall at any time when requested to do so by the Customer promptly provide the Customer with copies of all agreements in place with suppliers of the Third Party Products.

11. DATA PROTECTION

- 11.1 The terms defined in the Data Protection Legislation shall have the same meanings when used in this Clause 11 and throughout the Agreement.
- 11.2 With respect to the parties' rights and obligations under the Agreement, the parties acknowledge that the Customer is a data controller and that Brightsolid is a data processor.
- 11.3 Brightsolid hereby undertakes to the Customer that, if and to the extent that it comes into possession of personal data in the course of providing the Services:
- (a) it shall only process such personal data to the extent necessary to perform the Services and in accordance with the instructions of the Customer;
 - (b) it shall acquire no rights or interest in any such personal data;
 - (c) it shall implement and maintain at all times appropriate technical and organisational measures to guard against unauthorised or unlawful processing of, and against accidental loss or destruction of or damage to, such personal data;
 - (d) it shall not other than in accordance with the Data Protection Legislation, transfer any personal data to any country or territory outside the European Economic Area and, in any event, it shall not do so without the prior written consent of the Customer;
 - (e) it shall take all reasonable steps to ensure the reliability and integrity of any Brightsolid employees, agents and contractors who have access to the personal data and ensure that they:
 - (i) are aware of and comply with Brightsolid's duties under this Clause 11 and Clause 6 (Confidentiality);
 - (ii) are informed of the confidential nature of the personal data and do not publish, disclose or divulge any of the personal data to any third party unless directed in writing to do so by the Customer or as otherwise permitted by the Agreement; and
 - (iii) have undergone adequate training in the use, care, protection and handling of personal data;
 - (f) notify the Customer within five (5) Business Days if it receives:
 - (i) from a data subject (or third party on their behalf):
 - (A) a data subject access request (or purported data subject access request);
 - (B) a request to rectify, block or erase any personal data; or
 - (ii) any other request, complaint or communication relating to the Customer's obligations under the Data Protection Legislation;
 - (iii) any communication from the Information Commissioner or any other Regulator in connection with Personal Data of the Customer; or
 - (iv) a request from any third party for disclosure of personal data where compliance with such request is required or purported to be required by law and which involves the Customer or any Customer Data;
 - (g) provide the Customer with full cooperation and assistance (within the timescales reasonably required by the Customer) in relation to any complaint,

communication or request made as referred to in Clause 11.3(f) including by promptly providing:

- (i) the Customer with full details and copies of the complaint, communication or request;
- (ii) where applicable, such assistance as is reasonably requested by the Customer to enable the Customer to comply with the data subject access request within the relevant timescales set out in the Data Protection Legislation; and
- (iii) the Customer, on request by the Customer, with any personal data it holds in relation to a data subject.

11.4 The Customer warrants and represents that all instructions provided to Brightsolid in relation to the processing of personal data are lawful and shall as a minimum include:

- (a) the nature and purpose of the processing of the personal data;
- (b) the types of personal data to be processed; and
- (c) the categories of data subjects to whom the personal data relates.

11.5 The Customer shall only provide instructions to Brightsolid that are in accordance with the terms of this Agreement.

11.6 The Customer acknowledges that as data controller it is solely responsible for determining the lawful processing condition upon which it shall rely in providing instructions to Brightsolid to process personal data for the purposes of performing its obligations under this Agreement.

11.7 The Customer agrees and acknowledges that Brightsolid relies on the Customer's compliance with its own obligations under the Data Protection Legislation and shall not be liable to the Customer for any acts or omissions undertaken at the specific instruction of the Customer.

11.8 Brightsolid shall use its reasonable endeavours to assist the Customer to comply with any obligations under the Data Protection Legislation and shall not perform its obligations under the Agreement in such a way as to cause the Customer to breach any of the Customer's obligations under the Data Protection Legislation to the extent Brightsolid is aware, or ought reasonably to have been aware, that the same would be a breach of such obligations. Brightsolid shall not disclose any Personal Data to any third parties other than:

- (a) to employees and sub-contractors to whom such a disclosure is necessary in order for Brightsolid to carry out the Services; or
- (b) to the extent required under a court order.

11.9 In so far as Brightsolid is acting as a data controller, Brightsolid undertakes that it will comply with the provisions of the Data Protection Legislation and any applicable subordinate legislation enacted pursuant to, in connection with the performance of the Services under the Agreement which shall include, without limitation, maintaining such valid and up to date registration or (where applicable) notification under such legislation as such shall be required for the purposes of carrying out the Services. Brightsolid shall only undertake such processing of personal data to the extent necessary.

11.10 The Customer consents and agrees to the appointment by Brightsolid of the Third Party Supplier(s) as a sub-processor. Notwithstanding the terms of this Clause 11, the Third Party Supplier(s)' activities as a sub-processor shall be regulated by their standard terms of business and other applicable terms of service in accordance with the provisions of Clause 7

12. NOTICES

- 12.1 Any notice given under the Agreement requires to be sent by registered delivery mail or email to the following address/email:

Brightsolid Online Technology Limited

Gateway House

Luna Place

Dundee Technology Park

Dundee

Scotland

DD2 1TP

Tel: 01382 429000

Email: enquiries@brightsolid.com

[CUSTOMER ADDRESS]

- 12.2 Notices sent by registered mail will be deemed served on receipt of a signature for acceptance and notices sent by email will be deemed to be served on transmission upon acknowledgment of receipt of the email sent from the recipient of the email, to the sender.
- 12.3 The provisions of this Clause shall not apply to the service of any proceedings or other documents in any legal action.

13. FORCE MAJEURE

- 13.1 Neither party shall be in breach of the Agreement, nor liable for any failure or delay in performance of its obligations under the Agreement arising from or attributable to acts, events, omissions or circumstances beyond its control, including but not limited to, acts of God, perils of the sea or air, fire, flood, drought, explosion, sabotage, accident, embargo, riot, civil commotion or civil authority including acts of local government and parliamentary authority; telecommunications failures; war; terrorism; failure of utilities and telecoms providers and extreme adverse weather conditions ("Force Majeure").
- 13.2 If and to the extent that either party is prevented or delayed in the performance of any of its obligations under the Agreement by reason of Force Majeure, then the affected party shall be excused the performance or the punctual performance of such obligations as the case may be from the date of such notice for so long as such cause of prevention or delay shall continue subject to using its reasonable endeavours at all times to prevent and mitigate the effects of the Force Majeure.
- 13.3 The affected party shall notify the other party as soon as practicable after the Force Majeure ceases or no longer causes the affected party to be unable to comply with its obligations under the Agreement.
- 13.4 In the event either party is unable to perform a substantial part of its obligations hereunder by reason of Force Majeure for a period in excess of ninety (90) days, then the other party shall be entitled to terminate the Agreement with immediate effect on expiry of such period.

14. AUDIT, ACCESS TO LOCATIONS

- 14.1 Subject to giving reasonable notice, the Customer and its auditors shall have the right during regular office hours to audit the Locations, equipment and operational procedures of Brightsolid to obtain assurance that these are in accordance with the Agreement, and in particular, to verify the security and confidentiality of the Customer's data, and the arrangements for business continuity/disaster recovery. Any Regulator shall also have such rights of audit but without the requirement to give reasonable notice or to be restricted to conducting the audit of the Locations, equipment and operational procedures to regular office hours. Access to any Locations where a secure Data Centre is located shall be on an escorted basis only.
- 14.2 The Customer shall, and shall procure that any agents and contractors accessing the Locations shall, provide Brightsolid with reasonable confidentiality undertakings as a condition of access to the Location and minimise disruption to Brightsolid's other operations at the Location.
- 14.3 Brightsolid shall be entitled to change the Location(s) on giving prior written notice to the Customer.

15. INSURANCE

- 15.1 Brightsolid agrees to procure and maintain at its expense during the Term of the Agreement insurance coverage of the types and with limits of liability not less than those set out below:
- (a) Employer's liability insurance shall be in amount of not less than GBP 5,000,000 per occurrence or series of occurrences arising from any one event which complies with all applicable laws and which shall cover all employees of Brightsolid engaged in the Services;
 - (b) Public and Products liability insurance to cover all locations at which operations are to be performed with a combined bodily injury and property damage limit of not less than GBP 1,000,000 per accident or occurrence or series of occurrences arising from any one event and unlimited in the aggregate; and
 - (c) Errors and Omissions and Professional Indemnity insurance appropriate for the nature of Brightsolid's business, including permanent loss or damage to the Customer's data, intellectual property infringement and breach of duty of confidentiality which shall, in any event be in amount of not less than GBP 2,000,000 per occurrence or series of occurrences arising from any one event.

16. ANTI-BRIBERY AND CORRUPTION

- 16.1 Brightsolid shall:
- (a) comply with all applicable laws, regulations, codes and sanctions relating to anti-bribery and anti-corruption including the Bribery Act 2010 ("Relevant Requirements");
 - (b) not knowingly engage in any activity, practice or conduct which would constitute an offence under sections 1, 2 or 6 of the Bribery Act 2010 if such activity, practice or conduct had been carried out in the UK; and
 - (c) have and shall maintain in place throughout the term of the Agreement its own policies and procedures containing what it believes to be adequate provisions to ensure compliance with the Relevant Requirements and this Clause 16, and will enforce them where appropriate.

17. DISPUTE RESOLUTION

- 17.1 Subject to Clause 17.2 all disputes between the parties shall be referred by either party for resolution in accordance with the escalation procedure set out in Clause 17.3.
- 17.2 Neither party shall be obliged to implement the escalation procedure in relation to intellectual property or confidentiality claims or where it would prejudice its legal rights or remedies or its position as regards any regulatory requirement.
- 17.3 The parties shall use all reasonable endeavours to discuss and resolve any dispute which may arise out of or in connection with the Agreement. If the parties cannot resolve the dispute within seven days of the dispute arising through discussion, the dispute shall be referred by either party for resolution in accordance with the following escalation procedure:
- (a) all disputes shall in the first instance be referred, by either party, to each party's Nominated Representative for resolution; and
 - (b) if any dispute cannot be resolved by the Nominated Representatives within seven days after it has been referred to them, that dispute shall be escalated to a member of the board of directors of each party ("Senior Representatives") for resolution; and
 - (c) if the dispute cannot be resolved by the parties' Senior Representatives within a maximum of ten (10) days after it has been referred under Clause 17.3(b), then Clause 18.13 shall apply.
- 17.4 Nothing contained in this Clause 17 shall restrict either party's freedom to commence legal proceedings to preserve any legal right or remedy or protect any proprietary or trade secret right or for interdict or other injunctive relief.

18. MISCELLANEOUS PROVISIONS

- 18.1 The Customer shall be entitled to assign, novate, sub-contract or transfer any of its rights or obligations under the Agreement to a Group Company, or to a purchaser of all or part of its business, without the prior written consent of Brightsolid.
- 18.2 Brightsolid shall be entitled to assign, novate, sub-contract or transfer any of its rights or obligations under the Agreement to a Group Company, or to a purchaser of all or part of its business, without the prior written consent of the Customer.
- 18.3 Subject to Clause 3.2, no variation or amendment of the Agreement shall be effective unless it is in writing, in the form prescribed in the Change Control Procedure and executed by authorised representatives of both parties.
- 18.4 A waiver of a breach of any of the terms of the Agreement or of a default under the Agreement does not constitute a waiver of any other breach or default and shall not affect the other terms of the Agreement, nor will it prevent a party from subsequently requiring compliance with the waived obligation.
- 18.5 No waiver of any of the provisions of the Agreement shall be effective unless it is expressly stated to be a waiver and communicated to the other party in writing.
- 18.6 In the event that any of the terms, conditions or provisions of the Agreement shall be determined by any competent Customer to be invalid, unlawful or unenforceable to any extent, such term, condition or provision shall to that extent be severed from the remaining terms, conditions and provisions, which shall continue to be valid to the fullest extent permitted by law.
- 18.7 This Agreement constitutes the entire agreement and understanding between the parties and supersedes any previous agreements, arrangements or understandings, between the parties relating to the subject matter of the Agreement and may only be amended by the written agreement of both parties.

- 18.8 Each of the parties acknowledge and agree that in entering into the Agreement, (and the documents referred to in it) that both parties shall not rely on, and shall have no remedy in respect of, any statement, representation, or understanding whether negligently or innocently made prior to entering into the Agreement.
- 18.9 Nothing in the Agreement is intended to or shall operate to create a partnership (or joint venture of any kind) between the parties. Neither party is the agent of the other and neither party shall give any undertaking on behalf of the other or otherwise bind the other in any way.
- 18.10 Brightsolid may use the Customer's name in promotional materials including press releases, presentations and customer references regarding the provision of Services. Brightsolid will obtain the Customer's prior approval for publicity that contains claims, quotes, endorsements or attributions by the Customer.
- 18.11 No one other than a party to this agreement, their successors and permitted assignees, shall have any right to enforce any of its terms.
- 18.12 This agreement may be executed in any number of counterparts, each of which when executed and delivered shall constitute a duplicate original, but all the counterparts shall together constitute the one agreement.
- 18.13 The parties hereby agree that the Agreement shall be governed by and construed in accordance with Scots law and hereby submit to the exclusive jurisdiction of the Scottish courts. ***[INTERNAL DRAFTING NOTE: if customer insists on English law, please refer to DCT Legal]***

IN WITNESS WHEREOF these presents consisting of this and the [XXX] preceding pages together with the Schedule have been signed in duplicate as follows:

Signed for and on behalf of

[Customer]

Full Name

Position

Date

Witness

Full Name

Address

Signed for and on behalf of **Brightsolid**

Online Technology Limited

Full Name

Position

Date

Witness

Full Name

Address

Service Commencement Date: