

07 APRIL 2022

Terms & Conditions relating to BrightNet Portal and Subscription Service

Revised June 2022

BrightNet is an online portal service provided by Brightwell Dispensers Limited (registered in England and Wales with company number 00661996) and whose registered office is at Unit 9, Euro Business Park, Estate Road, Newhaven, BN9 0DQ, England (**Brightwell**).

By accessing BrightNet and making use of the Services, Subscribers and/or Authorised Users irrevocably confirm:-

- A that such access and use is governed exclusively by these terms and conditions to the exclusion of all other terms and conditions (including any terms and conditions which the relevant Subscriber and/or Authorised User may purport to apply); and**
- B that they accept that the processing of Subscriber Data (as defined below) is governed by clause 5 of these terms and conditions and Brightwell's Privacy Policy available at www.brightwell.co.uk or such other website address as may be notified to Subscribers from time to time, and as such document may be amended from time to time by Brightwell in its reasonable but sole discretion**

1. Interpretation

1.1 The definitions and rules of interpretation in this clause apply in these terms and conditions.

Authorised Users: those employees, agents and independent contractors of a Subscriber who are authorised by such Subscriber to use the Services and the Documentation, as further described in clause 2.2(d).

Business Day: a day other than a Saturday, Sunday or public holiday in England when banks in London are open for business.

Confidential Information: information that is proprietary or confidential and is either clearly labelled as such or identified as Confidential Information in clause 11.1.

Documentation: such documentation as is made available to Subscribers by Brightwell and which sets out a description of the Services and the user instructions for the Services.

Normal Business Hours: 9.00 am to 5.30 pm local UK time, each Business Day.

Services: the online subscription services provided by Brightwell to the Subscriber under these terms and conditions and which Services have various levels of functionality depending upon the level of Subscription Fee (if any) that the relevant Subscriber pays for.

Software: the online software applications provided by Brightwell as part of the Services.

Subscriber: a subscriber to the Services and **Subscribers** shall be construed accordingly regardless of whether or not such Services are provided free of charge or subject to Subscription Fees.

Subscriber Data: data inputted by a Subscriber, Authorised Users, or Brightwell on a Subscriber's behalf for the purpose of using the Services or facilitating that Subscriber's use of the Services.

Subscription Fees: the subscription fees payable by a Subscriber to Brightwell for the Services to be provided to such Subscriber and the related User Subscriptions.

Subscription Term: such period during which the Subscriber is entitled to use the Services (whether by virtue of having paid Subscription Fees or being provided by Brightwell with free access to use the Services).

Support Services Policy: Brightwell's policy from time to time for providing support in relation to the level of Services to be provided to the relevant Subscriber.

User Subscriptions: the user subscriptions which entitle Authorised Users to access and use the Services and the Documentation in accordance with these terms and conditions.

Virus: any thing or device (including any software, code, file or programme) which may: prevent, impair or otherwise adversely affect the operation of any computer software, hardware or network, any telecommunications service, equipment or network or any other service or device; prevent, impair or otherwise adversely affect access to or the operation of any programme or data, including the reliability of any programme or data (whether by re-arranging, altering or erasing the programme or data in whole or part or otherwise); or adversely affect the user experience, including worms, trojan horses, viruses and other similar things or devices.

1.2 Clause headings shall not affect the interpretation of these terms and conditions.

1.3 A reference to **writing** or **written** excludes fax but not email.

1.4 References to a **party** or **parties** mean Brightwell and the relevant Subscriber.

2. User subscriptions

2.1 Subject to (where applicable) payment of any Subscription Fees due and the other terms and conditions herein, Brightwell grants to Subscribers a non-exclusive, non-transferable right and licence, without the right to grant sublicences, to permit their Authorised Users to use the Services and the Documentation during the Subscription Term solely for the Subscriber's internal business operations.

2.2 In relation to Authorised Users, Subscribers undertake that:

- (a) the maximum number of Authorised Users that they authorise to access and use the Services and the Documentation shall not exceed the number of User Subscriptions they have purchased or which are otherwise made available to them by Brightwell free of charge from time to time;

- (b) they will not allow or suffer any User Subscription to be used by more than one individual Authorised User unless it has been reassigned in its entirety to another individual Authorised User, in which case the prior Authorised User shall no longer have any right to access or use the Services and/or Documentation;
- (c) each Authorised User shall keep a secure password for their use of the Services and Documentation and shall keep their password confidential;
- (d) they shall maintain a written, up to date list of current Authorised Users and provide such list to Brightwell within 5 Business Days of Brightwell's written request at any time or times;
- (e) they shall permit Brightwell or Brightwell's designated auditor to audit the Services in order to establish the name and password of each Authorised User and the Subscriber's data processing facilities to audit compliance with these terms and conditions. Each such audit may be conducted no more than once per quarter, at Brightwell's expense, and this right shall be exercised with reasonable prior notice, in such a manner as not to substantially interfere with the Subscriber's normal conduct of business;
- (f) if any of the audits referred to in clause 2.2(e) reveal that any password has been provided to any individual who is not an Authorised User, then without prejudice to Brightwell's other rights, Brightwell may disable such passwords and shall not issue any new passwords to any such individual; and
- (g) if any of the audits referred to in clause 2.2(e) reveal that the Subscriber has underpaid any Subscription Fees due to Brightwell, then without prejudice to Brightwell's other rights, the Subscriber shall pay to Brightwell an amount equal to such underpayment within 10 Business Days of the date of the relevant audit.

2.3 Subscribers and/or Authorised Users shall not access, store, distribute or transmit any Viruses, or any material during the course of their use of the Services that:

- (a) is unlawful, harmful, threatening, defamatory, obscene, infringing, harassing or racially or ethnically offensive;
- (b) facilitates illegal activity;
- (c) depicts sexually explicit images;
- (d) promotes unlawful violence;
- (e) is discriminatory based on race, gender, colour, religious belief, sexual orientation, disability; or
- (f) is otherwise illegal or causes damage or injury to any person or property;

and Brightwell reserves the right, without liability or prejudice to its other rights to Subscribers, to disable a Subscriber's access to the Services where any material breaches the provisions of this clause.

2.4 Subscribers shall not:

- (a) except as may be allowed by any applicable law which is incapable of exclusion by agreement between the parties and except to the extent expressly permitted under these terms and conditions:
 - (i) attempt to copy, modify, duplicate, create derivative works from, frame, mirror, republish, download, display, transmit, or distribute all or any portion of the Software and/or Documentation (as applicable) in any form or media or by any means; or
 - (ii) attempt to de-compile, reverse compile, disassemble, reverse engineer or otherwise reduce to human-perceivable form all or any part of the Software; or
- (b) access all or any part of the Services and Documentation in order to build a product or service which competes with the Services and/or the Documentation; or
- (c) use the Services and/or Documentation to provide services to third parties; or
- (d) subject to clause 20.1, license, sell, rent, lease, transfer, assign, distribute, display, disclose, or otherwise commercially exploit, or otherwise make the Services and/or Documentation available to any third party except their Authorised Users, or
- (e) attempt to obtain, or assist third parties in obtaining, access to the Services and/or Documentation, other than as provided under this clause 2; or
- (f) introduce or permit the introduction of any Virus or other vulnerability into Brightwell's network and information systems.

2.5 Subscribers shall use all reasonable endeavours to prevent any unauthorised access to, or use of, the Services and/or the Documentation and, in the event of any such unauthorised access or use, promptly notify Brightwell.

2.6 The rights provided under this clause 2 are granted to Subscribers only, and shall not be considered granted to any subsidiary or holding company of the Subscriber without the prior written consent of Brightwell.

3. Additional user subscriptions

3.1 Subject to clause 3.2, Subscribers may, from time to time, purchase additional User Subscriptions and Brightwell shall grant access to the Services and the Documentation to such additional Authorised Users in accordance with the provisions of these terms and conditions.

3.2 If a Subscriber wishes to purchase additional User Subscriptions, the Subscriber shall notify Brightwell in writing. Brightwell shall evaluate such request for additional User Subscriptions and respond to the Subscriber with approval or rejection of the request (such approval not to be unreasonably withheld). Where Brightwell approves the request, Brightwell shall activate the

additional User Subscriptions within 2 Business Days of its approval of the Subscriber's request or, if later, receipt of any additional Subscription Fee.

4. Services

4.1 Brightwell shall, during the Subscription Term, provide the Services and make available the Documentation to Subscribers on and subject to the terms of these terms and conditions.

4.2 Brightwell shall use commercially reasonable endeavours to make the Services available 24 hours a day, seven days a week, and (save where urgent maintenance is required) shall use reasonable endeavours to ensure that any maintenance to the system is carried out outside of Normal Business Hours.

4.3 Dependant on the level of Services made available to such Subscribers, Brightwell will, as part of the Services, provide Subscribers with Brightwell's standard Subscriber support services during Normal Business Hours in accordance with Brightwell's Support Services Policy in effect at the time that the Services are provided. Brightwell may amend the Support Services Policy in its sole and absolute discretion from time to time. The Subscriber may purchase enhanced support services separately at Brightwell's then current rates.

5. Data protection

5.1 Subscribers shall own all right, title and interest in and to all of their Subscriber Data and shall have sole responsibility for the legality, reliability, integrity, accuracy and quality of such Subscriber Data.

5.2 Notwithstanding clause 5.1, and subject always to the provisions of clause 11, Brightwell shall be entitled to use Subscriber Data for its own internal purposes to monitor data provided by all Subscribers and improve or otherwise develop the Services.

5.3 In the event of any loss or damage to Subscriber Data, the Subscriber's sole and exclusive remedy shall be for Brightwell to use reasonable commercial endeavours to restore the lost or damaged Subscriber Data from the latest back-up of such Subscriber Data. Brightwell shall not be responsible for any loss, destruction, alteration or disclosure of Subscriber Data caused by any third party (except those third parties sub-contracted by Brightwell to perform services related to Subscriber Data maintenance and back-up).

5.4 Brightwell shall, in providing the Services, comply with its Privacy Policy relating to the privacy and security of the Subscriber Data available at www.brightwell.co.uk or such other website address as may be notified to the Subscriber from time to time, as such document may be amended from time to time by Brightwell in its reasonable but sole discretion.

- 5.5 If Brightwell processes any personal data on a Subscriber's behalf when performing its obligations under these terms and condition, the parties record their intention that the relevant Subscriber shall be the data controller and Brightwell shall be a data processor and in any such case:
- (a) the Subscriber acknowledges and agrees that the personal data may be transferred or stored outside the EEA or the country where the Subscriber and the Authorised Users are located in order to carry out the Services and Brightwell's other obligations under this agreement;
 - (b) the Subscriber shall ensure that the Subscriber is entitled to transfer the relevant personal data to Brightwell so that Brightwell may lawfully use, process and transfer the personal data in accordance with these terms and conditions on the Subscriber's behalf;
 - (c) the Subscriber shall ensure that the relevant third parties have been informed of, and have given their consent to, such use, processing, and transfer as required by all applicable data protection legislation;
 - (d) each party shall take appropriate technical and organisational measures against unauthorised or unlawful processing of the personal data or its accidental loss, destruction or damage.

6. Third party providers

Subscribers acknowledge that the Services may enable or assist it to access the website content of, correspond with, and purchase products and services from, third parties via third-party websites and that it does so solely at its own risk. Brightwell makes no representation, warranty or commitment and shall have no liability or obligation whatsoever in relation to the content or use of, or correspondence with, any such third-party website, or any transactions completed, and any contract entered into by the Subscriber, with any such third party. Any contract entered into and any transaction completed via any third-party website is between the Subscriber and the relevant third party, and not Brightwell. Brightwell recommends that Subscribers refer to the third party's website terms and conditions and privacy policy prior to using the relevant third-party website. Brightwell does not endorse or approve any third-party website nor the content of any of the third-party website made available via the Services.

7. Brightwell's obligations

- 7.1 Brightwell undertakes that the Services will be performed substantially in accordance with the Documentation and with reasonable skill and care.
- 7.2 The undertaking at clause 7.1 shall not apply to the extent of any non-conformance which is caused by use of the Services contrary to Brightwell's instructions, or modification or alteration of the Services by any party other than Brightwell or Brightwell's duly authorised contractors or agents. If the Services do not conform with the foregoing undertaking, Brightwell will, at its expense, use reasonable commercial endeavours to correct any such non-conformance promptly, or provide Subscribers with an alternative means of accomplishing the desired performance. Such

correction or substitution constitutes a Subscriber's sole and exclusive remedy for any breach of the undertaking set out in clause 7.1.

7.3 Brightwell:

- (a) does not warrant that:
 - (i) any Subscriber's use of the Services will be uninterrupted or error-free;
 - (ii) that the Services, Documentation and/or the information obtained by a Subscriber through the Services will meet that Subscriber's requirements; or
 - (iii) the Software or the Services will be free from Viruses or other vulnerability.
- (b) 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 Subscribers acknowledge that the Services and Documentation may be subject to limitations, delays and other problems inherent in the use of such communications facilities.

7.4 Brightwell warrants that it has and will maintain all necessary licences, consents, and permissions necessary for the performance of its obligations under these terms and conditions.

8. Subscriber obligations

8.1 Subscribers shall:

- (a) provide Brightwell with:
 - (i) all necessary co-operation; and
 - (ii) all necessary access to such information as may be required by Brightwell;in order to provide the Services, including but not limited to Subscriber Data, security access information and configuration services;
- (b) without affecting their other obligations under these terms and conditions, comply with all applicable laws and regulations with respect to their activities;
- (c) carry out all other Subscriber responsibilities set out in these terms and conditions in a timely and efficient manner. In the event of any delays in a Subscriber's provision of such assistance, Brightwell may adjust any agreed timetable or delivery schedule as reasonably necessary;
- (d) ensure that Authorised Users use the Services and the Documentation in accordance with these terms and conditions and shall be responsible for any of their Authorised User's breach of these terms and conditions;
- (e) obtain and shall maintain all necessary licences, consents, and permissions necessary for Brightwell, its contractors and agents to perform their obligations under these terms and conditions, including without limitation the Services;

- (f) ensure that its network and systems comply with any relevant specifications provided by Brightwell from time to time; and
- (g) be, to the extent permitted by law and except as otherwise expressly provided in these terms and conditions, solely responsible for procuring, maintaining and securing its network connections and telecommunications links from its systems to Brightwell's data centres, and all problems, conditions, delays, delivery failures and all other loss or damage arising from or relating to the Subscriber's network connections or telecommunications links or caused by the internet.

8.2 Subscribers shall own all right, title and interest in and to all of their Subscriber Data that is not personal data and shall have sole responsibility for the legality, reliability, integrity, accuracy and quality of all such Subscriber Data.

9. Charges and payment

9.1 Depending on the level of Services to be provided by Brightwell to the relevant Subscriber, such Subscriber shall pay the Subscription Fees to Brightwell for the User Subscriptions.

9.2 If Brightwell has not received payment within 10 Business Days after the due date, and without prejudice to any other rights and remedies of Brightwell:

- (a) Brightwell may, without liability to the Subscriber, disable the Subscriber's password, account and access to all or part of the Services and Brightwell shall be under no obligation to provide any or all of the Services while any Subscription Fees remain overdue; and
- (b) interest shall accrue on a daily basis on such due amounts at an annual rate equal to 4% over the then current Bank of England base rate from time to time, commencing on the due date and continuing until fully paid, whether before or after judgment.

9.3 All amounts and fees stated or referred to in these terms and conditions:

- (a) are, subject to clause 12.4(b), non-cancellable and non-refundable;
- (b) are exclusive of value added tax, which shall be added to Brightwell's invoice(s) at the appropriate rate.

9.4 Brightwell shall be entitled to increase Subscription Fees and any fees payable in respect of the additional User Subscriptions upon not less than [90] days' prior notice to the Subscriber.

10. Proprietary rights

10.1 Subscribers acknowledge and agree that Brightwell and/or its licensors own all intellectual property rights in the Services and the Documentation. Except as expressly stated herein, these terms and conditions do not grant Subscribers any rights to, under or in, any patents, copyright,

database right, trade secrets, trade names, trade marks (whether registered or unregistered), or any other rights or licences in respect of the Services or the Documentation.

10.2 Brightwell confirms that it has all the rights in relation to the Services and the Documentation that are necessary to grant all the rights it purports to grant under, and in accordance with, these terms and conditions.

11. Confidentiality

11.1 **Confidential Information** means all confidential information (however recorded or preserved) disclosed by a party or its Representatives (as defined below) to the other party and that party's Representatives:

- (a) any information that would be regarded as confidential by a reasonable business person relating to:
 - (i) the business, assets, affairs, customers, clients, suppliers, plans, intentions, or market opportunities of the disclosing party (or of any member of the group of companies to which the disclosing party belongs); and
 - (ii) the operations, processes, product information, know-how, designs, trade secrets or software of the disclosing party (or of any member of the group of companies to which the disclosing party belongs);
- (b) any information developed by the parties in the course of providing or using the Services and the parties agree that:
 - (i) details of the Services, and the results of any performance tests of the Services, shall constitute Brightwell Confidential Information; and
 - (ii) Subscriber Data shall constitute Subscriber Confidential Information.

Representatives means, in relation to a party, its employees, officers, contractors, subcontractors, representatives and advisers.

11.2 The provisions of this clause shall not apply to any Confidential Information that:

- (a) is or becomes generally available to the public (other than as a result of its disclosure by the receiving party or its Representatives in breach of this clause);
- (b) was available to the receiving party on a non-confidential basis before disclosure by the disclosing party;
- (c) was, is or becomes available to the receiving party on a non-confidential basis from a person who, to the receiving party's knowledge, is not bound by a confidentiality agreement with the disclosing party or otherwise prohibited from disclosing the information to the receiving party; or
- (d) the parties agree in writing is not confidential or may be disclosed; or

- (e) is developed by or for the receiving party independently of the information disclosed by the disclosing party.

11.3 Each party shall keep the other party's Confidential Information secret and confidential and shall not:

- (a) use such Confidential Information except for the purpose of exercising or performing its rights and obligations under or in connection with the Services and as provided in these terms and conditions (**Permitted Purpose**); or
- (b) disclose such Confidential Information in whole or in part to any third party, except as expressly permitted by this clause 11.

11.4 A party may disclose the other party's Confidential Information to those of its Representatives who need to know such Confidential Information for the Permitted Purpose, provided that:

- (a) it informs such Representatives of the confidential nature of the Confidential Information before disclosure; and
- (b) at all times, it is responsible for such Representatives' compliance with the confidentiality obligations set out in this clause.

11.5 A party may disclose Confidential Information to the extent only that such Confidential Information is required to be disclosed by law, by any governmental or other regulatory authority.

11.6 Each party reserves all rights in its Confidential Information. No rights or obligations in respect of a party's Confidential Information other than those expressly stated in this clause are granted to the other party, or to be implied from these terms and conditions.

11.7 Except as expressly stated in these terms and conditions, no party makes any express or implied warranty or representation concerning its Confidential Information.

11.8 The above provisions of this clause 11 shall continue to apply after termination or expiry of the Subscription Term.

12. Limitation of liability

12.1 Except as expressly and specifically provided in these terms and conditions:

- (a) Subscribers assume sole responsibility for results obtained from the use of the Services and the Documentation by the relevant Subscriber, and for conclusions drawn from such use. Brightwell shall have no liability for any damage caused by errors or omissions in any information, instructions or scripts provided to Brightwell by the Subscriber in connection with the Services, or any actions taken by Brightwell at the Subscriber's direction;

- (b) all warranties, representations, conditions and all other terms of any kind whatsoever implied by statute or common law are, to the fullest extent permitted by applicable law, excluded from these terms and conditions; and
 - (c) the Services and the Documentation are provided to the Subscriber on an "as is" basis.
- 12.2 Under no circumstances shall Brightwell, its employees, agents and sub-contractors be liable to a Subscriber to the extent that the alleged infringement is based on:
 - (a) a modification of the Services or Documentation by anyone other than Brightwell; or
 - (b) the Subscriber's use of the Services or Documentation in a manner contrary to the instructions given to the Subscriber by Brightwell; or
 - (c) the Subscriber's use of the Services or Documentation after notice of the alleged or actual infringement from Brightwell or any appropriate authority.
- 12.3 Nothing in these terms and conditions excludes the liability of Brightwell:
 - (a) for death or personal injury caused by Brightwell's negligence; or
 - (b) for fraud or fraudulent misrepresentation.
- 12.4 Subject to clauses 12.1 to 12.3:
 - (a) Brightwell shall not be liable whether in tort (including for [negligence or] breach of statutory duty), contract, misrepresentation, restitution or otherwise for any loss of profits, loss of business, depletion of goodwill and/or similar losses or loss or corruption of data or information, or pure economic loss, or for any special, indirect or consequential loss, costs, damages, charges or expenses however arising under these terms and conditions; and
 - (b) Brightwell's total aggregate liability in contract, tort (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise, arising in connection with the performance or contemplated performance of these terms and conditions shall be limited to the total of any Subscription Fees paid by the relevant Subscriber to Brightwell for the User Subscriptions during the 12 months immediately preceding the date on which the claim arose.

13. Term and termination

- 13.1 Without affecting any other right or remedy available to it, either party may terminate the relevant Subscription Term with immediate effect by giving written notice to the other party if:
 - (a) the other party fails to pay any amount due under these terms and conditions on the due date for payment and remains in default not less than 10 Business Days after being notified in writing to make such payment;

- (b) the other party commits a material breach of any other term of these terms and conditions and (if such breach is remediable) fails to remedy that breach within a period of 10 Business Days after being notified in writing to do so;
- (c) the other party suspends or ceases, or threatens to suspend or cease, carrying on all or a substantial part of its business.

13.2 Where any Services are provided to a Subscriber free of charge, Brightwell reserves the right at any time on written notice to terminate the Subscriber's rights to use such Services whereupon the Subscription Term shall terminate in so far only as such free of charge Service are concerned. Termination of free of charge Services shall not affect the continuance of the Subscription Term in respect of Services for which the Subscriber has paid Subscriber Fees.

13.3 On termination or expiry of the Subscription Term for any reason:

- (a) all licences granted under these terms and conditions shall immediately terminate and the Subscriber shall immediately cease all use of the Services and/or the Documentation;
- (b) each party shall return and make no further use of any equipment, property, Documentation and other items (and all copies of them) belonging to the other party;
- (c) Brightwell may destroy or otherwise dispose of any of Subscriber Data in its possession unless Brightwell receives, no later than 10 Business Days after the Subscription ends, a written request for the delivery to the Subscriber of the then most recent back-up of the Subscriber Data. Brightwell shall use reasonable commercial endeavours to deliver the back-up to the Subscriber within 25 Business Days of its receipt of such a written request, provided that the Subscriber has, at that time, paid all fees and charges outstanding at and resulting from termination (whether or not due at the date of termination). The Subscriber shall pay all reasonable expenses incurred by Brightwell in returning Subscriber Data; and
- (d) any rights, remedies, obligations or liabilities of the parties that have accrued up to the date of termination or expiry, including the right to claim damages in respect of any breach of the agreement which existed at or before the date of termination or expiry shall not be affected or prejudiced.

14. Force majeure

Neither party shall be in breach of these terms and conditions nor liable for delay in performing, or failure to perform, any of its obligations under these terms and conditions if such delay or failure result from events, circumstances or causes beyond its reasonable control. The time for performance of such obligations shall be extended accordingly. If the period of delay or non-performance continues for 4 weeks, the party not affected may terminate the Subscription Term by giving 5 Business Days written notice to the affected party.

15. Variation

No variation of these terms and conditions shall be effective unless it is agreed in writing by both parties.

16. Waiver

16.1 A waiver of any right or remedy is only effective if given in writing and shall not be deemed a waiver of any subsequent right or remedy.

16.2 A delay or failure to exercise, or the single or partial exercise of, any right or remedy shall not waive that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy.

17. Rights and remedies

Except as expressly provided in these terms and conditions, the rights and remedies provided under these terms and conditions are in addition to, and not exclusive of, any rights or remedies provided by law.

18. Severance

18.1 If any provision or part-provision of these terms and conditions is or becomes invalid, illegal or unenforceable, it shall be deemed deleted, but that shall not affect the validity and enforceability of the rest of these terms and conditions.

18.2 If any provision or part-provision of these terms and conditions is deemed deleted under clause 18.1 the parties shall negotiate in good faith to agree a replacement provision that, to the greatest extent possible, achieves the intended commercial result of the original provision.

19. Entire agreement

19.1 These terms and conditions, together with any information relating to Service levels to be purchased which is supplied to Subscribers in writing as part of the subscription acceptance process, constitutes the entire agreement between the parties and supersedes and extinguishes all previous and contemporaneous agreements, promises, assurances and understandings between them, whether written or oral, relating to its subject matter.

19.2 Each party acknowledges that it does not rely on, and shall have no remedies in respect of, any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in these terms and conditions or in any information relating to Service levels to be purchased which is supplied to Subscribers in writing as part of the subscription acceptance process.

- 19.3 Each party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in these terms and conditions or in any information relating to Service levels to be purchased which is supplied to Subscribers in writing as part of the subscription acceptance process.
- 19.4 Where there is any conflict between these terms and conditions and any information relating to Service levels to be purchased which is supplied to Subscribers in writing as part of the subscription acceptance process, the provisions of these terms and conditions shall prevail.
- 19.5 Nothing in this clause shall limit or exclude any liability for fraud.

20. Assignment

- 20.1 Subscribers shall not, without the prior written consent of Brightwell, assign, novate, transfer, charge, sub-contract or deal in any other manner with all or any of their rights or obligations under these terms and conditions.
- 20.2 Brightwell may at any time assign, transfer, charge, sub-contract or deal in any other manner with all or any of its rights or obligations under these terms and conditions.

21. No partnership or agency

Nothing in these terms and conditions is intended to or shall operate to create a partnership between the parties, or authorise either party to act as agent for the other, and neither party shall have the authority to act in the name or on behalf of or otherwise to bind the other in any way (including, but not limited to, the making of any representation or warranty, the assumption of any obligation or liability and the exercise of any right or power).

22. Third party rights

These terms and conditions do not confer any rights on any person or party (other than the parties to these terms and conditions and, where applicable, their successors and permitted assigns) pursuant to the Contracts (Rights of Third Parties) Act 1999.

23. Notices

- 23.1 Any notice given to a party under or in connection with these terms and conditions shall be in writing and shall be:
- (a) delivered by hand or by pre-paid first-class post or airmail or other next working day delivery service at its registered office (if a company) or its principal place of business (in any other case); or
 - (b) sent by email to the following addresses (or an address substituted in writing by the party to be served):

- (i) Brightwell – sales@brightwell.co.uk
- (ii) Subscriber – the email address supplied upon the Subscriber agreeing to subscribe to the Services.

23.2 Any notice shall be deemed to have been received:

- (a) if delivered by hand, at the time the notice is left at the proper address;
- (b) if sent by pre-paid first-class post or other next working day delivery service to an address in the United Kingdom, at 9.00 am on the second Business Day after posting;
- (c) if sent by pre-paid airmail providing proof of postage, at 9.00am on the fifth Business Day after posting; or
- (d) if sent by email, at the time of transmission, or, if this time falls outside Business Hours in the place of receipt, when Business Hours resume.

23.3 This clause does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution.

24. Governing law

These terms and conditions and any dispute or claim 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 interpreted in accordance with the law of England and Wales.

25. Jurisdiction

Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with the Services, these terms and conditions or their subject matter (including non-contractual disputes or claims).