Brightwire

TERMS AND CONDITIONS

Commencement Date: DATE

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THIS AGREEMENT is delivered on DATE

This support agreement ("**the Agreement**") is made by and entered into by and between:-

(1) **BRIGHTWIRE TECHNOLOGY SERVICES LIMITED** ("**the Company**"), a company registered in Scotland under company number SC301621, whose registered office is at Unit 5, School Brae, Peebles, EH45 8AT; and

(2) **CLIENT NAME** ("**the Client**"), a company registered under company number XXXX, whose registered office and place of business is at XXXX.

WHEREAS

(a) The Company is a technology services company that delivers software design, development, hosting and maintenance services to clients; and

(b) The Client wishes the Company to provide application development and consulting services on the following terms and conditions.

1. Definitions and Interpretation

In this document the following words shall have the following meanings:

"Affiliate"	means any entity (a) that Controls the Client; (b) that is controlled by the Client; or (c) that is Controlled by an entity that also Controls the Client;
"Agreement"	means this agreement, including the Schedule (incorporating the Quotation);
"Applicable Law"	means all UK laws, legislation, regulations, legally binding codes of practice, or rules or mandatory legal requirements of any relevant Scottish and/or UK governmental agency applicable to the provision of the Developed Work and/or the Services;
"Brightwire Document"	includes, without any limitation, in addition to any document in writing, any drawing, map, plan, diagram, design, picture or other image, tape, disk or other device or record embodying information in any form, provided or developed by the Company;
"Brightwire Materials"	means all Brightwire Documents, information, products and materials provided or developed by the Company or its agents, subcontractors, consultants or employees in relation to the Services in any form whatsoever including computer programs and software applications, data, reports, and specifications (including drafts);
"Change Request Procedure"	means the procedure set out in Clause 6 by which the Client may request the Company to amend the Services or the development work

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	forming part of the Services to be provided under this Agreement and in terms of the Quotation;
“Client”	means the person, firm or company who purchases services from the Company;
“Client or User Acceptance Testing”	means the period in which the Client should perform acceptance tests on all/part of the development work forming part of the Services;
“Client Materials”	means any and all documents, information and materials whatsoever provided by the Client to the Company in connection with the Services;
“Commencement Date”	means DATE;
“Company”	means Brightwire Technology Services Limited, a private limited company registered in Scotland (Scottish Company No. SC301621) and having its registered office at Unit 5, School Brae, Peebles, EH45 8AT, and its successors and assignees;
“Confidential Information”	means any and all information or data which may be in tangible or intangible form, whether expressed orally, in writing, in electronic or any other form (whether or not marked confidential) including, but not limited to business and financial information, marketing information, technical or commercial information or know-how, specifications, inventions, processes, initiatives and any and all Intellectual Property Rights, third party relationships, techniques, computer programs, software applications and manuals;
“Control”	shall have the meaning given to it by section 1124 of the Corporation Tax Act 2010;
"Data Protection Laws"	means all laws from time to time relating to the processing of personal data and/or privacy, including, (i) the General Data Protection Regulation (Regulation (EU) 2016/679) (the **"GDPR"**); (ii) the Data Protection Act 2018, (iii) the Privacy and Electronic Communications Regulations 2003 (or any successor regulation); and (iii) any legislation that in respect of the United Kingdom, replaces the GDPR as a consequence of the United Kingdom leaving the European Union; and “controller”, “processor", "data subject", "personal data" and "processing" bear the meanings given to them within the Data Protection Laws;
“Developed Work”	means the work which has been developed by the Company pursuant to the Services;
“Fee/s”	means the amount payable by the Client to the Company in respect of the Service provision and as stated in the Quotation;

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“Hosting Agreement”	means (if applicable) the agreement to be entered into between the Client and the Company for the provision by the Company to the Client of hosting services;
"Intellectual Property or IPR”	means all patents, trademarks, registered designs (and any applications for any of the foregoing), copyright (including rights in software), database rights, unregistered design rights, rights in and to trade names, business names, domain names, product names and logos, databases, inventions, discoveries, know-how and any other intellectual or industrial property rights in each and every part of the world together with all applications, renewals, revisals and extensions;
“Invoice Schedule”	means the invoice schedule attached to the Quotation, detailing each stage of the Services to be provided;
“Order or Work Order”	means an order placed by the Client with the Company for the provision of the Service;
“Parties”	means the Company and the Client and any reference to “Party” shall be construed accordingly;
“Project”	refers to the engagement undertaken by the Company to provide the Services to the Client;
“Quotation”	means the quotation, proposal, statement or scope of work, cost estimate, specification, project plan, engagement letter or other estimate together with any specifications or other similar material produced by the Company for the Client in relation to provision of the Service attached in the Schedule to this Agreement including any variations thereto agreed by the parties;
“Service” or “Services”	means the provision of services to be supplied by the Company pursuant to the Quotation. These may cover, but shall not be limited to, the supply of services including software development and consultancy, business consultancy, graphic design, technical consultancy, technical architecture and design, technical and/or application development, implementation and/or deployment, infrastructure, support and hosting services;
“Support Agreement”	means (if applicable) the agreement to be entered into between the Client and the Company for the provision by the Company to the Client of support services;
“Third Party Rights”	means any IPR owned by third parties;
“Terms and Conditions”	means these terms and conditions, as amended from time to time in accordance with Clause 25;
“VAT”	means Value Added Tax at the prevailing rate from time to time.

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Clause headings are for ease of reference only and shall not affect the construction or interpretation of any clause. Words importing the singular shall include the plural and vice versa and words denoting any gender shall include all genders. References to legislation are to that legislation as amended or re-enacted from time to time.

2. General Conditions

2.1 These Terms and Conditions shall

2.1.1 apply to and be incorporated into this Agreement; and

2.1.2 prevail over any inconsistent terms or conditions contained, or referred to, in the Client's purchase order, confirmation of order, acceptance of the Quotation or specification, or implied by law, trade custom, practice or course of dealing.

2.2 The Client's purchase order or acceptance of the Quotation constitutes an offer by the Client to purchase the Services specified in it on these Terms and Conditions. No offer placed by the Client shall be accepted by the Company other than:

2.2.1 by a written acknowledgement issued and executed by the Company; or

2.2.2 if earlier, by the Company starting to provide the Services,

when a contract for the supply and purchase of those Services on these Terms and Conditions shall be established. The Client's standard terms and conditions (if any) attached to, enclosed with or referred to in any purchase order or other document shall not govern this Agreement.

2.3 Quotations are issued by the Company on the basis that no Agreement shall come into existence except in accordance with Clause 2.2. Any Quotation is valid for a period of 30 days from its date, provided that the Company has not previously withdrawn it by notice in writing.

2.4 This Agreement comprises several documents. In case of ambiguity, inconsistency or conflict among any of them, the following descending order of precedence shall apply:

2.4.1 the Quotation (Proposal Document) and Engagement Letter;

2.4.2 these Terms and Conditions; and

2.4.3 any other applicable development or consultancy proposal, cost specification or other estimate document(s) referenced in the documents detailed at clauses 2.4.1 and 2.4.2 or otherwise forming a part of this Agreement by agreement between the Parties.

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3. Services

3.1 The Company will provide the Services under this Agreement with effect from the Commencement Date and in accordance with and subject to these Terms and Conditions and the Quotation.

3.2 The Company warrants and represents to the Client that:

3.2.1 it will perform the Services using the reasonable skill and care of a diligent supplier in a professional and timely manner, using competent personnel who have the appropriate technical skills, qualifications, experience, certifications and training to perform and complete the relevant elements of the Services allocated to them in accordance with good standards and practices observed in the industry for similar services; and

3.2.2 it will perform the Services in a safe manner which, as a minimum, complies with all relevant and binding health and safety and environmental legislation and regulations applicable in the UK.

3.3 The Company will use reasonable endeavours to ensure that:

3.3.1 it will perform its obligations under this Agreement in such a manner to ensure that it does not introduce, without limitation, any software viruses, Trojan horses, worms, time bombs, logic bombs, trap doors, cancelbots or any other computer code, files or programs designed to disrupt, interrupt, disable, damage, destroy or limit the functionality of any of the Client's systems; and

3.3.2 the provision of the Services shall seek to restrict or minimise the risk of any unauthorised access by third parties (but no absolute assurance or guarantee can be given in this regard) to or cause any loss or damage to the Client's systems.

3.4 Each party will as soon as reasonably practicable notify the other if it becomes aware of any breach of Clauses 3.2 or 3.3. In these circumstances, the Company will, use its reasonable endeavours to rectify such breach and it will provide all reasonable assistance to the Client in this regard.

3.5 The Company shall co-operate (in so far as reasonably within its control) with any investigation relating to security which is carried out by or on behalf of the Client, including providing any information or material in its possession or control and implementing new security measures, to the extent reasonably requested by the Client and in so far as such information and materials can be disclosed without breach of law, regulation or any confidentiality obligation owed to a third party. The Company's co-operation shall be at the sole cost and expense of the Client which shall be in addition to the agreed charges for the Developed Work and the Services in terms of this Agreement.

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4. Responsibilities

4.1. To enable the Company to fulfil its obligations under this Agreement, the Client shall warrant that:

4.1.1 it has the power and legal authority to enter into and perform its obligations under the Agreement;

4.1.2 it has received all relevant information and advice from the Company before placing the Order and that it has satisfied itself that the Service shall be suitable for its particular needs;

4.1.3 its use of the Service will not infringe any third party intellectual property or other rights;

4.1.4 co-operate with all reasonable requests made by the Company in all matters relating to the Services;

4.1.5 provide, to the Company, its agents, sub-contractors and employees, in a timely manner and at no charge, any Client Materials which the Company may reasonably request from time to time and ensure that any such Client Materials provided are accurate in all respects;

4.1.6 provide, to the Company, its agents, sub-contractors and employees, in a timely manner and at no charge, any equipment as reasonably required and requested by the Company from time to time;

4.1.7 where there is a requirement for the Client to provide any equipment to the Company in order for the Company to provide the Services, provide any such equipment in a timely manner, at no charge, and shall ensure that any such equipment is in good working order and suitable for the purposes for which it is used in relation to the Services;

4.1.8 obtain all the necessary permissions and consents which may be required before the commencement of the Services;

4.1.9 comply with any other such requirements as may be set out in the Quotation or otherwise agreed between the Parties;

4.1.10 provide reasonable access, at no charge, to a suitably qualified member of the Client's staff, nominated and authorised to liaise with the Company on a day to day basis, and access to other such members of the Client's staff as the Company, and its personnel, may require from time to time to perform its Services; and

4.1.11 where there is a requirement for the Company to work from the Client's premises, provide reasonable office accommodation with ancillary services (e.g. electricity, telephones, copying facilities) to enable the Company to perform its obligations and its Services expeditiously and efficiently and inform the Company, and any employees, agents or subcontractors of the

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Company, of all health and safety rules and regulations and any other reasonable security requirements that apply at the Client's premises.

4.2. Unless otherwise expressly stated any timescales or milestone dates estimated or forecast by the Company are best estimates. Such estimates shall be extended as appropriate to take account of any failure by the Client to comply with its responsibilities under this Agreement, or of any variation of the requirements of the Client, or of any circumstances which could not reasonably have been foreseen by the Company;

4.3. The Company acknowledges that it shall take all reasonable endeavours to meet any timescales and milestone dates estimated, and to give the Client, where possible, reasonable advance notice of any delays as they may arise or result from the Company's activity;

4.4. The Client acknowledges that any failure to comply with its responsibilities under this Agreement or any instance of variation of requirements, or failure to deliver from any other third party will give legitimate cause for delay compared to original estimates as set out in the Quotation;

4.5. In the event that the Client or any third party, not being an employee, agent or sub-contractor of the Company, shall omit or commit anything which prevents or delays the Company from undertaking or complying with any of its responsibilities or obligations under this Agreement, then the Company shall notify the Client as soon as possible, and if applicable, the timetable for the Project will be modified accordingly and the Client agrees that the Company shall have no liability in respect of any delay to the completion of the Project;

4.6. Subject to the other provisions of this Agreement, each party shall be liable to compensate the other Party for any expenses incurred by that party as a result of the Party's failure to comply with its responsibilities and obligations set out in this Clause 4;

4.7. The Client shall not, without the prior written consent of the Company, at any time from the Commencement Date to the expiry of twelve months after the Termination of this Agreement solicit or entice, or seek to solicit or entice, away from the Company or employ or attempt to employ any person who is, or has been, engaged as an employee or sub-contractor of the Company in the provision of the Services in any respects;

4.8. Both Parties shall provide the other with accurate contact details and email addresses, and shall promptly notify the other of any changes.

4.9. Each of the Client and the Company shall, at its own expense, obtain and maintain throughout the duration of the Agreement and until all Developed Work and Services under this Agreement have been fully performed and completed, such type and level of insurance as is reasonable and appropriate in respect of its liability arising out of or connected with this Agreement, with a reputable insurance company.

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5. Acceptance

5.1. The Company will notify the Client, in writing, when all or part of the development work forming part of the Services (the "Developed Work") is ready for Client (or User) Acceptance Testing;

5.2. The period of any Client Acceptance Testing shall be fourteen days or such other period agreed between the Parties. The Client Acceptance Testing period shall run from the date the Client receives the Company's notification referred to in Clause 5.1 above;

5.3. It is the responsibility of the Client to ensure that any acceptance tests pursuant to the Client Acceptance Testing are conducted in accordance with any timetable and procedures specified in the Quotation, however the Client may at its own cost (such cost being in addition to the Fees under this Agreement) engage the services of the Company to assist with the relevant acceptance tests to the extent necessary to achieve this;

5.4. The Company will create a secure website through which the Client must record any and all defects and issues it may have with the Developed Work, which will be time and date stamped and recorded against individual Client usernames, in order that these are logged and auditable;

5.5. The Client will notify the Company promptly and via the secure website of any defect discovered during the Client Acceptance Testing, specifying in reasonable detail the respects in which the Developed Work is thought to have failed the test. The Company shall make such modifications or corrections to the Developed Work as may be necessary to correct any such defects and will notify the Client as soon as the Developed Work is ready for retesting. The Company shall use reasonable endeavours to remedy any defects discovered by the Client during the Client Acceptance Testing as soon as possible;

5.6. The Company reserves the right to charge the Client, on a time and materials basis in accordance with the rates agreed with the Client, and in addition to any Fees set out in the Quotation, for any work necessitated by defects to the extent that such defects are not caused by an act or omission, (including neglect or default) of the Company or prove to be due to operator error rather than the Developed Work itself and/or for assistance provided by the Company in the planning, preparation or conduct of the Client Acceptance Testing procedure;

5.7. Once the Client has completed its Client Acceptance Testing the Company will provide the Client with software release and acceptance forms to formally sign off and approve the Developed Work. The Client shall sign and return these documents within five working days to the Company;

5.8. The Client will not use any part of the Developed Work in live running or a production environment unless and until the Client has delivered to the Company a software release and/or acceptance form for that part of the Developed Work;

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5.9. Once any part of the Developed Work has been accepted and moved to a live environment or a software release form has been signed, the Client shall have no right to withhold or retain any payments or charges made relating directly to that part of the Developed Work.

6. Alterations to the Quotation

6.1 The Parties may at any time mutually agree upon any variation to, or replacement of, the Quotation. Any alterations in the scope of the Services to be provided under this Agreement, or the Fees to be charged in relation thereto, shall be set out in a revised Quotation, which shall reflect the updated Services and Fees and any other revised terms as may be agreed between the Parties;

6.2 Any variation to the Services or the Developed Work requested by the Client, which follow sign off and approval of the Quotation or the Client Acceptance Tests, will be acknowledged by the Company through its Change Request Procedure. The Change Request Procedure will be initiated by the Client submitting to the Company a request in writing for amendments to be made to the Services or the Developed Work, as outlined in the Quotation (a "Change Request");

6.3 This written Change Request from the Client will be recorded either by the Company or the Client on a Change Request Form, wherein the Client shall provide detail of or document, in as much detail as the Company may reasonably require, the desired amendments to be made to the Services or the Developed Work;

6.4 Upon receipt of the Change Request Form, the Company shall, within five working days or other such period as may be agreed between the Parties, advise the Client by notice in writing of the effect of such amendments, if any, on the Fees payable and any other terms already agreed between the Parties. Such written notice by the Company shall be referred to as a Change Request Report;

6.5 If the Client accepts and approves the Company's Change Request Report, the Parties shall agree an amended/replacement Quotation as appropriate to give effect to the terms of the Change Request Report and thereafter the Parties shall perform their respective responsibilities and obligations under this Agreement upon the basis of such terms as contained in the amended Quotation.

7. Website and Web Application Development

7.1 If a choice of graphic design is presented to the Client as part of the delivery of the Services, the Client shall have the right to select one design only and may use such design strictly in accordance with the terms of Clause 9.1. The Client shall have no right, title interest or licence in relation to the non-selected designs;

7.2 The Company cannot guarantee the availability of any domain name. Where the Company is asked to register a domain name on behalf of a Client it will endeavour to do so but the Client should not assume a successful registration;

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7.3 Neither Party shall register or cause to be registered any domain name materially similar to that of the other Party, except where the Client specifically requests that the Company register domain names similar to that of the Client's on behalf of the Client in order to prevent their registration and use by third parties. In this case all fees and expenses reasonably incurred in registration of such domain names shall be payable by the Client as part of the Project cost in addition to the Fees payable;

7.4 The Client acknowledges and agrees that a web page built from a graphic design may not exactly match the original design because of the difference between the display in the design software and the rendering of the code by internet browser software. The Company will endeavour to match the design as closely as is possible when developing the relevant code;

7.5 The Company shall make every effort to design websites to be compatible with the main browsers' (Internet Explorer and Google Chrome) latest releases. New layouts are tested with older browsers to ensure as much compatibility as possible. The Client agrees that the Company cannot guarantee correct functionality with all browser software across different operating systems;

7.6 A responsive design, rendering content to mobile and other devices to where the layout of the website or web application changes depending on the device used, shall be delivered only if this is explicitly requested, and design work will take place to demonstrate how different pages will be displayed on different devices. Responsive design and development is subject to separate timescale and cost estimates. The Company makes no guarantee that responsive design will perform optimally across every known device;

7.7 In consideration of and subject to payment of the Fees, the Client is permitted to:

7.7.1 materially alter or diminish the design and function of the website designed and developed by the Company for the Client, without the prior written consent of the Company; and

7.7.2 alter, amend or modify the coding of the website delivered by the Company under this Agreement without the prior written consent of the Company.

In these circumstances, the Client and the Company shall discuss in good faith whether (and the basis upon which) the Company will be able to continue to provide support services under the Support Agreement. The Client acknowledges that by exercising its rights under this clause 7, functional changes made by or on behalf of the Client by a third party may mean that the Company may not be able to provide support services under the Support Agreement;

7.8 The Client may be able, through the use of an installed content management system delivered under this Agreement, to edit and update its website directly. Where this is the case, the Client agrees that in doing so, it assumes full responsibility and liability for any issues which occur as a direct result of changing the website itself. If a Client or a third party of its choosing edits the website and this results in functionality errors or the page displaying incorrectly, then the Company reserves the right to quote for, and charge, an additional fee in respect of carrying out any work necessary to repair the website;

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7.9 The Company may from time to time recommend to the Client that updates are required to its website or web application to ensure compliance with, including but not limited to, new legislation, software releases and web standards. The Company reserves the right to quote for, and charge, an additional fee where instructed by the Client to carry out any additional work relating to such updates. The Client acknowledges and agrees that the Company is not liable for any failure to inform the Client of, or implement, such updates to its website. The Client agrees that it shall fully and effectively indemnify, defend and hold harmless the Company and from and against all losses, expenses, liabilities, claims, damages and costs arising from the Company's omission to inform or to implement these updates;

7.10 Due to the infinite number of considerations that search engines use when determining a website's ranking, the Company cannot guarantee any particular placement. Acceptance by any search engine cannot be guaranteed and when a website is accepted, the time it takes to appear in search results varies from one search engine to another. Rankings will also vary as new websites are added and the Company shall have no responsibility in relation to any such matters;

7.11 Any website hosting offered by the Company to the Client as part of the Services shall be subject to a separate Hosting Agreement;

7.12 Any application support offered by the Company to the Client as part of the Services shall be subject to a separate Support Agreement.

8. Fees

8.1 In consideration for the Services, the Client agrees to pay the Company the Fees as set out in the Quotation and any additional agreed fees as may otherwise be agreed from time to time between the Parties.

8.2 The Company will invoice the Client for Fees in accordance with the payment terms set out in the Quotation or Invoice Schedule.

8.2.1 Unless otherwise agreed by the Parties, the Company's standard terms for invoicing shall be as follows:

8.2.1.1 A payment of 30% of the total Fees payable, together with the VAT payable thereon, is required to be paid upfront, on the agreement of the Quotation (the "First Payment"). This First Payment must be received by the Company in full into a bank account nominated by the Company prior to the commencement of the Services;

8.2.2 a payment of 30% of the total Fees payable, together with the VAT payable thereon, is required to be paid on an agreed mid-point Project milestone or deliverable as set out in the Quotation or Invoice Schedule;

8.2.3 a payment of 30% of the total Fees payable, together with the VAT payable thereon, is required to be paid on the completion and delivery of the Developed Work for Client

Acceptance Testing, or, in the case of consultancy, a further agreed mid-point Project milestone or deliverable as set out in the Quotation or Invoice Schedule;

8.2.4 a payment of 10% of the total Fees payable, together with the VAT payable thereon, is required to be paid two weeks following the completion and delivery of the Developed Work for Client Acceptance Testing, or, in the case of consultancy, the final deliverable of the agreed Services as set out in the Quotation or Invoice Schedule.

8.3 Time and materials based projects will be invoiced at month end in accordance with the rates agreed with the Client and invoices will be accompanied by detailed timesheets demonstrating effort used during the period;

8.4 The Company will invoice the Client monthly for expenses, cost of materials, and other chargeable disbursements, full details of which will be provided to the Client prior to invoice;

8.5 Invoiced amounts shall be due and payable within 30 days of receipt of invoice. The Company shall be entitled to charge interest daily on undisputed overdue invoices from the date when payment becomes due until the date of payment at a rate of 3% per annum above the base rate of the Bank of England. In circumstances of bona fide disputed overdue invoices, the Client shall settle the undisputed element of the invoice (if any) on the due date for payment and, in relation to the disputed element, Parties shall attempt to resolve such overdue invoice(s) informally by either Party referring the matter to the Client's authorised representative and the Company's authorised representative. In the event that the parties' authorised representatives are unable to resolve the matter within 30 days of the due date for the applicable overdue invoice, the Company reserves the right to suspend operation of the Services and remove the Client's material (including but not limited to: documentation, code, domain names, hosting, design and maintenance) from all and any of the Company's computer systems until payment of the full amount is received. Removal of such materials does not relieve the Client of its obligations to pay the amount overdue;

8.6 The Company reserves the right to decline to undertake further work to deliver the Services, if there are undisputed invoices outstanding with the Client and in such an event, the Company shall not be liable for any delays arising or missed deadlines in the provision of the Services;

8.7 In the event that the Client's procedures require that an invoice be submitted against a purchase order to payment, the Client shall be responsible for issuing such purchase order before the Services are rendered;

8.8 Fees and expenses as quoted in the Quotation are valid for 30 days and are subject to VAT;

8.9 Any credit provided to the Client may be changed or withdrawn at any time;

8.10 Payments for Fees and any additional expenses may be made by BACS, cheque or previously agreed electronic funds transfer. The Company reserves the right to charge the Client any fees or charges arising as a result of such transfer;

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8.11 Returned cheques shall incur an additional fee of £50.00 + VAT per returned cheque. The Company reserves the right to consider a Client invoice overdue in the event of a returned cheque;

8.12 Where a Client invoice or account requires litigation to collect an overdue debt, the Company reserves the right to charge an administration fee. Clients whose invoices are not disputed and become overdue agree to pay the Company reasonable legal expenses and third party collection agency fees in the enforcement of this Agreement;

8.13 Any dispute arising in regard to an invoice should be raised by the Client in writing to the Company within 30 days of the date of the invoice;

8.14 In the event that the Client terminates this Agreement for convenience in accordance with Clause 16.1.9, in the event of the Client unlawfully terminating this Agreement or in the event of the Client cancelling the Service, or if this Agreement is terminated prematurely for the Client's default, the Client shall be required to pay to the Company as agreed damages, and not as a penalty, (i) the full amount for any Developed Work and/or Services provided by the Company in accordance with the terms of this Agreement to the Client at the date of termination, (ii) any costs and expenses incurred by the Company prior to such date or termination and which cannot be avoided; and (iii) any and all committed costs and expenses relating to the delivery of the Project or Developed Work which the Company is reasonably unable to avoid, terminate or cancel and the parties acknowledge this is a genuine preestimate of the Company's losses in such a case and shall be in full and final settlement of any claims. For the avoidance of doubt, the Client's failure to comply with its responsibilities and obligations under Clause 4 shall be deemed to be a cancellation of the Services and subject to the payment of damages set out in this Clause.

8.15 The fees to be charged by the Company may be reviewed on an annual basis and will increase at an annual rate in line with the Retail Prices Index, or other such index of equivalent value as may replace it from time to time. Any increase proposed by the Company over that level shall require to be agreed between the Parties hereto.

9. Intellectual Property

9.1. Subject to Clause 9.2 and in consideration of and subject to payment by the Client of all monies due to the Company under this Agreement, the Company hereby grants to the Client a perpetual, irrevocable, worldwide, non-exclusive, non-transferable or sub-licensable licence and authority to use and reproduce so much of any material produced by the Company in rendering the Services as is necessary for the Client's internal purposes only and for no other purpose or use whatsoever, including for the avoidance of doubt, using the Developed Work for the purposes for which it was developed and amending, developing and redeveloping the Developed Work for the Client's own internal uses, but save to that extent nothing herein or elsewhere contained shall expressly or impliedly effect, or be deemed to be, any assignation of copyright;

9.2. Notwithstanding Clause 9.1, the parties acknowledge that under the licence granted pursuant to clause 9.1, the Client is permitted to use any third party to maintain, alter or host the Developed

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Work but is expressly not entitled to grant any sub-licences to any third party for any other use or purpose whatsoever;

9.3. The Company shall supply to the Client, upon request, such documents, information, source code and other materials produced by the Company in rendering the Services as the Client shall reasonably require to exercise the licence granted to it under Clause 9.1. For the avoidance of doubt, this obligation shall endure for as long as the Company continues to grant a licence to the Client in terms of Clause 9, notwithstanding any earlier termination of this agreement;

9.4. Any third party software that is required to be incorporated into the Services or the Developed Work will be licensed to the Client (on the basis of the licence either having been obtained by the Company to such software) subject to the Client having paid the Company for such third party licences and complied with any other requirements in relation thereto as may be applicable from time to time, or on the basis of the licence having been obtained by the Client to such software, subject to the Client having paid the Software Licence Supplier for such third party licences and complied with any other requirements in relation thereto as may be applicable from time to time;

9.5. The Company acknowledges that all Intellectual Property arising from any changes made to the Developed Work without the involvement of the Company shall be (as between the Company and the Client) the property of the Client. The Client acknowledges and accepts that any changes made to the Developed Work without the involvement of the Company are not warranted and not supported by the Company in the event of any failure whatsoever.

9.6. The Client agrees to fully indemnify the Company against all costs, expenses, liabilities, losses, damages, claims and judgements that the Company may incur or be subject to as a result of the infringement of any part of the Service provision howsoever occurring or of any Intellectual Property infringement owned by third parties arising from:

9.6.1. the Client's failure to obtain the necessary rights and permissions from third parties in order to enable the Company to legally provide the Service;

9.6.2. the provision of the Service by the Company based upon information and materials provided by the Client.

10. Confidentiality and Data Protection

10.1. Neither Party shall use, copy, adapt, alter, disclose or part with possession of Confidential Information received from the other Party (the party in receipt being the "Receiving Party") except solely as strictly necessary to perform the obligations or exercise its rights under this Agreement or with the written consent of the other party (the "Disclosing Party"), except in so far as and to the extent that such Confidential Information:

10.1.1. is disclosed by the Receiving Party to any of its officers, employees, contractors, professional advisers or insurers or those of its Affiliates, to the extent that such disclosure is necessary for the purpose of this Agreement, and providing that the Receiving Party shall ensure that

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such of its officers, employees, contractors, professional advisers, insurers and/or Affiliates shall comply with the obligations of confidentiality under the Agreement; or

10.1.2. can be proved by the Receiving Party to have been in the public domain at the date it was disclosed; or

10.1.3. is lawfully or properly obtained by the Receiving Party from a person without obligation of confidentiality; or

10.1.4. comes into the public domain otherwise than through the default or negligence of the Receiving Party; or

10.1.5. was independently developed by the Receiving Party (as evidenced by its verifiable records) without reference to the Confidential Information of the Disclosing Party; or

10.1.6. is, with the prior written consent of the Disclosing Party (such consent not to be unreasonably withheld or delayed) necessary to be disclosed to obtain or maintain any listing on any recognised stock exchange; or

10.1.7. is required to be disclosed by Applicable Law or by a court, regulator or a body having similar authority over the Receiving Party provided that where permitted by such body the Disclosing Party is given prompt notice thereof prior to such disclosure; or

10.1.8. is requested to be disclosed by the Receiving Party or on its behalf to its auditors (whether internal or external) to the extent that such disclosure is necessary for the purpose of such audit and providing that the Receiving Party shall ensure that such auditors shall comply with the obligations of confidentiality under this Agreement and further provided that the Disclosing Party is given prompt notice thereof prior to such disclosure.

10.2 Neither party makes any representation or warranty, express or implied, with respect to its Confidential Information. Neither Party shall be liable to the other Party or another person in respect of that party's Confidential Information or its use;

10.3 Each Party acknowledges that breach by it of this Clause 10 may cause irreparable injury to the other Party, which injury may be inadequately compensable in damages. Accordingly, each party is entitled to seek the remedies of interdict, or specific performance and other equitable relief in respect of any actual breach or threatened breach of the terms of this Agreement in addition to any other legal remedies which may be available, without the necessity of proving actual damages or posting of security or a bond;

10.4 Each party shall comply with the applicable requirements of the General Data Protection Regulation (Regulation (EU) 2016/679) (the "GDPR") and the Data Protection Act 2018 (**"DPA"**).

10.5 The Parties acknowledge that if the Company processes any personal data on the Client's behalf when performing its obligations under this Agreement, the Client is the Data Controller and the Company is the Data Processor for the purposes of the Data Protection Laws.

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10.6 The Company agrees to comply with the data processing obligations as set out in Schedule 1 to this Agreement;

10.7 The terms **"Personal Data", "Processes", "Data Controller"** and **"Data Processor"** used in this Agreement shall have the same meanings as they are given in the GDPR and the DPA;

10.8 Each Party indemnifies the other Party against all liability, claims, demands, fines, losses and expenses, including reasonable legal fees, directly arising out of a failure by a Party to comply with the terms of this Clause 10;

10.9 The obligations set out in this Clause 10 shall survive the termination or expiry of this Agreement.

11. Independent Contractors

11.1. The Company and the Client are contractors independent of each other, and neither has the authority to bind the other to any third party or act in any way as the representative of the other, unless otherwise expressly agreed to in writing by both Parties;

11.2. The Company may, in addition to its own employees, engage sub-contractors to provide all or part of the Services being provided to the Client but such engagement shall not relieve the Company of its obligations under this Agreement.

11.3. The provision of the Services under this Agreement by the Company and any subsequent termination of this Agreement is not intended to constitute a "Relevant Transfer" under the Transfer of Undertakings (Protection of Employment) Regulations 2006.

12. Promotional Materials

12.1. The Company is permitted to produce written materials and demonstrations of the Client's completed systems which have been supplied by the Company, including the use of the Client's business name and identity, for the sole purpose of marketing and producing promotional literature and materials, subject to the Client providing its prior written consent (at its absolute discretion) in respect of all such materials and demonstrations. Such promotional materials may be presented to third parties at the Company's sole discretion;

12.2. Subject to Clause 10, the Client shall be able to refer to its working relationship with the Company for press and publicity purposes after receiving the written approval of the Company regarding the content of any such material;

12.3. Subject to Clause 10, the Client agrees to allow the Company to place websites and other designs, or screenshots, along with a link to the Client's site on the Company's own website, and to use any designs in its own publicity, subject to the Client providing its prior written consent in respect of such promotion.

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13. Limitation of Liability

13.1. The following provisions set out the entire financial liability of each Party (including any liability for the acts or omissions of its employees, agents and sub-contractors) to the other Party in respect of any breach of this Agreement; and any representation, misrepresentation (whether innocent or negligent), statement or delictual act or omission (including negligence) arising out of or in connection with this Agreement;

13.2. All warranties, conditions and other terms implied by statute or common law are excluded from the Agreement to the fullest extent permitted by law;

13.3. Nothing in this Agreement excludes or limits the liability of a Party:

13.3.1. for death or personal injury caused by a Party's negligence; or for fraud or fraudulent misrepresentation;

13.3.2. for payment of Fees or (subject to clause 13.4) in respect of recovery by the Client of Fees as part of any damages claim; or

13.3.3. in respect of the indemnities provided in accordance with Clauses 14 (Intellectual Property Rights Infringement Indemnity) and 10.7 (Confidentiality and Data Protection).

13.4. Subject to Clause 13.2 and Clause 13.3, neither party shall be liable to the other, whether in delict (including for negligence or breach of statutory duty), contract, misrepresentation (whether innocent or negligent) or otherwise for any of the following losses or damages, whether direct or indirect and (whether such losses or damages were foreseen, foreseeable, known or otherwise):

a) loss of profits; or
b) loss of business; or
c) depletion of goodwill or similar losses; or
d) loss of anticipated savings; or
e) loss of goods; or
f) loss of contract; or
g) loss of use or downtime; or
h) loss or corruption of data or information; or
i) any other special, indirect, consequential or pure economic loss, costs, damages, charges or expenses.

13.5. Save as provided below, the Company and the Client shall each comply with all Applicable Law in so far as such Applicable Law applies to each Party's obligations under this Agreement. To avoid doubt, this clause shall include (but not be limited to) an obligation on the Client to fully comply with and be satisfied that the website or web application delivered by the Company pursuant to this Agreement

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(and all constituent parts thereof) complies and will continue to comply with the Equality Act 2010, having regard to inter alia the fact that whilst the Company will provide the framework of the content management system, the Company will not be responsible for the ongoing maintenance, content publication, content validation or content compliance with legal obligations for the website. Following delivery of the website or application the responsibility to comply with legal obligations in respect of content and data will pass to the Client. The Client is responsible in full and liable for any activity relating to its website or web application, once published to a live server environment;

13.6. The Client shall be solely responsible for ensuring that its application and any content or materials linked to the application, and any activity conducted via the application do not breach the rights of any third parties including without limitation any intellectual property rights.

13.7. Subject to Clauses 13.1, 13.3 and 13.4, each party's total liability in contract, delict (including negligence or breach of statutory duty), misrepresentation (whether innocent or negligent), restitution or otherwise, arising in connection with the Services under this Agreement in any 365 day period commencing on the date of this Agreement (and annually thereafter) shall be limited to 50 per cent of the aggregate fees paid or payable by the Client to the Company in the said 365 day annual period in relation to the Services as set out in the Quotation and rendered solely in connection with this Agreement (excluding expenses reimbursed by the Client). For the avoidance of doubt, the foregoing limitation shall be without prejudice to the Client's obligation in addition to pay the Fees;

13.8. This Clause 13 shall survive termination of the Agreement;

13.9. Notwithstanding any other provision of this Agreement, the Company shall have no liability or responsibility to the Client (or any Affiliate of the Client) for any loss, damage or liability, cost or expense arising or suffered and/or incurred by the Client (or any Affiliate of the Client) unless and to the extent that it arose from any neglect or default of the Company, its directors, employees, agents sub-contractors or consultants and in particular, the Client acknowledges that the Company shall have no liability or responsibility to the Client (or any Affiliate of the Client) for any support or services provided by any third parties in respect of the project prior to the commencement of the Developed Work and/or Services by the Company.

13.10. Nothing in this Agreement shall restrict or limit a party's general obligation or duty at law to mitigate any loss or damage that it may suffer or incur as a result of an act, omission or event that may give rise to a claim under this Agreement.

14. Intellectual Property

14.1. **Intellectual Property Rights Infringement Indemnity**

14.1.1. For the purposes of this Clause 14:

14.1.1.1. **"Company Pre-existing IPR"** means any output, whether electronic, documentary, tangible or intangible in existence prior to the Commencement Date, provided by the Company to the Client as part of the Services, the Intellectual Property Rights in

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which are owned by or licensed to the Company from time to time but excluding the Client Pre-Existing IPR;

14.1.1.2. **"Client Pre-existing IPR"** means any output, whether electronic, documentary, tangible or intangible in existence prior to the Commencement Date, provided by the Client to the Company as part of the Services, the Intellectual Property Rights in which are owned by or licensed to the Client, but excluding any output, whether electronic, documentary, tangible or intangible, the Intellectual Property Rights which are licensed directly from third parties to the Company;

14.1.1.3. the **"Indemnifer"** means:

14.1.1.3.1. the Company when referring to the Company's indemnity; and
14.1.1.3.2. the Client when referring to the Client's indemnity; and

14.1.1.4. the **"Indemnified Party"** means:

14.1.1.4.1. the Company when referring to the Client's indemnity; and
14.1.1.4.2. the Client when referring to the Company's indemnity.

14.1.2. The Company shall not in any circumstances have any liability under this Agreement for any claim of infringement of a third party's Intellectual Property, to the extent that it is caused or contributed to by:

(a) the Client's use of the Software, Developed Work and/or Service in combination with software not supplied or approved in writing by the Company;

(b) any unauthorised modification of any Software or Developed Work provided by the Company as part of the Service made by, or on behalf of, the Client;

(c) the Client's use of any version of the Software or Developed Work other than the latest version supplied by the Company, if such claim could have been avoided by the use of such supplied version;

(d) the Company's incorporation into the Software, Developed Work or the Service of a feature expressly requested by the Client s; or

(e) the Company's use of any of the Client Pre-existing IPR.

14.1.3. The Client shall fully and effectively indemnify, defend and hold harmless the Company on demand from and against all losses, expenses, liabilities, claims, damages and costs that the Company may or is likely to incur or suffer, arising out of or in relation to any claims or allegations by a third party that its Intellectual Property have been infringed by any materials provided by the Client to the Company pursuant to this Agreement or by the Client's Pre-existing Intellectual Property (collectively the "**Client's Intellectual Property Products"**) or relating to any of the circumstances set out in paragraph 14.1.2 above;

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14.1.4. The Company shall fully and effectively indemnify , defend and hold harmless the Client on demand from and against all losses, expenses, liabilities, claims, damages and costs the Client may or is likely to incur or suffer, arising out of or in relation to any claims or allegations by a third party that its Intellectual Property have been infringed by the use or receipt of the Services and/or the Hosting Environment by the Client, or by any materials provided by the Company to the Client pursuant to this Agreement, or by the Company Pre-existing Intellectual Property (collectively the "**Company's Intellectual Property Products").**

14.1.5. The Indemnified Party shall use its reasonable efforts to give the other party notice in writing of claims, actions or proceedings being made, threatened or brought against the other party in connection with:

14.1.5.1. in respect of the Company, the Software, Developed Work or any materials provided by the Company to the Client pursuant to this Agreement and/or the Company's Intellectual Property Products; and

14.1.5.2. in respect of the Client, any materials provided by the Client to the Company pursuant to this Agreement and/or the Client's Intellectual Property.

14.1.6. The Indemnifier shall conduct any litigation which may ensue and all negotiations for a settlement of any claim resulting from this Clause 14 in accordance with the following provisions:

(a) the Indemnifier shall, at its expense, conduct such litigation with due diligence and propriety and in such a way as not to bring the reputation or good name of the Indemnified Party (or any of its Affiliates) into disrepute;

(b) the Indemnifier shall not be entitled to admit, settle or compromise any claims against the Indemnified Party without the Indemnified Party's prior written consent;

(c) the Indemnifier shall keep the Indemnified Party informed at all times of developments in the litigation or negotiations; and

(d) the Indemnified Party shall allow the Indemnfiying Party to have reasonable access to such books, records and information and its staff and personnel as the Indemnfiying Party may reasonably require in respect of any such claims or litigation arising therefrom;

(e) the Indemnified Party may, at its own expense, participate in such litigation and negotiations and may at any time on written notice to the Indemnifier assume sole control of such litigation or negotiations.

15. Warranty

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15.1. The Company warrants that the Services performed under this Agreement shall be performed using reasonable skill and care, and of a quality conforming to generally accepted industry standards and good practices.

16. Termination

16.1. Either Party may give written notice to the other (**"the Defaulting Party"**) to terminate this Agreement at any time, if:

16.1.1. the Defaulting Party commits a material breach of this Agreement and, in the case of a breach capable of being remedied, fails to remedy it within 30 calendar days of being given written notice from the other Party to do so; or

16.1.2. the Defaulting Party commits a material breach of this Agreement which cannot be remedied under any circumstances; or

16.1.3. the Defaulting Party fails to make payment in accordance with terms of this Agreement;

16.1.4. the Defaulting Party suffers an encumbrancer to take possession of, or a receiver to be appointed over, any of its property or assets or any distress execution or process is levied or enforced thereon and is not paid out within ten days; or

16.1.5. an order is made by a court of competent jurisdiction, or a resolution is passed, to wind up the Defaulting Party other than for the purposes of a bona fide scheme of solvent amalgamation or reconstruction; or

16.1.6. the Defaulting Party ceases to carry on its business or substantially the whole of its business; or

16.1.7. the Defaulting Party is declared insolvent, or convenes a meeting of or makes or proposes to make any arrangement or composition with its creditors; or a liquidator, receiver, administrative receiver, manager, trustee or similar officer is appointed over any of its assets; or

16.1.8. any period or periods of suspension under Clause 18 exceed ten weeks in aggregate. And upon such notice being given this Agreement shall forthwith terminate and, if such notice as is referred to in this section is given by the Company to the Client, then the licence and all other rights granted hereunder shall forthwith be revoked without prejudice to the rights and remedies of either party in respect of an antecedent breach and to the mutual obligations of confidentiality in Clause 10 and the right of the Company to invoice and be paid fees in accordance herewith; or

16.1.9. the Client may give 60 days' written notice to terminate this Agreement. In the event that the Client terminates the Agreement under this Clause 16.1.9, the provisions of Clause 8.14 shall apply.

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16.2. In the event that either party terminates the Hosting Agreement or the Support Agreement in accordance with the relevant provisions of the Hosting Agreement or the Support Agreement (as relevant), either party is permitted to terminate this Agreement with 60 days' written notice to the other Party.

17. Consequences of termination

17.1. On expiry or termination of this Agreement:

17.1.1. the Client's right to receive the Services shall cease automatically;

17.1.2. the Client shall return all and any Brightwire Documents and Brightwire Materials which the Client is no longer entitled to use; and

17.1.3. all amounts due and that remain outstanding from the Client under this Agreement shall be paid immediately by the Client;

17.1.4. promptly on the Client's request, the Company shall provide at a cost to be agreed between the parties at such time such agreed form and level of assistance as is reasonably necessary to the Client for an orderly assumption of the Services by a third party or the Client, and the Company shall use reasonable endeavours so far as within its control to ensure that the Client obtains appropriate access to its hardware, software, personnel and facilities required to perform an orderly termination. Such agreed assistance may include the following:

17.1.4.1. the provision by the Company of copies of relevant procedures and operational materials;

17.1.4.2. the provision by the Company of relevant system, software and/or hardware information;

17.1.4.3. the provision by the Company of information regarding work in progress and associated unresolved faults in progress as at the date of termination or expiry; and

17.1.4.4. the reasonable cooperation of its staff during the termination process.

17.2 Each party shall as soon as reasonably practicable return, destroy or permanently erase (as directed in writing by the other party) any documents, handbooks, CD-ROMs or DVDs or other information or data provided to it by the other party containing, reflecting, incorporating or based on Confidential Information belonging to the other party.

17.3 Termination of the Agreement, howsoever arising, shall not affect any accrued rights or liabilities of either Party nor shall it affect the coming into force or the continuance in force of any provision of this Agreement, which is expressly or by implication intended to come into force or continue in force on or after that termination (including, without limitation, Clauses 1 (Definition and Interpretation), 9 (Intellectual Property), 10 (Confidentiality and Data Protection), 13 (Limitation of Liability), 14

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(Intellectual Property), 17 (Consequences of Termination), 22 (Notices), 23 (Entire Agreement) , 26 (Dispute Resolution), and 27 (Governing Law and Jurisdiction) which shall continue in full force and effect.

18. Force Majeure

18.1. Neither Party shall be liable for any delay or failure to perform any of its obligations if the delay or failure results from events or circumstances outside its reasonable control, including but not limited to acts of God, labour disputes or strikes, legal impediments, civil disturbances, armed conflict, embargoes, lock outs, accidents, war, acts of terrorism, fire, the act or omission of government, highway authorities or any telecommunications carrier, operator or administration or other competent authority, or the delay or failure in manufacture, production, or supply by third parties of equipment or services, and the party shall be entitled to a reasonable extension of its obligations after notifying the other party of the nature and extent of such events (a **"Force Majeure Event"**);

18.2. If either Party is prevented from performing its obligations due to a Force Majeure Event, the party so affected may give written notice to the other to suspend this Agreement for the duration of such Force Majeure event and this Agreement shall for all purposes be automatically extended by the period or periods of any such suspension.

19. Assignation

19.1. Subject to Clause 19.2, neither party shall assign its rights or obligations or delegate its duties under this Agreement without the prior written consent of the other party (such consent not to be unreasonably withheld or delayed).

19.2. Notwithstanding Clause 19.1, the Client is permitted to assign its rights or obligations or to delegate its duties under this Agreement to any of its Affiliates. subject to the following:

19.2.1. the Client will remain liable for all and any activities of the assignee; and

19.2.2. the Company shall ensure that any assignee shall adhere to the same level of obligations as are applicable to the Client ; and

19.2.3. if such assignee ceases to be an Affiliate, the Client will ensure that the rights and obligations assigned to such Affiliate are assigned to another Affiliate of the Client or re-assigned to the Client, prior to such assignee so ceasing to be an Affiliate of the Client.

20. Waiver

20.1. The failure by either Party to enforce at any time or for any period any right conferred by this Agreement shall not be deemed to be a waiver of such right or operate to bar the exercise or enforcement thereof at any time or times thereafter.

21. Severability

21.1. If any provision of this Agreement is held invalid, illegal or unenforceable for any reason by any Court of competent jurisdiction such provision shall be severed and shall be deemed not to be or never to have been or formed part of this Agreement and the remainder of the provisions herein shall continue in full force and effect.

22. Notices

22.1. Any notice to be given by either Party to the other may be served by email, fax, personal service or by first class post to the address of the other Party as set out in this Agreement or such other address as such Party may from time to time have communicated to the other in writing, and if sent by email shall unless the contrary is proved be deemed to be received on the day it was sent, if sent by fax shall be deemed to be served on receipt of an error free transmission report, if given by letter shall be deemed to have been served at the time at which the letter was delivered personally or if sent by post shall be deemed to have been delivered in the ordinary course of post.

23. Entire Agreement

23.1. This Agreement supersedes any previous agreements, arrangements, undertakings or proposals of whatever nature, whether oral or written;

23.2. This Agreement contains the entire agreement and understanding of the Parties with regard to the subject matter thereof and there are no conditions, warranties or representations with respect thereto other than those expressly set forth herein;

23.3. Each Party hereby agrees that it shall have no rights and remedies (and hereby waives such rights and remedies to the extent that they exist) in respect of any condition, representation or warranty (whether made innocently or negligently) that is not set out in this Agreement and/or implied by law. Neither Party shall have any claim for innocent or negligent misrepresentation based upon any statement in this Agreement. Nothing in this Clause shall limit or exclude any liability for fraud.

24. Joint Venture Partnerships and Third Parties

24.1. Nothing in this Agreement shall be construed as creating a partnership, joint venture or an agency relationship between the Parties and neither Party shall have the authority or power to bind the other party or to contract in the name of or create a liability against the other party. A person who is not a party to this Agreement shall have no third party rights under the Contract (Third Party Rights)(Scotland) Act 2017 or otherwise to enforce or otherwise invoke any term of this Agreement.

24.2. Nothing in this Agreement is intended to, nor shall it confer, any rights on a third party.

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25. Variation to Agreement

25.1. This Agreement, including the Schedules, may not be amended without the prior written agreement of the Parties.

26. Dispute Resolution

26.1. The Parties shall use all reasonable endeavours to settle any disputes relating to this Agreement between them in good faith and in accordance with the procedure set out in this Clause 26.

26.2. In the first instance the Parties will make reasonable endeavours to resolve all disputes as soon as possible at the lowest level in which they can best be managed. Where either Party considers that a dispute cannot be resolved within acceptable timeframes the dissatisfied Party can escalate the dispute to the directors or other senior representatives of the Parties with authority to settle the dispute who will, within seven (7) days of a written request from one Party to the other, meet in a good faith effort to resolve the dispute. If such directors or other senior representatives cannot resolve the dispute within a further seven (7) days of their meeting this dispute resolution procedure will be deemed to have been exhausted.

26.3. Nothing in this Clause 26 shall prevent either party from seeking any interdict relief at any time.

27. Governing Law and Jurisdiction

27.1. This Agreement 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 construed in accordance with the Law of Scotland and the Parties hereby submit to the non-exclusive jurisdiction of the Scottish Courts.

28. Counterparts

28.1. 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.

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IN WITNESS WHEREOF This Agreement comprising this and the preceding 26 pages together with the Schedule (in 1 part) annexed hereto are executed as follows:

They are signed for and on behalf of
Client Name
at
on the day of

by:

in the presence of:

Witness

They are signed for and on behalf of
Brightwire Technology Services Limited
at Peebles
on the DD MM YYYY

by:

Director

in the presence of:

Witness

c/o Brightwire Technology Services Limited, Peebles, EH45 8AT

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This is the schedule consisting of [1] part referred to in the preceding Development Agreement between Brightwire Technology Services Limited and CLIENT NAME dated XXXX

SCHEDULE 1 – DATA PROTECTION

In this Schedule 1, the terms:

"**Data Protection Laws**" mean all applicable laws from time to time relating to the processing of personal data and/or privacy, including the DPA and the GDPR.

PART A – DATA PROTECTION

1. The Company shall comply at all times with the Data Protection Laws.

2. Part B of this Schedule sets out the type of personal data and categories of data subjects, which the parties intend shall be processed under this Agreement, as well as the permitted nature, purpose and duration of that processing.

3. The Company shall, in relation to any personal data of the Client's provided to, or generated or obtained by the Company in the course of providing the Services hereunder (the "**Data**"):

   3.1.1 only process Data in accordance with the documented instructions of the Client as set out in Part B of this Schedule 1 or as otherwise notified to the Company by the Client;

   3.1.2 not transfer any Data to a country outside of the European Economic Area ("**EEA**") or to a person based outside the EEA (unless required to do so by applicable EU or member state law to which the Company is subject and in such circumstances the Company shall inform the Client of such requirement unless prohibited by applicable EU or member state law on important grounds of public interest) without the prior written consent of the Client and subject to adequate safeguards being in place in advance;

   3.1.3 ensure that any persons authorised by it to process Data are bound by appropriate confidentiality obligations in relation thereto;

   3.1.4 taking into account the state of the art, the costs of implementation and the nature, scope, context and purposes of processing as well as the severity of the risk to the rights and freedoms of natural persons, take and maintain appropriate technical and organisational measures (including, where applicable, complying with the Client's policies and procedures relating to data protection) in relation to the Data to ensure a level of security appropriate to the level of risk (and in assessing risk shall take account, in particular, of the risks that are presented by processing in particular from accidental or unlawful destruction, loss, alteration, unauthorised disclosure of or access to the Data).

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3.1.5 not authorise any third party to process any Data without the prior written consent of the Client and subject to compliance with the Data Protection Laws, including in the event that such consent is obtained, by putting in place written terms with each such third party which are equivalent to those in this Schedule;

3.1.6 when requested by the Client, assist the Client in fulfilling the Client 's obligations under the Data Protection Laws, including assisting the Client in (i) ensuring compliance with its obligations relating to data security, data breach and data protection impact assessments under applicable Data Protection Laws (including, once in effect, Article 32 to 36 of the GDPR), and (ii) responding to requests from data subjects in relation to the exercise of that data subject's rights with respect to their personal data under the Data Protection Laws;

3.1.7 forthwith at the end of the provision of services relating to processing under this Agreement, delete or return to the Client (as requested by the Client) all Data in its and/or its sub-processors' possession or control (except to the extent that applicable EU or member state law requires storage of that Data by the Company), and shall, on the Client's request, certify in writing to the Client that it has done so;

3.1.8 prepare, keep, and make available to the Client on its request all such documentation and information as is necessary to demonstrate its compliance with its obligations under the Data Protection Laws and this Schedule 1;

3.1.9 allow for and contribute to audits (including inspections) conducted by the Client or another auditor mandated by the Client relating to it and all sub-processors to it (if any); and

3.1.10 immediately inform the Client if it becomes aware of a personal data breach under the Data Protection Laws, and/or if in its opinion an instruction from the Client infringes the Data Protection Laws.

PART B - DETAILS OF PROCESSING

Duration of processing	For the continuance of this Agreement
Nature and purpose of processing	To perform the Services and to keep the Client informed as to performance of the Services
Categories of data subjects	Employees and customers of the Client.
Types of personal data	Names, emails addresses, telephone numbers, job titles, postal addresses.

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Gold Application Development
Silver Collaboration and Content
Silver Cloud Productivity