



PREPARED FOR

Laramie County ("Subscriber")

Dan Ange
Events Director
3801 Archer Parkway
Cheyenne, WY 82007

PREPARED BY

Brightly Software Inc ("Company")
11000 Regency Parkway, Suite 300
Cary, NC 27518

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PUBLISHED ON



Q-365008

Term: 36 months (06/01/2023 - 05/31/2026)

Cloud Services

Item	Start Date	End Date	Pricing Based On	Investment
Event Manager Enterprise	6/1/2023	5/31/2024	10.00 Locations	4,614.39 USD
3.0 Month(s) included at no additional cost on the first term 06/01/2023 - 08/29/2023				-1,134.69 USD
Subtotal:				3,479.70 USD

Professional Services

Item	Pricing Based On	Investment
Event Manager Implementation with Consulting	10.00 Locations	7,448.00 USD
Subtotal:		7,448.00 USD

Total Initial Investment**10,927.70 USD**



Subscription

Item	Investment Year 2 Start Date: 06/01/2024	Investment Year 3 Start Date: 06/01/2025
Event Manager Enterprise	4,891.25 USD	5,184.73 USD
Total:	4,891.25 USD	5,184.73 USD



Event Manager – Consulting Implementation Service Statement of Work

Summary:

Company will provide specified professional consulting services to Subscriber to implement Event Manager (EVM), an on-line event management system. These professional services include meeting with key stakeholders to ensure the set-up and configuration of the system will meet the client's operational needs; location and category hierarchies are configured appropriately; workflows meet the needs of the business; available data is cleaned, aligned and imported; and end users are trained and ready for go-live.

In Scope: The Deliverables below will be considered in scope of this EVM SOW:

1. Implementation with Consulting
2. Training
3. Post Consulting Go-Live Support

Deliverables:

- Project initiation and discovery
- Available location, user, category, event data loaded
- Account configuration
- User acceptance testing (UAT)
- End User training for Tenant Administrator and Approver roles
- Go-Live support

Acceptance Process:

As each deliverable is completed, the Project Coordinator will confirm with the Subscriber and document acceptance in the Project Community Portal.

- Project initiation and discovery
 - Kick-off call complete
 - Discovery call complete
 - Data, configuration, and training requirements documented
- Available data loaded
 - Available location, user, category, event data is loaded in EVM to meet documented data requirements.
- Account Configuration
 - Account has been setup and configured to meet documented configuration requirements.
- User Acceptance Testing
 - Consultant-led end-to-end walkthrough and client UAT has demonstrated to Subscriber functionality meets configuration requirements.
- End User Training
 - Tenant Administrator and Approver roles have received training on their respective roles.



- Go-Live Support
 - 30-day Go-Live Support period has been concluded.

Assumptions:

Subscriber Assumptions:

- There will be a single point of contact/project manager for the duration of the project.
- IT department is responsible for ensuring access to mobile devices, internet connections, e-mail access, and web link access to the software such as whitelisting IP addresses.
- The appropriate resources will be available for all scheduled activities. Canceling or rescheduling consulting activities within 2 weeks of the scheduled activity may result in a rescheduling fee being assessed.
- For on-site activities, Subscriber will provide a dedicated space with adequate technology, including but not limited to monitor/projector, computers, mobile devices, quality phone and internet connections.
- Will provide relevant data to be loaded in a timely manner and in Excel or CSV format. Each record type will be provided in one file with one sheet with column headings and one record with corresponding attributes per row.
- If Subscriber is unable to provide data in an acceptable format for import, Consultant will guide Subscriber on how to manually create records.
- Subscriber has up to (5) business days to confirm deliverable acceptance. No response will be interpreted as acceptance.

Company Assumptions:

- Consultant will not access any 3rd party systems for the purpose of exporting data.
- Once End User Training has been completed, 30-day Go-Live Support period begins, consisting of up to 4 weekly 30-minute check-ins with the Implementation Specialist. If client does not attend a scheduled check-in, it will be assumed no assistance was needed.
- For any on-site activities, Company will bill Subscriber for actual travel and associated expenses incurred.
- Any services not explicitly included in this SOW are assumed to be out of scope.

Project schedule and approach:

- Kick-off Call with Project Coordinator
 - Confirm software and services purchased
 - Identify key stakeholders
 - Assign resources
 - Schedule key milestone dates, including anticipated project completion date
 - Access to Company's on-line Learning Management System
 - Access to an interactive project plan
- Discovery with Consultant
 - Interview key stakeholders to understand specific maintenance & operations objectives
 - Overview of EVM with key stakeholders, including data import requirements
 - Determine optimal EVM configuration to meet operational requirements
 - Document data, configuration, and training requirements



- Schedule required consulting activities and confirm projected completion date
- Data loaded by Consultant
 - Review, cleanse, and load available location, user, category, event data
- Account configuration by Consultant
 - Populate key drop-down menus
 - Assist with layout, branding, and community use configuration
 - Configure workflow for request/approval of events
 - Assist with configuring invoicing and cost recovery
- User Acceptance Testing
 - Configuration demo to walk through the end-to-end workflow from request to completion
 - Demonstrate key functionality meets configuration requirements
- Consultant conducts End User Training for Administrator and Full User roles
 - End-to-end walkthrough for their role
 - Desktop and mobile training
- Go-Live Support
 - Company provides (4) weekly check-in calls with implementation specialist and Subscriber
 - Company implementation specialist addresses any issues identified. Where issues require product support, implementation specialist will submit to Company Support.
 - Implementation specialist adjusts configurations as needed prior to project close.
- Project Close

Sample Project Timeline (project timelines may vary):

Timeline Events	Day 1	Week 1	Week 2	Week 3	Week 4	Week 5	Week 6	Week 7	Week 8	Week 9	Week 10	Week 11	Week 12	Week 13
Project Kick Off Call														
LMS (Learning Management System) Review and Q&A														
Discovery Call														
Data Review														
Data Loading														
Account Configuration														
UAT (User Acceptance Testing)														
User Training														
Post-Consulting Call														
OLS (Go Live Support)														
Project Close														

Change Management:

Subscriber may request that the Company add services not in the specifications by submitting a written proposed change order to the Company. Submitted change requests will be reviewed for approval. Approved change orders will become part of the applicable SOW when executed by both Parties, and the services described therein will become part of the services.

Invoicing:

At the conclusion of the Go Live Support period, the main consulting milestone will be completed and will trigger billing for the full consulting service.



Event Manager - Enterprise

Scheduling & Publishing

- Custom Event Submission Forms
- Master Calendar with 10 sites
- Branding, Sharing, Importing
- Basic Approval Workflow
- Conflict Checking
- Event Registration, Ticketing, Merchandising with Online Payment

Operations

- Event Setup and Breakdown Options
- Advances Approval Workflow
- Quick Form
- Task Management
- Invoicing & Online Payment
- Room Configurations
- Resource Management

Community Use

- Custom Public Request Form
- Community/Public Request Form
- Community/Public Request Portal
- Public Invoicing & Online Payment

Sites

definition

- The home for an accounts individual calendars. Each account can occupy multiple calendars that host their own unique url. Each website can create and manage their own reservable spaces.

Reservable Location Spaces

definition

- Locations which are available to be obtained or secured by advanced request or arrangement.

API activation is included with Professional and Premium subscriptions only.

For clients interested in working with online payment vendors, Company preferred processors are PayPal, Stripe, MySchoolBucks, or SchoolPay.

There will be a transaction fee charged when processing payments through PayPal or Stripe. The transaction fee is paid to Brightly by your renters, requesters, or registrants and is independent from the processing fees collected by the online payment vendor.



Registration and Sales using Online Payments:

- Company will charge a transaction fee of 2.5% + \$.99 for each item or ticket sold. There is cap of \$9.95 collected for all the items sold in a transaction.

Invoicing using Online Payments:

- Company will charge a transaction fee of 2.5% on all invoices.

Outside of our preferred processors, clients have the option to pay an annual subscription fee of \$2,360 to Company. This option allows clients to process online payments through Authorize.Net, TouchNet, Tempus, TrustCommerce, or NIC Payments. The annual subscription fee is charged independently from the processing fees collected by the online payment vendor.



Order Form terms

- By accepting this Order Form, and notwithstanding anything to the contrary in any other purchasing agreement, Subscriber agrees to pay all relevant Fees for the full Services Term defined above.
- Payment terms: Net 30
- The "Effective Date" of the Agreement between Subscriber and Company is the date Subscriber accepts this Order Form.
- This Order Form and its Services are governed by the terms of the Brightly Software, Inc. Master Subscription Agreement found at <http://brightlysoftware.com/terms> (<http://brightlysoftware.com/terms>) ("Terms"), unless Subscriber has a separate written agreement executed by Brightly Software, Inc. ("Company") for the Services, in which case the separate written agreement will govern. Acceptance is expressly limited to these Terms. Any additional or different terms proposed by Subscriber (including, without limitation, any terms contained in any Subscriber purchase order) are objected to and rejected and will be deemed a material alteration hereof.
- To the extent professional services are included in the Professional Services section of this Order Form, the Professional Services Addendum found at <http://brightlysoftware.com/terms> (<http://brightlysoftware.com/terms>) is expressly incorporated into the Terms by reference.
- During the Term, Company shall, as part of Subscriber's Subscription Fees, provide telephone and email support ("Support Services") during the hours of 8:00 AM and 6:00 PM EST, (8:00 am – 8:00 pm EST for Community Development Services) Monday through Friday ("Business Hours"), excluding Company Holidays.
- Company maintains the right to increase Subscription Fees within the Services Term by an amount not to exceed the greater of prices shown in the investment table or the applicable CPI and other applicable fees and charges every 12 months. Any additional or renewal Service Terms will be charged at the then-current rate.
- Acceptance of this Order Form on behalf of a company or legal entity represents that you have authority to bind such entity and its affiliates to the order, terms and conditions herein. If you do not have such authority, or you do not agree with the Terms set forth herein, you must not accept this Order Form and may not use the Service.
- Proposal expires in sixty (60) days.
- Subscriber shall use reasonable efforts to obtain appropriation in the full amount required under this Order Form annually. If the Subscriber fails to appropriate funds sufficient to maintain the Service(s) described in this Order Form, then the Subscriber may terminate the Service(s) at no additional cost or penalty by giving prior written notice documenting such non-appropriation. Subscriber shall use reasonable efforts to provide at least thirty (30) days prior written notice of non-appropriation. Subscriber agrees non-appropriation is not a substitute for termination for convenience, and further agrees Service(s) terminated for non-appropriation may not be replaced with functionally similar products or services prior to the expiration of the Services Term set forth in this Order Form. Subscriber will not be entitled to a refund or offset of previously paid, but unused Fees.

Additional information

- Prices shown above do not include any taxes that may apply. Any such taxes are the responsibility of Subscriber. This is not an invoice. For customers based in the United States, any applicable taxes will be determined based on the laws and regulations of the taxing authority(ies) governing the "Ship To"



location provided by Subscriber. Tax exemption certifications can be sent to accountsreceivable@brightlysoftware.com (<mailto:accountsreceivable@brightlysoftware.com>).

- Billing frequency other than annual is subject to additional processing fees.
- Please reference Q-365008 on any applicable purchase order and email to Purchaseorders@Brightlysoftware.com (<mailto:Purchaseorders@Brightlysoftware.com>)
- Brightly Software, Inc. maintains the necessary insurance coverage for its products and professional services, including but not limited to liability and errors & omissions coverage. Proof of insurance can be provided upon request.



Signature

Presented to:

Q-365008
May 10, 2023, 7:46:08 PM

Accepted by:

Printed Name

Signed Name

Title

Date

OMNIBUS ADDENDUM TO:

**Brightly Order Form
Brightly Master Subscription Agreement
Brightly Professional Services Addendum**

Laramie County/Brightly Software

THIS ADDENDUM is made and entered into by and between Laramie County, Wyoming, P. O. Box 608, Cheyenne, Wyoming 82003-0608, ("COUNTY" or "Subscriber") and Brightly Software, Inc., 11000 Regency Parkway, Suite 400, Cary, NC 27518 ("CONTRACTOR" or "Company").

I. PURPOSE

The purpose of this Addendum is to modify the Order Form to provide Laramie County with software and associated professional services as more fully laid out in the Statement of Work portion of the entire agreement between the Parties, attached hereto as Attachment 'A' and fully incorporated herein (hereinafter "Agreement"). It is the intention of the parties that this Omnibus Addendum (hereinafter "Addendum") apply to all the attached Agreements within Attachment 'A' between the parties. It is also the intention of the parties that any additional terms within this Addendum apply to each of the Agreements within Attachment 'A.'

II. TERM

This Addendum shall commence on the date last executed by the duly authorized representatives of the parties to this Addendum and Agreement and shall remain in full force pursuant to the terms of the Agreement and this Addendum.

III. RESPONSIBILITIES OF CONTRACTOR

- a. CONTRACTOR shall provide and complete the services described in Attachment 'A', particularly the Statement of Work document, attached hereto and fully incorporated herein.
- b. COUNTY shall pay CONTRACTOR in accordance with the payment terms set forth more fully in the attached Agreement. Payment will be made upon receipt of the CONTRACTOR'S invoice to the COUNTY. No payment shall be made before the last signature is affixed to this Agreement. Payments shall be in accordance with Wyo. Stat. § 16-6- 602 (as amended).

IV. MODIFICATIONS TO BRIGHTLY MASTER SUBSCRIPTION AGREEMENT

- a. Section 6.3(b), Indemnification, of the Agreement is stricken and of no force and effect.
- b. Section 7.1, Definition of Confidential Information, of the Agreement is hereby modified to include the following:

The Parties acknowledge that Subscriber is a governmental entity and, as such, any agreement between the Parties is subject to disclosure under the Wyoming Public Records Act, W.S. 16-4-201 et seq. Any disclosure of information in accordance with the Wyoming Public Records Act shall not be treated as a breach of any confidentiality obligations set forth by Section 7 of this Agreement.

- c. Section 9.5, Assignment, is stricken and of no force and effect. It is replaced with the following:

Neither this Agreement, nor any rights or obligations hereunder shall be assigned or delegated by a party without the prior written consent of the other party, except that Company shall have the right to transfer or assign this Agreement to the surviving entity in a merger or consolidation or to a purchaser of all or substantially all of its assets without the written consent of the Subscriber.

V. PROFESSIONAL SERVICES ADDENDUM

- a. Section 8.2 is stricken and of no force and effect.

VI. ADDITIONAL PROVISIONS APPLICABLE TO ENTIRE AGREEMENT

- a. Entire Agreement: The Agreement (21 pages combined) and Addendum (4 pages) represents the entire and integrated agreement and understanding between the parties in regard to the subject matter herein and supersedes all prior negotiations, statements, representations and agreements, whether written or oral.
- b. Discrimination: All parties agree they will not discriminate against any person who performs work under the terms and conditions of this Agreement and Addendum because of race, color, gender, creed, handicapping condition, or national origin.
- c. ADA Compliance: All parties agree they will not discriminate against a qualified individual with disability, pursuant to a law as set forth in the Americans with Disabilities Act, P.L. 101-336, 42 U.S.C. § 12101, *et seq.*, and/or any properly promulgated rules and regulations relating thereto.
- d. Governmental/Sovereign Immunity: COUNTY does not waive its Governmental/Sovereign Immunity, as provided by any applicable law including W.S. § 1-39-101 et seq., by entering into this Agreement and Addendum. Further, COUNTY fully retains all immunities and defenses provided by law with regard to any action, whether in tort, contract or any other theory of law, based on this Agreement and Addendum.
- e. Conflict of Interest: COUNTY and CONTRACTOR affirm, to their knowledge, no CONTRACTOR employee has any personal beneficial interest whatsoever in the agreement described herein. No staff member of CONTRACTOR, compensated either partially or wholly with funds from this Agreement, shall engage in any conduct or activity which would constitute a conflict of interest relative to this Agreement.
- f. Limitation on Payment: COUNTY's payment obligation is conditioned upon the availability of funds which are appropriated or allocated for the payment of this obligation. If funds are not allocated and available for the continuance of the services and equipment

provided by CONTRACTOR, the Agreement may be terminated by COUNTY at the end of the period for which funds are available. COUNTY shall notify CONTRACTOR at the earliest possible time of the services which will or may be affected by a shortage of funds. At the earliest possible time means at least thirty (30) days before the shortage will affect payment of claims, if COUNTY knows of the shortage at least thirty (30) days in advance. No penalty shall accrue to COUNTY in the event this provision is exercised, and COUNTY shall not be obligated or liable for any future payments due or for any damages as a result of termination under this provision. This provision shall not be interpreted or construed to permit COUNTY to terminate this Agreement in order to acquire similar services from another party.

- g. Addendum Controls: Where a conflict exists or arises between any provision or condition of this Addendum and the Agreement, the provisions and conditions set forth in this Addendum shall control.

[Remainder of this page intentionally left blank. Signature page to follow]

OMNIBUS ADDENDUM TO:

**Brightly Order Form
Brightly Master Subscription Agreement
Brightly Professional Services Addendum**

Laramie County/Brightly Software

Signature Page

LARAMIE COUNTY, WYOMING

By: 
Chairman, Laramie County Commissioners

Date May 23, 2023

ATTEST:

By: 
Laramie County Clerk

Date May 23, 2023

Brightly Software, Inc. Representative

By: 
Authorized Signature

Date 22 May 2023


Authorized Signature

Date 22 May 2023

REVIEWED AND APPROVED AS TO FORM ONLY

By: 
Laramie County Attorney's Office

Date 5.23.23

10/10/2020 10:10:10 AM

10/10/2020 10:10:10 AM

10/10/2020 10:10:10 AM



PROFESSIONAL SERVICES ADDENDUM

THIS PROFESSIONAL SERVICES ADDENDUM ("Addendum") is an addendum to the Master Subscription Agreement (the "Agreement") between Brightly Software ("Company") and Subscriber, as defined in the Agreement. This Addendum applies to the extent that Subscriber and Company execute an Order Form that includes a Statement of Work ("SOW") for the provision of Professional Services to be provided by Company for Subscriber.

BY ACCEPTING THIS ADDENDUM, EITHER BY CLICKING A BOX INDICATING ACCEPTANCE, BY RESELLER PURCHASE, BY EXECUTING AN ORDER FORM THAT REFERENCES THIS ADDENDUM OR BY OTHERWISE ACCESSING AND USING THE PROFESSIONAL SERVICES, SUBSCRIBER AGREES TO THE TERMS OF THIS AGREEMENT. AS A RESULT, PLEASE READ ALL THE TERMS AND CONDITIONS OF THIS AGREEMENT CAREFULLY.

1. PROFESSIONAL SERVICES.

1.1 Scope. Company will provide such Professional Services and supply Deliverables to Subscriber in accordance with the terms of the Agreement and all applicable SOWs or Order Forms. Unless otherwise specified in an applicable SOW or Order Form: (i) Company will perform the Professional Services during workdays, Monday through Friday, up to 8 hours a day; (ii) any estimate of hours or costs are reasonable, good faith estimates only; and (iii) each task is performed as firm fixed price work or time and materials. Company is only obliged to supply Professional Services as expressly stated in the SOW and shall not be obliged to supply any Professional Services and/or Deliverables until both Parties have approved the applicable SOW.

1.2 Scheduling. Company requires at least 6 weeks advanced notice from the acceptance of an Order Form or reseller purchase to schedule Professional Services delivery dates when travel is required. Onsite Professional Services shall be delivered consecutively in a single onsite visit unless the applicable Order Form or reseller purchase includes the additional fees and incidental expenses associated with multiple visits.

1.3 Unused Professional Services. Unless otherwise specified in the applicable SOW, any unused order for Professional Services will expire 6 months from the date of order, and Subscriber will not be entitled to receive a refund for any fees prepaid for such expired Professional Services.

1.4 Relationship to Other Services. The Addendum is limited to Professional Services and does not convey any right to use any other Company Services. Subscriber agrees that Professional Services is not contingent on the delivery of any future Service functionality or features other than Deliverables, or on any oral or written public comments by Company regarding future Service functionality or features.

1.5 Subscriber Cooperation. Subscriber will cooperate reasonably and in good faith with Company in its performance of Professional Services by: (i) providing access to Subscriber Data, (ii) allocating sufficient resources and timely performing any tasks reasonably necessary to enable Company to perform its obligations under the SOW or Order Form, and (iii) actively participate in scheduled project meetings. Any delays in the performance of Professional Services or delivery of Deliverables caused by Subscriber may result in additional applicable charges for resource time.

1.6 Acceptance. Any Deliverables are stated in the SOW or Order Form. Unless otherwise specified in the applicable SOW, Deliverables will be considered accepted upon Subscriber's written notice thereof (e-mail is sufficient) or two (2) business days from delivery whichever is sooner, provided Subscriber's rejection is limited to failure to materially conform to the SOW's specifications. An effective notice of rejection must specifically disclose the material failure to conform to its specifications. In response to rejection, Company may revise and redeliver the Deliverable, and thereafter the procedures of this Section will repeat.

1.7 Change Order. Changes to Professional Service defined in an Order Form, SOW or reseller purchase, shall require a written Change Order signed by the parties prior to implementation of such change(s). Changes may include, for example, alterations to the Professional Service scope of work, Deliverables or changes to fees or schedule.

2. FEES & PAYMENT TERMS.

2.1 Payment. Subscriber will pay Company the fees specified in each SOW or Order Form contained therein. Unless the SOW or Order Form provides otherwise, Subscriber will pay Company within thirty (30) calendar days from the date of invoice. Where multiple onsite visits are scheduled, the Professional Services, fees and incidental expenses shall be invoiced upon the completion of each visit.

2.2 Incidental Expenses. Subscriber will reimburse Company for travel and related business expenses incurred in connection with Professional Services. If an estimate of incidental expenses is included in the applicable SOW or Order Form, Company will not exceed a 5% inflation such estimate without the written consent of Subscriber.

3. TERM AND TERMINATION.

3.1 Term. Each SOW term shall begin on the effective date specified in the applicable SOW or Order Form and end on the date that the Professional Services are completed. Unless earlier terminated as set forth below, the terms of this Addendum will continue until termination or expiration of the applicable SOW. Termination shall be in accordance with the Agreement.

3.2 Termination. Either party may terminate a SOW or this Addendum for the other's material breach of such SOW or this Addendum, as applicable, on thirty (30) days' written notice, provided that if the other party cures the breach before expiration of such notice period, the SOW will not terminate. Additionally, all SOWs will immediately terminate upon termination or expiration of the Agreement.



3.3 Effect of Termination. Upon termination of a SOW: (1) if such SOW provides for an hourly or per unit fee, Subscriber will pay Company such fee for the work performed up to the date of termination; and (2) if the SOW provides for a fixed fee, Subscriber will pay Company the reasonable value of the Professional Services rendered by Company up to the termination date. Termination of a SOW for any reason, including without limitation for cause, will not terminate any other SOW.

4. PROPRIETARY RIGHTS AND LICENSES.

4.1 Confidential Information. As between the parties, each party retains all ownership rights in and to its Confidential Information as set forth in the Agreement.

4.2 Subscriber Data. Subscriber does not grant to Company any rights in or to Subscriber's intellectual property except such licenses as are required for Company to perform its obligations under the Agreement.

4.3 License for Deliverables. Upon payment of fees due under an applicable SOW or Order Form, Company grants Subscriber a worldwide, perpetual, non-exclusive, non-transferable, royalty-free license to copy, maintain, use and run (as applicable) solely for its internal business purposes associated with its use of Company's Services any Deliverables created by Company solely for Subscriber under this Agreement. Company and Subscriber each retain all right, title and interest in their respective Intellectual Property and Company retains all ownership rights in the Deliverables.

5. WARRANTY.

Company represents and warrants that all Professional Services shall be performed in a professional and workmanlike manner in accordance with generally accepted industry standards. For any breach of this warranty in Section 5, Subscriber's exclusive remedy and Company's entire liability shall be the re-performance of the applicable Professional Services.

6. DISCLAIMER.

EXCEPT FOR THE EXPRESS WARRANTIES SET FORTH SECTION 5 ABOVE, AND TO THE MAXIMUM EXTENT PERMITTED BY LAW, Company AND ITS THIRD PARTY PROVIDERS DISCLAIM ALL WARRANTIES OF ANY KIND RELATED TO THE DELIVERABLES OR THE PERFORMANCE OF PROFESSIONAL SERVICES HEREUNDER, WHETHER EXPRESS, IMPLIED, STATUTORY, OR OTHERWISE, INCLUDING ANY WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE AND NON-INFRINGEMENT. Company DOES NOT WARRANT THE RELIABILITY, TIMELINESS, SUITABILITY, OR ACCURACY OF THE DELIVERABLES OR THE RESULTS SUBSCRIBER MAY OBTAIN BY USING THE DELIVERABLES. IN PARTICULAR, Company DOES NOT WARRANT UNINTERRUPTED OR ERROR- FREE OPERATION OF THE DELIVERABLES, THAT THE DELIVERABLES WILL CONTINUE TO FUNCTION WITH ANY SUBSCRIPTION SERVICES AFTER THE EXPIRATION OF THE APPLICABLE WARRANTY PERIOD, OR THAT Company WILL CORRECT ALL DEFECTS OR PREVENT THIRD PARTY DISRUPTIONS OR UNAUTHORIZED THIRD PARTY ACCESS.

7. NON-EXCLUSIVITY OF PROFESSIONAL SERVICES.

Notwithstanding the Confidentiality obligations set forth in Section 8 of the Agreement and this Addendum, Subscriber acknowledges and agrees that (i) multiple Subscribers may require similar Professional Services or Deliverables and that Company may be developing similar Professional Services and Deliverables for other third parties, (ii) Company may currently or in the future be developing information internally, or receiving information from other parties, that is similar to the Confidential Information of Subscriber, (iii) nothing will prohibit Company from developing or having developed for it customizations, configurations, feature, concepts, systems or techniques that are similar to the Deliverables, and (iv) nothing will prohibit Company from re-using with another Subscriber or making generally available as part of Subscription Services all or part of any customization, configuration, feature, concept, system or technique developed hereunder.

8. IP INDEMNITY.

8.1 Indemnification by Company. In addition to the indemnification obligations set forth in Section 6 of the Agreement and subject to this Addendum, Company will (i) defend, or at its option settle, any claim, demand, action or legal proceeding ("**Claim**") made or brought against Subscriber by a third party alleging that the use of the Deliverable(s) as contemplated hereunder directly infringes the intellectual property rights of such third party, and (ii) pay (a) any final judgment or award directly resulting from such Claim to the extent such judgment or award is based upon such alleged infringement or (b) those damages agreed to by Company in a monetary settlement of such Claim. Company's obligations to defend or indemnify will not apply to the extent that a Claim is based on (I) Subscriber Data, Subscriber's or a third party's technology, software, materials, data or business processes; (II) a combination of the Deliverable(s) with non-Company products or services; or (III) any use of the Deliverable(s) not in compliance with this Addendum. In the event of a Claim, Company may, in its discretion and at no cost to Subscriber (A) modify the Deliverable(s) so that they are no longer the subject of an infringement claim, (B) obtain a license for Subscriber's continued use of the Deliverable(s) in accordance with this Addendum, or (C) suspend use of the Deliverable in question and refund to Subscriber a pro rata portion of the fees paid for every month during which Subscriber is prevented from using the infringing Deliverable as a result of such infringement, during the first three years after delivery of such Deliverable.

8.2 Indemnification by Subscriber. To the extent permitted by law and subject to this Addendum, Subscriber will (i) defend, or at its option settle, any Claim made or brought against Company by a third party alleging that (I) Subscriber Data, Subscriber's or a third party's technology, software, materials, data or business processes; (II) a combination of the Deliverables with non-Company products or services; or (III) Subscriber's use of the Deliverables, other than as authorized in this Addendum, violates applicable law or regulations or infringes the intellectual property rights of, or has otherwise harmed, a third party; and (ii) pay (a) any final judgment or award directly resulting from such Claim, or (b) or those damages agreed to in a monetary settlement of such Claim.



THIS SECTION 8 STATES COMPANY'S SOLE OBLIGATION, AND SUBSCRIBER'S SOLE REMEDY, WITH REGARDS TO CLAIMS THAT THE DELIVERABLES INFRINGE ANY THIRD PARTY'S INTELLECTUAL PROPERTY RIGHTS.

9. LIMITATION OF LIABILITY. IN ADDITION TO THE OBLIGATIONS UNDER THE AGREEMENT, IN NO EVENT SHALL COMPANY, IN THE AGGREGATE, BE LIABLE FOR DAMAGES TO SUBSCRIBER IN EXCESS OF THE TOTAL AMOUNT PAID BY SUBSCRIBER UNDER THE APPLICABLE SOW TO WHICH THE CLAIM RELATES. THE ABOVE LIMITATIONS WILL APPLY WHETHER AN ACTION IS IN CONTRACT OR TORT AND REGARDLESS OF THE THEORY OF LIABILITY. THE FOREGOING LIMITATION WILL NOT APPLY TO THE EXTENT PROHIBITED BY LAW. UNDER NO CIRCUMSTANCES SHALL COMPANY HAVE ANY LIABILITY WITH RESPECT TO ITS OBLIGATIONS UNDER THIS AGREEMENT OR OTHERWISE FOR LOSS OF PROFITS, OR CONSEQUENTIAL, EXEMPLARY, INDIRECT, INCIDENTAL OR PUNITIVE DAMAGES, EVEN IF COMPANY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES OCCURRING, AND WHETHER SUCH LIABILITY IS BASED ON CONTRACT, TORT, STRICT LIABILITY OR PRODUCTS LIABILITY. NOTHING IN THIS SECTION SHALL LIMIT SUBSCRIBER'S PAYMENT OBLIGATIONS UNDER SECTION 4 OF THE AGREEMENT.

10. MISCELLANEOUS

10.1 Order of Precedence. In the event of a conflict, the provisions of an authorized SOW will prevail over those of this Addendum. Neither party's acts nor omissions related to Professional Services, to a SOW, or to this Addendum, including without limitation breach of a SOW or of this Addendum, will give the other party any rights or remedies not directly related to the SOW in question.

10.2 Independent Contractor. The parties are independent contractors and nothing in this Agreement should be construed to create a partnership, agency, joint venture, fiduciary or employment relationship between the parties. Neither party is authorized to make any representation or commitment on behalf of the other party. Each party assumes full responsibility for the actions of its personnel while performing Services and such party will be solely responsible for the supervision, daily direction, control of its personnel and for the payment of all of their compensation.

10.3 No Third-Party Beneficiaries. There are no third-party beneficiaries to this Agreement.

10.4 Force Majeure. Neither party will be responsible for failure or delay of performance of a SOW if caused by an act of nature, war, hostility or sabotage; an electrical, internet, or telecommunication outage that is not caused by the obligated party; government restrictions (including the denial or cancellation of any export or other license); or other event outside the reasonable control of the obligated party. Each party will use reasonable efforts to mitigate the effect of a force majeure event. If such event continues for more than thirty (30) days, either party may cancel unperformed Professional Services upon written notice.

10.5 Non-Solicitation. Except where prohibited by law, during the Term of this Addendum and for twelve (12) months thereafter, Subscriber will not solicit for employment, nor knowingly employ (either as an employee, contractor or agent), any of Company's employees or subcontractors without Company's prior written consent. For the purposes herein, "solicit" does not include broad-based recruiting efforts, including without limitation help wanted advertising and general posting open positions.

10.6 Subcontractors. Company may, in its reasonable discretion, use subcontractors inside or outside the United States to perform any of its obligations hereunder. Company will be responsible for the performance of Professional Services by its personnel (including employees and contractors) and their compliance with Company's obligations under this Addendum, except as otherwise specified herein.

10.7 Severability. If any provision of this Addendum is held by a court of competent jurisdiction to be contrary to law, the provision will be modified by the court and interpreted so as best to accomplish the objectives of the original provision to the fullest extent permitted by law, and the remaining provisions of this Addendum will remain in effect.

11. DEFINITIONS.

11.1 "Change Order" means a Company change order that changes the Professional Services as set forth on a SOW, Order Form or defined in a reseller purchase. Change Orders executed by both parties shall be incorporated by reference into the applicable SOW, Order Form or reseller purchase. A Change Order cannot change Services, as defined in the Agreement to include SaaS applications.

11.2 "Deliverable" means a deliverable under an SOW or Order Form.

11.3 "SOW" means a statement of work describing Professional Services to be provided hereunder, that is entered into between Subscriber and Company or which is incorporated into an Order Form that is entered into between Subscriber and Company. A Company Affiliate that executed an SOW with Subscriber will be deemed to be Company as such term is used in this Agreement. SOWs or Order Forms are deemed incorporated herein by reference.

All other capitalized terms used but not defined herein shall have the respective meanings set forth in the Agreement.



A Siemens Company

MASTER SUBSCRIPTION AGREEMENT

This Master Subscription Agreement, together with any addenda, (this "Agreement") shall govern Subscriber's (as defined below) access and use of the Cloud Services (as defined below) provided by Brightly Software ("Company"). This Agreement may be accepted by either clicking a box indicating acceptance, by reseller purchase, by executing an Order that references this Agreement or by otherwise accessing or using an Offering. Subscriber agrees to the terms of this Agreement by clicking the button or using any Offering and therefore indicates that Subscriber has read, understood, and accepted this Agreement. If Subscriber does not accept, Subscriber must not use any Offering and must return any Offering to Company or its authorized reseller or partner prior to use.

IF THE INDIVIDUAL ENTERING INTO THIS AGREEMENT IS ACCEPTING ON BEHALF OF A COMPANY OR OTHER LEGAL ENTITY, THE INDIVIDUAL REPRESENTS THAT THEY HAVE THE AUTHORITY TO BIND SUCH ENTITY AND ITS AFFILIATES TO THE TERMS AND CONDITIONS OF THIS AGREEMENT, IN WHICH CASE THE TERMS "ACCOUNT" OR "SUBSCRIBER" SHALL REFER TO SUCH ENTITY AND ITS AFFILIATES. IF THE INDIVIDUAL ACCEPTING THIS AGREEMENT DOES NOT HAVE SUCH AUTHORITY OR DOES NOT AGREE WITH THE TERMS AND CONDITIONS SET FORTH HEREIN, THE INDIVIDUAL MUST NOT ACCEPT THIS AGREEMENT AND MAY NOT USE THE OFFERING.

Section 1.0 Ordering and Use of Offerings

1.1 Company Cloud Service; Subscriber-Hosted Software.

(a) **Company Cloud Service.** Unless otherwise specified on an applicable Order, an Offering of Cloud Service shall be provided as Company-hosted, online cloud service. Company grants Subscriber a non-exclusive and non-transferable right to access and use the Offering for the Subscription Term.

(b) **Subscriber-Hosted Software.** Where an applicable Order sets forth a Subscriber-Hosted Software Offering, subject to the provisions of this Agreement, Company grants Subscriber a non-exclusive and non-transferable license (with no right to sublicense) to install and use the Offering for the Subscription Term. In respect of such Subscriber-Hosted Software Offering:

- (i) Subscriber is responsible for installing and implementing the Subscriber-Hosted Software and any updates, enhancements or modifications, except for any Professional Services set forth on an applicable Order (i.e., implementation).
- (ii) Subject to the terms of this Agreement, Subscriber may create copies of the Subscriber-Hosted Software to the extent strictly necessary to install and operate the Subscriber-Hosted Software for use in accordance with this Agreement, and to create backup and archival copies to the extent reasonably required in the normal operation of Subscriber systems. All such copies must include a reproduction of all copyright, trademarks or other proprietary notices contained in the original copy of the Subscriber-Hosted Software.
- (iii) Subscriber is responsible for providing the Environment and ensuring the Environment functions properly, and for implementing appropriate data backup and security measures. "Environment" means the systems, networks, servers, equipment, hardware, software and other material specified in Documentation or an Order on which, or in connection with which, the Subscriber-Hosted Service will be used.

1.2 Ordering.

(a) **Ordering.** The parties may enter into one or more Orders under this Agreement. Each Order is binding on the parties and is governed by the terms of this Agreement and all applicable addenda. Pursuant to an Order, Company shall grant Subscriber Account Users access or use of the Offerings during their Subscription Term, including all Content contained in or made available through the Cloud Service(s). Affiliates of either party may conduct business under this Agreement by executing an Order that references this Agreement's terms.

(b) **Account Setup.** To subscribe to the Cloud Service, Subscriber must establish its Account, which may only be accessed and used by its Account Users in accordance with any number and categories of users as set forth on the Order. To setup an Account User, Subscriber agrees to provide true and accurate information for such Account Users. Each Account User must establish and maintain personal, non-transferable Access Credentials, which shall not be shared with, or used by, any other individual. Subscriber must not create Account User(s) in a manner that intends to or has the effect of avoiding Fees, circumvents thresholds with the Account, or intends to violate the Agreement.

(c) **Subscriber Responsibilities.** Subscriber agrees that it shall use the Service(s) solely for internal business purposes, and access and use of the Cloud Service(s) shall be limited to Account Users. Subscriber will ensure that its Account Users shall comply with Subscriber's obligations under this Agreement whether they are accessing Cloud Services on Subscriber's behalf, at Subscriber's invitation or by invitation of a Subscriber Account User. If Subscriber becomes aware of any violation of this Agreement by a user or any unauthorized access to any user account, Subscriber will immediately notify Company and terminate the relevant Account User or user account's access to the Cloud Service. Subscriber is responsible for any act or failure to act by any Account User or any person using or accessing the account of a user in connection with this Agreement. Subscriber acknowledges and agrees that Account Users who submit declarations, notifications or orders to Company are acting on behalf of Subscriber's behalf. Further, Subscriber shall: (i) be solely responsible for the accuracy, and appropriateness of all Subscriber Data and Content created by Account Users using the Cloud Service; (ii) access and use the Cloud Service solely in compliance with the Documentation and all applicable laws, rules, directives and regulations (including those relating to export, homeland security, anti-terrorism, data protection and privacy); (iii) allow e-mail notifications generated by the Cloud Service on behalf of Subscriber's Account Users to be delivered to Subscriber's Account Users; and (vi) take responsibility for the security of Subscriber's systems, including the software on Subscriber's systems, and take commercially reasonable steps to exclude malware, viruses, spyware and trojans from Cloud Services.

(d) **Usage Restrictions.** Subscriber agrees that it shall not, and shall not permit any Account User or Third Party accessing by, through or at Subscriber direction, or on its behalf to, directly or indirectly: (i) modify, copy, create derivative works or attempt to derive the source code of the Cloud Service; (ii) assign, sublicense, distribute or otherwise make available the Cloud Service, to any Third Party, including on a timesharing, software-as-a-service or other similar basis; (iii) share Access Credentials or otherwise allow access or use the Cloud Service to provide any service bureau services or any services on a similar basis; (iv) use the Cloud Service in a way not authorized in writing by Company or for any unlawful purpose; (v) use the Cloud Service to store or transmit infringing, libelous, or otherwise unlawful or tortious material, or to store or transmit material in violation of Third Party privacy rights; (vi) attempt to tamper with, alter, disable, override, or circumvent any security, reliability, integrity, accounting or other mechanism, restriction or requirement of the Cloud Service; (vii) remove, obscure or alter any copyright, trademark, patent or proprietary notice affixed or displayed by or in the Cloud Service; (viii) perform load tests, network scans, penetration tests, ethical hacks or any other security auditing procedures on the Cloud Service; (ix) interfere with or disrupt the integrity or performance of the Cloud Service or the data contained therein; (x) access or use the Cloud Service in order to replicate applications, products or services offered by Company and/or otherwise build a competitive product or service, copy any features, functions or graphics of the Cloud Service or monitor the availability and/or functionality of the Cloud Service for any benchmarking or competitive purposes; (xi) under any circumstances, through a Third Party application, a Subscriber application or otherwise, repackage or resell the Cloud Service, or any Company Content; (xii) store, manipulate, analyze, reformat, print, and display Company Content for personal use; and (xiii) upload or insert code, scripts, batch files or any other form of scripting or coding into the Cloud Service. Notwithstanding the foregoing restrictions, in the event Subscriber has purchased a Subscription for Commercial Use (as such term is defined below), Subscriber shall be permitted to use the Cloud Service to provide Third Party services in cases where such Third Parties access the Subscriber provided applications or services, but where such Third Parties do not have the ability to install, configure, manage or have direct access to the Cloud Services. Company hereby agrees, subject to payment of the applicable fees, to permit such use and the terms of this Agreement, including references to "internal use"

and/or "internal business operations" shall be deemed to include and permit such use (hereafter referred to as "Commercial Use").

(e) **Additional Guidelines.** Company reserves the right to establish or modify its Cloud Service offerings, general practices and limits concerning use of the Cloud Service, and if applicable provide alternative Cloud Service offerings and practices, with approximately thirty (30) days' prior notice. Company also reserves the right to block IP addresses originating a Denial of Service (DoS) attack. Company shall notify Subscriber should this condition exist and inform Subscriber of its action. Once blocked, an IP address shall not be able to access the Cloud Service and the block may be removed once Company is satisfied corrective action has taken place to resolve the issue.

(f) **Links to Third Party Websites.** To the extent that the Cloud Service links to any Third Party website, application or service, the terms and conditions thereof shall govern Subscriber's rights with respect to such website, application or service, unless otherwise expressly provided by Company. Company shall have no obligations or liability arising from Subscriber's access and use of such linked Third Party websites, applications and services.

(g) **Previews, No-Charge Offerings.** From time to time, Company may make Offerings available to Subscribers at no charge or allow features or services at no extra charge as part of Cloud Services prior to their general release that are labeled or communicated as Previews. Subscriber may choose to try such Previews or not in its sole discretion. Use of Previews is at Subscriber's sole risk and may contain bugs or errors. Subscriber may discontinue use of the Previews at any time, in its sole discretion. Further, Company may discontinue all Previews availability at any time in its sole discretion without notice. Previews and No-Charge Offerings are provided on an "as-is" basis and "as available" basis, without any warranties of any kind.

1.3 Proprietary Rights.

(a) Subscriber acknowledges and agrees that Company retains all ownership right, title, and interest in and to Brightly IP, including the Cloud Service, its Documentation and Content, and all corrections, enhancements, improvements to, or derivative works thereof without limitation (collectively, "Derivative Works"), and in all Brightly IP therein or thereto. To the extent any Derivative Work is developed by Company based upon ideas or suggestions submitted by Subscriber to Company, Subscriber hereby irrevocably assigns all rights to use and incorporate Subscriber's feedback, including but not limited to suggestions, enhancement requests, recommendations and corrections (the "Feedback") relating to the Cloud Service, together with all Brightly IP related to such Derivative Works. Nothing contained in this Agreement shall be construed to convey to Subscriber (or to any party claiming through Subscriber) any Brightly IP rights other than the rights expressly set forth in this Agreement.

(b) Company acknowledges and agrees that Subscriber retains all ownership right, title, and interest in and to the Subscriber Data and Content, including all intellectual property rights therein or thereto. Notwithstanding the foregoing, Subscriber hereby grants Company and its Affiliates a non-exclusive, royalty-free license to access, display, copy, distribute, transmit, publish, disclose and otherwise use all or any portion of Subscriber Data and Content to fulfill its obligations under this Agreement. In addition, Subscriber hereby grants Company a non-exclusive, royalty-free right to use aggregated and de-identified data generated and/or derived by Company from the Subscriber Data (the "De-Identified Data") in order to improve the Cloud Service and Company's performance hereunder, including without limitation, submitting and sublicensing such De-Identified Data to Third Parties for analytical purposes, provided that Company shall take commercially reasonable efforts to conduct such de-identification in a manner that ensures that such De-identification cannot be traced back to Subscriber or natural persons. Company recommends Subscriber confirm the geographic area in which Subscriber Data will be stored, which may be outside the country in which Subscriber is located. Subscriber will ensure that Subscriber Data can be processed and used as contemplated by this Agreement without violating any rights of others or any laws or regulations.

(c) Subscriber acknowledges the Cloud Services may utilize, embed or incorporate Third Party software and/or tools (each, a "Third-Party Tool") under a license granted to Company by one or more applicable Third Parties (each, a "Third-Party Licensor"), which licenses Company the right to sublicense the use of the Third-Party Tool solely as part of the Cloud Services. Each such sublicense is nonexclusive and solely for Subscriber's internal use and Subscriber shall not further resell, re-license, or grant any other rights to use such sublicense to any Third Party. Subscriber further acknowledges that each Third-Party Licensor retains all right, title, and interest to its applicable Third-Party Tool and all documentation related to such Third-Party Tool. All confidential or proprietary information of each Third-Party Licensor is Confidential Information of Company under the terms of this Agreement and shall be protected in accordance with the terms of Section 7.

Section 2.0 Company Responsibilities

2.1 Professional Services. To the extent Professional Services are included in the applicable Order and/or described in one or more statements of work, Subscriber agrees to abide by Company's Professional Services Addendum. Each statement of work shall be effective, incorporated into and form a part of this Agreement when duly executed by an authorized representative of each of the parties. Each statement of work shall (i) describe the fees and payment terms with respect to the Professional Services being provided pursuant to such statement of work, (ii) identify any work product that will be developed pursuant to such statement of work, and (iii) if applicable, sets forth each party's respective ownership and proprietary rights with respect to any work product developed pursuant to such statement of work.

2.2 Service Levels. Company shall use commercially reasonable efforts to make the Cloud Service available 99.9% of the time for each full calendar month during the Subscription Term, determined on twenty-four (24) hours a day, seven (7) days a week basis (the "Service Standard"). The Service Standard availability for access and use by Subscriber(s) excludes unavailability when due to: (a) any access to or use of the Cloud Service by Subscriber or any Account User that does not strictly comply with the terms of the Agreement or the Documentation; (b) any failure of performance caused in whole or in part by Subscriber's delay in performing, or failure to perform, any of its obligations under the Agreement; (c) Subscriber's or its Account User's Internet connectivity; (d) any Force Majeure Event; (e) any failure, interruption, outage, or other problem with internet service or non-Cloud Service; (f) Scheduled Downtime; or (g) any disabling, suspension, or termination of the Cloud Service by Company pursuant to the terms of the Agreement. "Scheduled Downtime" means, with respect to any applicable Cloud Service, the total amount of time (measured in minutes) during an applicable calendar month when such Cloud Service is unavailable for the majority of Subscribers' Account Users due to planned Cloud Service maintenance. To the extent reasonably practicable, Company shall use reasonable efforts to provide eight (8) hours prior electronic notice of Cloud Service maintenance events and schedule such Cloud Service maintenance events outside the applicable business hours.

2.3 Security and Data Privacy. Each party shall comply with applicable data privacy laws governing the protection of personal data in relation to their respective obligations under this Agreement. Where Company acts as Subscriber's processor of personal data provided by Subscriber, the data is subject to Company's Privacy Policy, which can be viewed by clicking the "Privacy" hypertext link located within the Cloud Service. By using the Cloud Service, Subscriber accepts and agrees to be bound and abide by such Privacy Policy. At all times during the Subscription term and upon written request of Subscriber within thirty (30) days after the effective date of termination or expiration of this Agreement, Subscriber Content shall be available for Subscriber's export and download. In accordance with applicable data privacy laws following that initial period, Company shall not be obligated to maintain Subscriber Data nor Subscriber Content and may delete or destroy what remains in its possession or control.

(a) If applicable in the United States, if Subscriber is a "Covered Entity" under the Health Insurance Portability and Accountability Act of 1996 (as amended from time to time, "HIPAA"), and if Subscriber must reasonably provide protected health information as defined by HIPAA in order to use the Cloud Services, Company shall be Subscriber's "Business Associate" under HIPAA, and Company and Subscriber shall enter into a Business Associate Agreement (the form of which shall be reasonably satisfactory to Company).

(b) If applicable in the United Kingdom, Switzerland or European Economic Area (EEA), both parties will comply with the applicable requirements of Data Protection Legislation. "Data Protection Legislation" means (i) the United Kingdom's Data Protection Act 2018, and (ii) the General Data Protection Regulation ("GDPR") and any national implementing laws, regulations or secondary legislation. Company and Subscriber agree that Company will not be processing any personal data on behalf of the Subscriber as "Data Controller" (defined in accordance with the Data Protection

Legislation). Company will collect, use, disclose, transfer and store personal information when needed to administer this Agreement and for its operational and business purposes, in accordance with Data Protection Legislation. To the extent personal data from the UK, Switzerland or the EEA are processed by Company, the terms of a data processing addendum ("DPA") must be signed by the parties. To the extent Company processes personal data, its binding corporate rules and the standard contract clauses shall apply, as set forth in the DPA. For standard contract clauses, Subscriber and Company agree that Subscriber is the data exporter and Subscriber's acceptance of this Agreement or applicable Order shall be treated as its execution of the standard contract clauses.

Section 3.0 Third Party Interactions

3.1 Relationship to Third Parties. In connection with Subscriber's use of the Cloud Service, at Subscriber's discretion, Subscriber may: (i) participate in Third Party promotions through the Cloud Service; (ii) purchase Third Party goods and/or services, including implementation, customization, content, forms, schedules, integration and other services; (iii) exchange data, integrate, or interact between Subscriber's Account, the Cloud Service, its application programming interface ("API") and a Third Party provider; (iv) receive additional functionality within the user interface of the Cloud Service through use of the API; and/or (v) receive content, knowledge, subject matter expertise in the creation of forms, content and schedules. Any such activity, and any terms, conditions, warranties or representations associated with such Third Party activity, shall be solely between Subscriber and the applicable Third Party. Company shall have no liability, obligation or responsibility for any such Third Party correspondence, purchase, promotion, data exchange, integration or interaction. Company does not warrant any Third Party providers or any of their products or services, whether or not such products or services are designated by Company as "certified," "validated," "premier" and/or any other designation. Company does not endorse any sites on the Internet that are linked through the Cloud Service.

3.2 Ownership. As between Subscriber and Company, Subscriber is the owner of all Third Party Content loaded into the Subscriber Account. As the owner, it is Subscriber's responsibility to make sure it meets its particular needs. Company shall not comment, edit or advise Subscriber with respect to such Third Party Content in any manner.

Section 4.0 Fees and Payment.

4.1 Fees. Subscriber shall pay to Company all fees specified in Orders. Except as otherwise stated on the Order: (i) Subscription Fees are based on Cloud Services subscriptions purchased, (ii) all Subscription Fee payment obligations are non-refundable and non-cancelable, and (iii) quantities purchased cannot be decreased during the relevant Subscription Term. The Subscription Fee for such Cloud Service subscription shall be invoiced upon commencement of the Term. Thereafter, Company shall make reasonable efforts to invoice Subscriber for each applicable Subscription Fee sixty (60) days prior to its commencement. Unless Subscriber provides written notice of termination in accordance with Section 5.1, Subscriber agrees to pay all fees. Subscriber is responsible for providing complete and accurate billing and contact information to Company and notifying Company promptly of any changes to such information.

4.2 Automatic Payments. If Subscriber is paying by credit card or Automated Clearing House ("ACH"), Subscriber shall establish and maintain valid and updated credit card information or a valid ACH auto debit account (in each case, the "Automatic Payment Method"). Upon establishment of such Automatic Payment Method, Company is hereby authorized to charge any applicable Subscription Fee using such Automatic Payment Method.

4.3 Overdue Charges. If any invoiced amount is not received by Company by the due date, without limiting Company's rights or remedies, those overdue charges may accrue late interest at the rate of 1.5% of the outstanding balance per month, or the maximum amount permitted by law, whichever is lower. Company reserves the right to condition an overdue Account's future subscription renewals and Orders on shorter payment terms than those stated herein.

4.4 Taxes. Company's fees do not include any taxes, levies, duties or similar governmental assessments of any nature, including, for example, value-added, sales, use or withholding taxes, assessable by any jurisdiction whatsoever (collectively, "Taxes"). Subscriber is responsible for paying all Taxes associated with its purchases hereunder. If Company has the legal obligation to pay or collect Taxes for which Subscriber is responsible under this Section 4.5, Company shall invoice Subscriber and Subscriber shall pay that amount unless Subscriber provides Company with a valid tax exemption certificate authorized by the appropriate taxing authority. To the extent permitted by law, Subscriber agrees to indemnify and hold Company harmless from any encumbrance, fine, penalty or other expense which Company may incur as a result of Subscriber's failure to pay any Taxes required hereunder. For clarity, Company is solely responsible for taxes assessable against Company based on its income, property and employees.

4.5 Purchases through Resellers. In the event Subscriber purchases the Cloud Services (including any renewals thereof) through an authorized reseller of Company, the terms and conditions of this Agreement shall apply and supersede any other agreement except for any terms and conditions related to fees, payment or Taxes. Such terms and conditions shall be negotiated solely by and between Subscriber and such authorized reseller. In the event Subscriber ceases to pay the reseller, or terminates its agreement with the reseller, Company shall have the right to terminate Subscriber's access to the Cloud Services at any time upon thirty (30) days' prior written notice to Subscriber unless Subscriber and Company have agreed otherwise in writing.

Section 5.0 Term and Termination

5.1 Subscription Term. This Agreement will commence on the Effective Date set forth on the Order and continues until the Offerings hereunder have expired or have been terminated (the "Subscription Term"). Thereafter, except as stated on an applicable Order, the Subscription Term shall automatically renew for additional periods equal to the expiring Subscription Term or one year, whichever is longer, unless either party has provided written notice of its intent to terminate the Cloud Service subscription not less than forty-five (45) days prior to the expiration of the then-current Subscription Term applicable to the Cloud Service subscription.

5.2 Termination. Neither party will terminate an Order for convenience during the applicable Subscription Term. Either party may terminate this Agreement (in whole or with respect to an Order or purchased from a reseller) by notice to the other party if (i) the other party commits a material breach of this Agreement and fails to cure such breach within thirty (30) days (except in the case of a breach of Section 7 in which case no cure period will apply) or (ii) the other party becomes the subject of a petition in bankruptcy or other similar proceeding. Company may, at its option, and without limiting its other remedies, suspend (rather than terminate) any Cloud Services if Subscriber breaches the Agreement (including with respect to payment of Fees) until the breach is remedied.

5.3 Effect of Termination. Upon expiration of the applicable Subscription Term, or termination of any Order for one or more Offerings or this Agreement for any reason, Subscriber's right to access, use or receive the affected Order or Order items automatically terminate. Subscriber shall immediately cease using the Order or Offering, remove and destroy all Offerings and other Company Confidential Information relating to the Order in its possession or control, and certify such removal and destruction in writing to Company. Termination or suspension of an individual Order or reseller purchase will not terminate or suspend any other Order, reseller purchase or the remainder of the Agreement unless specified in the notice of termination or suspension. If the Agreement is terminated in whole, all outstanding Order(s) and reseller purchases will terminate. If this Agreement, any Order or reseller purchase is terminated, Subscriber agrees to pay all Fees owed up to the effective date of termination.

5.4 Survival. The following portions of this Agreement shall survive termination of this Agreement and continue in full force and effect: Sections 1, 2.3, 5.3, 6, 7, 8 and 9.

Section 6.0 Representations, Warranties and Disclaimers

6.1 Representations. Each party represents that: (i) it has full right, title and authority to enter into this Agreement; and (ii) this Agreement constitutes a legal, valid and binding obligation of Subscriber, enforceable against it in accordance with its terms.

6.2 Warranties.

(a) Company warrants that Cloud Service will perform substantially in accordance with the features and functions described in the applicable Documentation. To the extent permitted by law, Subscriber's exclusive remedy and Company's entire liability for a breach of this warranty in Section 6.2(a), at its option: (i) will use commercially reasonable efforts to restore the non-conforming Cloud Services so that they comply with this warranty, or (ii) if such restoration would not be commercially reasonable, Company may terminate the Order for the non-conforming Offering and refund any prepaid fees paid for such Offering. The warranty excludes: (a) no charge Offerings or Previews, and (b) issues, problems or defects arising from Third Party Content, Subscriber Data or Content, or use of Cloud Service not in accordance with this Agreement.

(b) Company represents and warrants that all such Professional Services shall be performed in a professional and workmanlike manner in accordance with generally accepted industry standards. For any breach of this warranty in Section 6.2(b), Subscriber's exclusive remedy and Company's entire liability shall be the re-performance of the applicable Professional Services.

(c) Company makes only the limited warranties expressly stated in this Agreement, and disclaims all other warranties, including without limitation, the implied warranties of merchantability and fitness for a particular purpose. Company does not warrant or otherwise guarantee that: (i) reported errors will be corrected or support requests will be resolved to meet Subscribers' needs, (ii) any Order or Third Party Content will be uninterrupted, error free, fail-safe, fault-tolerant, or free of harmful components, or (iii) any Content, including Subscriber and Third Party Content, will be secure or not otherwise lost or damaged. Representations about Orders or features or functionality in any communication with Subscriber constitutes technical information, not a warranty or guarantee.

(d) Company's Cloud Services have not been tested in all situations under which they may be used. Subscriber is solely responsible for determining the appropriate uses for the Cloud Services and the results of such use; Company will not be liable for the results obtained through Subscriber's use of the Cloud Services. Company's Cloud Services are not specifically designed or intended for use in (i) storage of sensitive, personal information, (ii) direct life support systems, (iii) nuclear facility operations, or (iv) any other similar hazardous environment.

6.3 Intellectual Property Indemnification.

(a) *Indemnity by Company.* Company shall defend and indemnify Subscriber from any loss, damage or expense (including reasonable attorneys' fees) awarded by a court of competent jurisdiction, or paid in accordance with a settlement agreement signed by Subscriber, in connection with any Third Party claim (each, a "Claim") alleging that Subscriber's use of the Cloud Service as expressly permitted hereunder infringes upon any intellectual property rights, patent, copyright or trademark of such Third Party, or misappropriates the trade secret of such Third Party; provided that Subscriber: (x) promptly gives Company written notice of the Claim; (y) gives Company sole control of the defense and settlement of the Claim; and (z) provides to Company all reasonable assistance, at Company's expense. If Company receives information about an infringement or misappropriation claim related to the Cloud Service, Company may in its sole discretion and at no cost to Subscriber: (i) modify the Cloud Service so that it no longer infringes or misappropriates, (ii) obtain a license for Subscriber's continued use of the Cloud Service, or (iii) terminate this Agreement (including Subscriber's Cloud Service subscriptions and Account) upon prior written notice and refund to Subscriber any prepaid Subscription Fee covering the remainder of the Term of the terminated Cloud Service subscriptions. Notwithstanding the foregoing, Company shall have no liability or obligation with respect to any Claim that is based upon or arises out of (A) use of the Cloud Service in combination with any software or hardware not expressly authorized by Company, (B) any modifications or configurations made to the Cloud Service by Subscriber without the prior written consent of Company, and/or (C) any action taken by Subscriber relating to use of the Cloud Service that is not permitted under the terms of this Agreement. This Section 6.3(a) states Subscriber's exclusive remedy against Company for any Claim of infringement or misappropriation of a Third Party's intellectual property rights related to or arising from Subscriber's use of the Cloud Service.

(b) To the extent permitted by law, Subscriber shall defend and indemnify Company from any loss, damage or expense (including reasonable attorneys' fees) awarded by a court of competent jurisdiction, or paid in accordance with a settlement agreement signed by Company, in connection with any Claim alleging that the Subscriber Data or Content, or Subscriber's use of the Cloud Service in breach of this Agreement, infringes upon any intellectual property rights, patent, copyright or trademark of such Third Party, or misappropriates the trade secret of such Third Party; unless applicable laws prohibit public entities from such indemnification and provided that Company (x) promptly gives Subscriber written notice of the Claim; (y) gives Subscriber sole control of the defense and settlement of the Claim; and (z) provides to Subscriber all reasonable assistance, at Subscriber's expense. This Section 6.3(b) states Company's exclusive remedy against Subscriber for any Claim of infringement or misappropriation of a Third Party's intellectual property rights related to or arising from the Subscriber Data or Subscriber's use of the Cloud Service.

6.4 Limitation of Liability.

(a) **The entire, aggregate liability of Company is limited to the amount of Subscription Fees paid by Subscriber to Company pursuant to this applicable Order during the twelve (12) months prior to the first act or omission giving rise to the liability. This does not apply to the Company's intellectual property indemnification obligations in Section 6.3.**

(b) **Under no circumstances will Company be liable for (i) any indirect, incidental, consequential, special exemplary or punitive damages, loss of production or data, interruption of operations or lost revenue or profits, even if such damages were foreseeable, or (ii) any Previews or No-Charge Offerings.**

(c) **Company will not be liable for any claim in connection with this Agreement if such claim is brought more than two (2) years after the first event giving rise to such claim is or should have been discovered by Subscriber.**

(d) **The limitations and exclusions of this Section 6.4 apply to: (i) benefit of Company and its affiliates, and their respective officers, directors, licensors, subcontractors and representatives, and (ii) regardless of the form of action, whether based in contract, statute, tort (including negligence), or otherwise.**

(e) **The foregoing limitations and exclusions will not apply to the extent that liability cannot be limited or excluded in accordance with applicable law. Nothing in this Section shall limit Subscriber's payment obligations under Section 4.**

Section 7.0 Confidentiality

7.1 Definition of Confidential Information. "Confidential Information" means any non-public information and/or materials maintained in confidence and disclosed in any form or medium by a party under this Agreement (the "Disclosing Party") to the other party (the "Receiving Party") that is identified as confidential, proprietary or that a reasonable person should have known, was the Confidential Information of the other party given the nature of the circumstances or disclosure, or as otherwise defined as Confidential Information, trade secrets, and proprietary business information as provided under applicable state law and exempted from disclosure by the applicable statute. Confidential Information may include without limitation: information about clients, services, products, software, data, technologies, formulas, processes, know-how, plans, operations, research,

personnel, suppliers, finances, pricing, marketing, strategies, opportunities and all other aspects of business operations and any copies or derivatives thereof. Confidential Information includes information belonging to a Third Party that may be disclosed only under obligations of confidentiality. Notwithstanding the foregoing, Confidential Information shall not include information that Receiving Party can demonstrate: (a) is or becomes generally known to the public without breach of any obligation by Receiving Party; (b) is received from a Third Party without breach of any obligation owed to Disclosing Party; or (c) is or has been independently developed by Receiving Party without the benefit of Confidential Information.

7.2 Protection of Confidential Information. The Receiving Party agrees that it shall: (i) use the Confidential Information solely for a purpose permitted by this Agreement, (ii) use the same degree of care as Receiving Party uses with its own Confidential Information, but no less than reasonable care, to protect Confidential Information and to prevent any unauthorized access, reproduction, disclosure, or use of any of Confidential Information; and (iii) restrict access to the Confidential Information of the Disclosing Party to those of its Affiliates and its and their employees, contractors and agents who need such access for purposes consistent with this Agreement and who are prohibited from disclosing the information by a contractual, legal or fiduciary obligation no less restrictive than this Agreement. Receiving Party shall not use, reproduce, or directly or indirectly allow access to the Confidential Information except as herein provided or export Confidential Information to any country prohibited from obtaining such information under any applicable laws or regulations.

7.3 Compelled Disclosure. If Receiving Party is required to disclose any Confidential Information to comply with law, to the extent legally permitted, Receiving Party shall: (a) give the Disclosing Party reasonable prior written notice to permit Disclosing Party to challenge or limit any such legally required disclosure; (b) disclose only that portion of the Confidential Information as legally required to disclose; and (c) reasonably cooperate with Disclosing Party, at Disclosing Party's request and expense, to prevent or limit such disclosure.

7.4 Records Requests. To the extent permitted by law, Subscriber shall treat as exempt from treatment as a public record, and shall not unlawfully disclose in response to a request made pursuant to any applicable public records law, any of Company's Confidential Information. Upon receiving a request to produce records under any applicable public records or similar law, Subscriber shall immediately notify Company and provide such reasonable cooperation as requested by Company and permitted by law to oppose production or release of such Company Confidential Information.

7.5 Remedies. Receiving Party shall promptly notify Disclosing Party if it becomes aware of any unauthorized use or disclosure of Disclosing Party's Confidential Information and agrees to reasonably cooperate with Disclosing Party in its efforts to mitigate any resulting harm. Receiving Party acknowledges that Disclosing Party would have no adequate remedy at law should Receiving Party breach its obligations relating to Confidential Information and agrees that Disclosing Party shall be entitled to enforce its rights by obtaining appropriate equitable relief, including without limitation a temporary restraining order and an injunction.

Section 8.0 Export Control Compliance

8.1 General. Subscriber shall comply with all applicable sanctions, embargoes and (re-)export control regulations, and, in any event, with those of the European Union, the United States of America and any locally applicable jurisdiction(s) (collectively "Export Regulations").

8.2 Checks. Prior to any transfer of Offerings (including all kinds of technical support and/or technology) to a Third Party, Subscriber shall check and ensure by appropriate measures that (i) there will be no infringement of an embargo imposed by the European Union, the United States of America and/or by the United Nations by such transfer, by brokering of contracts concerning Offerings or by provision of other economic resources in connection with Offerings, also taking into account any prohibitions to circumvent these embargos (e.g., by undue diversion); (ii) such Offerings are not intended for use in connection with armaments, nuclear technology or weapons, if and to the extent such use is subject to prohibition or authorization, unless required authorization has been obtained; (iii) the regulations of all applicable sanctioned party lists of the European Union and the United States of America concerning the trading with entities, persons and organizations listed therein are considered and (iv) Offerings within the scope of the respective Annexes to EU Regulations Nos. 833/2014 and 765/2006 as well as of Annex I to EU Regulation No. 2021/821 (in their current versions, respectively), will not, unless permitted by EU law, be (a) exported, directly or indirectly (e.g., via Eurasian Economic Union (EAEU) countries), to Russia or Belarus, or (b) resold to any third party business partner that does not take a prior commitment not to export such Goods and Services to Russia or Belarus.

8.3 Non-Acceptable Use of Offerings and Cloud Services. Subscriber shall not, unless permitted by the Export Regulations or respective governmental licenses or approvals, (i) download, install, access or use the Cloud Services, Content and/or Documentation from or in any location prohibited by or subject to comprehensive sanctions (currently Cuba, Iran, North Korea, Syria, and the Crimea, Donetsk and Luhansk regions of Ukraine) or to license requirements according to the Export Regulations; (ii) grant access to, transfer, (re-)export (including any 'deemed (re-)exports'), or otherwise make available the Cloud Services, Content and/or Documentation to any individual or entity designated on a sanctioned party list of the Export Regulations; (iii) use the Cloud Services, Content and/or Documentation for any purpose prohibited by the Export Regulations (e.g. use in connection with armaments, nuclear technology or weapons); (iv) upload to the Cloud Services platform any Subscriber Data or Content unless it is non-controlled (e.g. in the EU: AL = N; in the U.S.: ECCN = N or EAR99); (v) facilitate any of the aforementioned activities by any user. Subscriber shall provide any user(s) with all information necessary to ensure compliance with the Export Regulations.

8.4 Information. Upon request by Company, Subscriber shall promptly provide Company with all information pertaining to user(s), the intended use and the location of use of the Offerings.

8.5 Export Control Indemnification. Subscriber shall indemnify and hold harmless Company from and against any claim, proceeding, action, fine, loss, cost and damages arising out of or relating to any noncompliance with (re) Export Regulations by Subscriber and/or user(s) and/or Subscriber's Third Parties business partner re-exporting Offerings in violation of embargoes or sanctions referred to in 8.2 above, and Subscriber shall compensate Company for all losses and expenses resulting thereof.

8.6 Reservation. Company shall not be obligated to fulfill this Agreement if such fulfillment is prevented by any impediments arising out of national or international foreign trade or customs requirements or any embargoes or other sanctions. Subscriber acknowledges that Company may be obliged under the Export Regulations to limit or suspend access by Subscriber and/or user(s) to the Offerings.

Section 9.0 Miscellaneous

9.1 Compliance with Laws. Each party will comply with all laws and applicable government rules and regulations insofar as they apply to such party in its performance of this Agreement's rights and obligations.

9.2 Publicity. Company is permitted to: (i) include Subscriber's name and logo in accordance with Subscriber's trademark guidelines; and (ii) list the Cloud Services and Professional Services selected by Subscriber, in public statements and client lists. Subscriber agrees to participate in press releases, case studies and other collateral using quotes or requiring active participation, the specific details of which shall be subject to mutual consent.

9.3 Relationship of the Parties. Company is performing pursuant to this Agreement only as an independent contractor. Company has the sole obligation to supervise, manage, contract, direct, procure, perform or cause to be performed its obligations set forth in this Agreement, except as otherwise agreed upon by the parties. Nothing set forth in this Agreement shall be construed to create the relationship of principal and agent between Company and Subscriber. Company shall not act or attempt to act or represent itself, directly or by implication, as an agent of Subscriber or its affiliates or in any manner assume or create, or attempt to assume or create, any obligation on behalf of, or in the name of, Subscriber or its affiliates.

9.4 Waiver. No failure or delay by either party in enforcing any of its rights under this Agreement shall be construed as a waiver of the right to subsequently enforce any of its rights, whether relating to the same or a subsequent matter.

9.5 Assignment. This Agreement will extend and be binding upon the successors, legal representatives, and permitted assignees of the parties.

However, Subscriber shall have no right to transfer, assign or sublicense this Agreement or any of its rights, interests or obligations under this Agreement to any Third Party and any attempt to do so shall be null and void. Company shall have the full ability to transfer, assign or sublicense this Agreement or any of its rights, interests or obligations under this Agreement.

9.6 Force Majeure. Subject to the limitations set forth below and except for fees due for Orders rendered, neither party shall be held responsible for any delay or default, including any damages arising therefrom, due to any act of God, act of governmental entity or military authority, explosion, epidemic casualty, flood, riot or civil disturbance, war, sabotage, unavailability of or interruption or delay in telecommunications or Third Party services, failure of Third Party software, insurrections, any general slowdown or inoperability of the Internet (whether from a virus or other cause), or any other similar event that is beyond the reasonable control of such party (each, a "Force Majeure Event"). The occurrence of a Force Majeure Event shall not excuse the performance by a party unless that party promptly notifies the other party of the Force Majeure Event and promptly uses its best efforts to provide substitute performance or otherwise mitigate the force majeure condition.

9.7 Entity, Governing Law, Notices and Venue. All notices, instructions, requests, authorizations, consents, demands and other communications hereunder shall be in writing and shall be delivered by one of the following means, with notice deemed given as indicated in parentheses: (a) by personal delivery (when actually delivered); (b) by overnight courier (upon written verification of receipt); (c) by business mail (upon written verification of receipt); or (d) except for notice of indemnification claims, via electronic mail to Subscriber at the e-mail address maintained on Subscriber's Account and to Company at notice@brightlysoftware.com. Any dispute arising out of or in connection with this Agreement will be resolved as set forth in the table below: The Company entity entering into this Agreement, the address to which notices shall be directed under this Agreement and the law that will apply in any dispute or lawsuit arising out of or in connection with this Agreement shall depend upon where Subscriber is domiciled:

(a) In the **United States and all other domiciles not otherwise mentioned**, the Company entity is Brightly Software, Inc., a Delaware corporation, and the notice address shall be Corporate Trust Center, 1209 Orange Street, Wilmington, DE 19801 USA, Attn: Brightly Software. The applicable law will be the laws of the state of Delaware, USA; any dispute arising out of or in connection with this Agreement will be subject to the jurisdiction of the courts of Delaware, USA unless Subscriber is a public entity in which case this Agreement shall be governed by the state law where it is domiciled. Each party hereby irrevocably submits itself to the personal jurisdiction of the relevant court for any such disputes.

(b) In **Canada**, the Company entity is Brightly Software Canada, Inc., an Ontario corporation, and the notice address shall be 1577 North Service Road East, Oakville, Ontario, Canada L6H 0H6 Canada, Attn: Brightly Software. The applicable law will be the laws of Ontario; any dispute arising out of or in connection with this Agreement will be subject to the jurisdiction of the courts of Ontario, Canada, without regard to the principles of conflicts of law.

(c) In the **United Kingdom or a country in Europe**, the Company entity is Brightly Software Limited, a limited company in England, the notice address shall be Pinehurst 2, Pinehurst Road, Farnborough, Hampshire, GU14 7BF Attn: Brightly Software. The applicable law will be the laws of England; any dispute arising out of or in connection with this Agreement will be finally resolved by binding arbitration in accordance with the ICC Rules. The seat of arbitration will be London, England.

(d) In **Australia, New Zealand, a country in Asia/Oceania**, the Company entity is Brightly Software Australia Pty Ltd, a proprietary limited company in Australia, and the notice address shall be Level 9, 257 Collins Street, Melbourne, VIC 3000 Australia, Attn: General Counsel. The applicable law will be the laws of Victoria, Australia; any dispute arising out of or in connection with this Agreement will be finally resolved by binding arbitration in accordance with the ICC Rules. The seat of arbitration will be Melbourne, Victoria, Australia.

If a dispute is subject to arbitration as described in this Section 9.7, arbitrators will be appointed in accordance with the ICC Rules, the language used for proceedings will be English, and orders for the production of documents will be limited to the documents on which each party specifically relies in its submission. Nothing in this Section 9.7 will restrict the right of the parties to seek interim relief intended to preserve the status quo or interim measures in any court of competent jurisdiction. Notwithstanding the foregoing, to the extent permissible under applicable law and to the extent it would not result in the invalidity or inapplicability of this Section 9.7, the parties agree that Company, at its sole discretion, may bring an action in the courts of the jurisdiction(s) where the Offering is being used or Subscriber has its place of business, to: (i) enforce Brightly IP rights, or (ii) for the payment of amounts due for any Offering.

9.8 Company Affiliates and Subcontractors. Company or its Affiliates may exercise Company's rights and fulfill Company's obligations under this Agreement. Company may use resources in various countries to provide Offerings, including unaffiliated subcontractors. Company remains responsible for its obligations under this Agreement.

9.9 Interpretation of Agreement. The Section headings contained in this Agreement are solely for the purpose of reference, are not part of the agreement of the parties, and shall not affect in any way the meaning or interpretation of this Agreement. Any reference to any federal, state, local or foreign statute or law shall be deemed to refer to all rules and regulations promulgated thereunder, unless the context requires otherwise.

9.10 No Third Party Beneficiaries. No person or entity not a party to the Agreement shall be deemed to be a Third Party beneficiary of this Agreement or any provision hereof.

9.11 Severability. The invalidity of any portion of this Agreement shall not invalidate any other portion of this Agreement and, except for such invalid portion, this Agreement shall remain in full force and effect.

9.12 Entire Agreement. This Agreement, including any applicable Order, is the entire agreement between Subscriber and Company regarding Subscriber's use of the Cloud Services and supersedes all prior and contemporaneous agreements, proposals or representations, written or oral, concerning its subject matter. No modifications, amendment or waiver of any provision of this Agreement shall be effective unless executed in writing by means of manual signatures or electronic signatures or via an online mechanism. The parties agree that any term or condition stated in any purchase order or in any other order documentation is void. In the event of any conflict or inconsistency between the documents, the order of precedence shall be (1) the applicable Order, (2) any schedule or addendum to this Agreement, and (3) the content of this Agreement.

9.13 Anti-Corruption. Neither party has received or been offered any illegal or improper bribe, kickback, payment, gift, or thing of value from an employee or agent of the other party in connection with this Agreement. If Subscriber learns of any violation of the above restriction, Subscriber shall immediately notify Company.

9.14 Cooperative Use. With Subscriber's approval, the market research conducted by Subscriber during its selection process for the Cloud Services may be extended for use by other jurisdictions, municipalities, and government agencies of Subscriber's state. Any such usage by other entities must be in accordance with ordinance, charter, and/or procurement rules and regulations of the respective political entity.

9.15 Modifications. Company may revise the terms of this Agreement from time-to-time and shall post the most current version of this Agreement on its website. If a revision meaningfully reduces Subscriber's rights, Company shall notify Subscriber.

9.16 USA Government Subscribers. The Cloud Service and its Documentation and Content are "Commercial Items," "Commercial computer software" and "Computer software documentation" as defined in the Federal Acquisition Regulations ("FAR") and Defense Federal Acquisition Regulations Supplement ("DFARS"). Pursuant to FAR 12.211, FAR 12.212, DFARS 227.7202, as revised, the U.S. Government acquires the Cloud Service and its Documentation and Content subject to the terms of this Agreement. Company will not be required to obtain a security clearance or otherwise be involved in accessing U.S. Government classified information.

Section 10.0 Definitions

As used in this Agreement, the following terms shall have the meanings set forth below:

10.1 "Access Credentials" means any user's name, identification number, password, license or security key, security token, PIN or other security code,

method, technology or device used, alone or in combination, to verify an individual's identity and authorization to access and use the Cloud Service.

10.2 "Account" means Subscriber's specific account where Subscriber subscribes to access and use Cloud Service(s).

10.3 "Account User" means each person or entity that access an Offering under this Agreement, whether such access is given by Subscriber, by Company at Subscriber's request, or by a third party authorized by Subscriber.

10.4 "Affiliate" means, with respect to any legal entity, any other legal entity that (i) controls, (ii) is controlled by or (iii) is under common control of such legal entity. A legal entity shall be deemed to "control" another legal entity if it has the power to direct or cause the direction of the management or policies of such legal entity, whether through the ownership of voting securities, by contract, or otherwise.

10.5 "Brightly IP" means all patents, patent applications, copyrights, trade secrets and other intellectual property rights in, related to, or used in the provision or delivery of any Order or technical solution underlying an Order, and any improvement, modification, or derivative work of any of the foregoing.

10.6 "Cloud Service" or "Cloud Services" means Company's branded offerings of cloud-based online services and associated cloud-based API (application programming interfaces) made available by Company, as updated, enhanced or otherwise modified from time-to-time. Cloud Service excludes Subscriber Data and Third Party Content.

10.7 "Content" means audio and visual information, documents, content, materials, products and/or software.

10.8 "Documentation" means the user instructions, learning material, functional or technical documentation, and API information relating to the Cloud Service made available to Subscriber by Company in print, online or embedded as part of help functions, which may be updated from time to time.

10.9 "Brightly Software" or "Company" means Brightly Software, Inc., Brightly Software Canada Inc., Brightly Software Australia Pty Ltd, Brightly Software Limited, Facility Health, Inc. and Energy Profiles Limited together with their affiliates, successors and assigns.

10.10 "Order" means Company's ordering document, online purchasing form, statement of work, or end user license agreement (EULA) used to order Company Cloud Services and/or Professional Services. By entering into an Order, Affiliate(s) agree to be bound by the terms of this Agreement as if an original party.

10.11 "Offering" means an individual offering made available by Company and identified on an Order, which consists of Cloud Services, Professional Services or a combination of any of the foregoing, and any associated maintenance and support services and Documentation.

10.12 "Previews" means Cloud Service or functionality that may be made available to Subscriber to try at its option at no additional charge that is clearly designated as beta, preview, pre-release, pilot, limited release, early adoption, non-production, sandbox, evaluation or a similar description.

10.13 "Professional Service" means the training, technical, consulting and/or other services, excluding Cloud Services, to be performed by Company that are ordered by Subscriber on an Order or provided without charge (if applicable).

10.14 "Subscriber" means the legal entity identified on the Account, on behalf of itself and its Affiliates and its and their employees, consultants, and (sub)contractors.

10.15 "Subscriber Data" means all data, information and other content provided by or on behalf of Subscriber, including that which the Account Users input or upload to the Cloud Service.

10.16 "Subscriber-Hosted Software" means Company's suite of cloud software applications, as updated, enhanced or otherwise modified from time-to-time that are: (i) ordered by Subscriber on an Order or provided without charge (if applicable) and made available by Company, including mobile components, and (ii) granted a non-exclusive and non-transferable license (with no right to sublicense) to install and use software for the Term.

10.17 "Subscription Fee" means the fee invoiced to Subscriber by Company prior to the Subscription Term, which is required to be paid in order for Subscriber to be permitted to access and use the Cloud Service.

10.18 "Third Party" means a party other than Subscriber or Company.

10.19 "Third Party Content" means Content, applications and services owned or controlled by a Third Party and made available to Subscriber by the Third Party through or in connection with Cloud Services.