

**Version Date: 19th June 2024**

## **Agreement**

### **1. What this agreement is about;**

1. This agreement describes how the User may use Bright software products.
2. In this agreement, “Bright software products” refers to the on-line human resources (HR), Health and Safety and payroll software and the “Services”.
3. “Services” refers to the provision of the Provider’s website and other digital services, associated software, and other services provided by the Provider in accordance with these Terms of Use, together with the characteristics and features as described at [www.brighthr.com](http://www.brighthr.com) from time to time The User understands and agrees that it cannot use a Service unless it is licensed by the Provider to use and has paid the applicable fee to use Bright software products.
4. “Delegated” Users are not a party to the agreement but are provided with access with the Users consent, such access can only be provided to enhance the performance of the Services and reasonable enjoyment of the User for the purpose of lawful, legitimate use of the software and the facilitation of the Services. The Provider can withdraw access to any Delegated Users at any time should the use of delegation not align with the purpose of the agreement.
5. “Contracting Entity” refers to the legal person pursuant to whose contract with the Provider the User is authorised to use Bright Software Products.
6. The Provider may change the terms and conditions of this agreement, and its privacy policy, at any time. The Provider will make reasonable efforts to communicate any changes to the User via a notification in Bright software products, or by sending an email to the User, but it is up to the User to ensure that it regularly checks, reads, understands and agrees to the most recent version of this agreement, and the Provider’s privacy policy, as it will be deemed to accept all changes if the User continues to access and use Bright software products.

### **2. Who this agreement is between;**

This agreement is between:

1. “the User”- the person or organisation authorised to use Bright software products.
2. “the Provider”- BrightHR Ltd, company registration number 09283467, Vat number GB927524217 and whose registered office is situated at The Peninsula, Victoria Place, Manchester, M4 4FB.

By entering into this agreement, both the User and the Provider agree to be bound by its terms.

### **3. How the User accepts this agreement, and when this agreement starts;**

1. The User accepts the terms and conditions of this agreement when they log into the system.
2. This agreement will continue until terminated in accordance with clause 16 below.

3. If the User is not willing to accept these terms and conditions and therefore decides not to enter into this agreement, it should contact the Provider and is not permitted to use Bright software products or any of the Services.

## **Bright Software**

### **4. The User's rights to use Bright software products, its obligations and cooling off;**

1. If the User accepts this agreement and pays the relevant fees, then the Provider gives to the User the right to use Bright software products in the way described in this agreement, and in accordance with any service announcements, administrative messages, sales support literature, and other information from the Provider. The User must not use Bright software products in any other way.
2. The User shall only use Bright software products for internal business management Health and Safety, HR and payroll purposes, and shall input its own employee data information in order to assist it in managing that information. It is also authorised to allow its own employees, or Delegated Users, to input their own information.
3. Bright software products enables the User to submit content which is then stored in a document library. Such content will, generally, comprise employee data information, and will include such matters as their forename, surname, start date, salary, bank details (for payment of salary) and job title. The User retains ownership of any Intellectual Property Rights that it holds in that content. However, access to this information is dependent upon the User complying with these terms and conditions, and ensuring that the applicable fee has been paid in full. The Provider will use all reasonable endeavours to implement technical and appropriate security measures to protect the information from loss or damage.
4. The User cannot transfer its rights under this agreement to use Bright software products (or any of the Services) to any other person or organisation.
5. The User must comply with all applicable laws in respect of its use of Bright software products, and the User must also ensure that the content of any data, however inputted into Bright software products does not, and will not, result in any injury, damage or harm to the Provider or any third party (including, without limitation, defamation or breach of confidentiality). Such content must not contain anything which is unlawful, obscene, indecent or immoral or which promotes or condones any illegal or unlawful activities. It is also a condition of use that the User does not upload content (for example music or videos) for which it does not hold the copyright.
6. The User acknowledges that although the Provider forms part of a group of companies whose core business is the offering of professional HR, Health and Safety and payroll advice Bright software products are not a substitute for seeking any employment law advice, health and safety advice, payroll advice or tax advice.
7. The User may purchase or subscribe to third party complimentary products or software services that integrate or work with Bright software products ("Additional Services"). It is The User's responsibility to decide whether or not to access and use the Additional Services, and if the User chooses to do so, it must agree to the separate applicable terms and conditions presented to it by the Provider, or the third party, for those Additional Services. If the User utilises Additional Services, the User may permit access,

via delegation, to individuals for the purpose of lawful, legitimate use of the Services and software. If there is a conflict between any of the terms of this agreement and the Additional Services terms, then the Additional Services terms will prevail in relation to the User's use of the Additional Services. The Provider is not responsible for any issue with any third-party technology, authorised delegation, information and/or services and will not be liable for those issues. The Provider may withdraw access to such third party technology, delegation, information or services via Bright software products at any time and without notifying the User.

8. If the User is an 'individual' within the meaning of the Consumer Credit Act 2006 then they are entitled to a 'cooling off' period. A User falls within the definition of an 'individual' and is thereby entitled to a 'cooling off' period, if they are (1) a natural person (i.e an individual) (2) a partnership consisting of two or three persons not all of whom are bodies corporate or (3) an unincorporated body of persons which does not consist entirely of bodies corporate and is not a partnership. The 'cooling off' period will entitle such a User to cancel their use of Bright software products and release them from any obligation to pay a fee, provided such notification is received by the Provider within 14 working days from when they accept the terms of this agreement and become a User. In those circumstances the User may become liable to pay the Provider a fee for the Services used, such fee to be agreed between the Provider and the User or accepted by the User at the point of purchase.

#### **5 (a) No longer in use**

#### **5. (b) Setting up a Bright software products account on the basis of a fixed term contract;**

1. The Provider will give the User its sign-in details to enable it to use Bright software products (the "sign-in information") as soon as the User has registered with the Provider and has accepted these terms and conditions of use.
2. Following registration, the Provider will provide access to Bright software products until either the User or the Provider end this agreement either in one of the ways set out in clause 18 or by virtue of the operation of the terms of the contract signed by the Provider and the User. If at any time the Provider charges the User an incorrect fee, then the Provider reserves the right to rectify its invoice and claim the correct payment from the User which the User agrees to pay.

#### **5.(c) Setting up a Bright software products account on the basis of a free Lite Product agreement:**

1. The Provider will give the User its sign-in details to enable it to use Bright software products (the "sign-in information") as soon as the User has registered with the Provider and has accepted these terms and conditions of use.

#### **6. Use of Bright software products;**

1. The User is solely responsible for obtaining and maintaining its internet and network connections and any associated connectivity problems are its own responsibility.
2. The Provider will take reasonable steps to make sure that Bright software products are free from viruses but it cannot guarantee this. The Provider recommends that the User operates with its own virus-protection software as the Provider cannot be held

responsible for any loss or damage caused by any viruses or other harmful technology that may infect the User's computer systems, data or other material owned by it.

3. The Provider cannot guarantee that Bright software products will be compatible with the User's web browser or computer set-up or that the User's access to Bright software products will be uninterrupted or error free (as this may on occasions be beyond the Provider's control).
4. The User is responsible for controlling access to its own Bright software products account. The User should not allow anyone else to use its sign in information and the User should also change its password at regular intervals.
5. From time to time the Provider may temporarily suspend access to Bright software products for maintenance, repairs or other reasons. The Provider will try to do this outside normal business hours and provide the User with notice in advance but this might not always be possible.

#### **7. Adding Services to the User's Bright software products Account;**

1. To add Additional Services to Bright software products, the User must pay the applicable fee for each Additional Service in accordance with the terms and conditions of this agreement.
2. The User can add Services via its Bright software products customer account portal. If the User wishes to add Additional Services to its Bright software products account but experiences difficulty, then the User must contact The Provider and must forthwith cease the addition of such Additional Services until the Provider has successfully cured the difficulty. When adding an Additional Service to its Bright software products account, the applicable fee payable) will be amended to reflect such Additional Service(s). To discuss any Additional Services the User must contact The Provider via email, telephone or web chat.

#### **Legal**

#### **8 (a) Over-utilisation of BrightHR Payroll**

1. In the event that the User and / or the Contracting Entity utilises BrightHR Payroll for a higher number of personnel than those declared on the Services Agreement or Additional Services Agreement in any given pay run, each payment will be additionally charged at the same per payee rate as is chargeable for the agreed contracted volumes. In such circumstances, BrightHR will issue the User and / or the Contracting Entity with a retrospective invoice for the additional sums due.

#### **8. (b) Fees for those Users who pay on a fixed term contract;**

1. Fees for using Bright software products are set out in the contract, signed when the User agreed to purchase the Services or accepted by the User at point of purchase.

#### **9. What happens if The User is in Default?**

1. If, at any time, the User is in breach of any term of this agreement, or if the Provider does not receive payment from it for the use of Bright software products (including, without limitation, any of the Services it has subscribed to receive), then without prejudice to any other right or remedy which the Provider may have, the Provider is entitled to

suspend or limit the User's use and any employees' self - service use of Bright software products (including all Services). The Provider may at its sole discretion offer the User a grace period during the defaulted payment period and has the right to suspend the service at the end of this period if payment has not been made. The Provider will notify the User of any payment related defaults.

2. Any suspension of the User's use of Bright software products shall continue until such time that the breach in question has been remedied to the Provider's reasonable satisfaction and/or the Provider have received payment from the User in full. Any failure by the User to remedy a breach of this agreement, or to pay any amount due to the Provider, shall (without prejudice to any other right or remedy which the Provider may have) entitle it to terminate this agreement in accordance with clause 16 below. The Provider will notify the User by email of any intention to terminate the agreement.
3. The User shall indemnify and hold harmless the Provider from and against all Claims and Losses arising from (a) a breach of any part of this Agreement which results in loss, damage, liability, injury to the Provider and/or its employees, consultants, or other representatives and third parties, (b) infringement of third party Intellectual Property Rights or third party losses by reason or arising out of the User's access and use of Bright software products outside of that expressly permitted by this Agreement, or (c) any information or other materials supplied to the Provider by the User within or outside the scope of this Agreement. "Claims" shall mean all demands, claims, proceedings, penalties, fines and liability (whether criminal or civil, in contract, tort or otherwise) and "Losses" shall mean all losses including without limitation financial losses, damages, legal costs and other expenses of any nature whatsoever.

#### **10. Restrictions on The User's use of Bright software products;**

1. The User must not introduce any viruses or harmful technology to Bright software products.
2. The User must not access any Bright software products and Services when they have not paid the applicable fee to do so. If the User engages in such unauthorised usage, the Provider is entitled to charge the User a fee at the appropriate rate of the Bright software products and/or Services in force at the time. If the User does not pay the additional charges, the Provider has the right to suspend all the User's services until the breach has been remedied to the Provider's reasonable satisfaction.
3. The User must not try to affect the availability of Bright software products to other registered users.
4. Except as expressly permitted in this agreement, the User must not give anyone else any right (of any kind) to use or benefit from Bright software products in any way, or provide Bright software products to others, unless others are entitled to use Bright software products within the User's business and are added to Bright software products as a user of the Service. The User can provide delegated access to group companies of the Provider. The User is responsible, without limitation, for the actions of the authorised users and will use all endeavours to ensure those with authorised access comply with the terms and conditions. The User will indemnify the Provider against any and all claims, or loss, arising from delegated access, with the exception of when it's delegated to a Group employee.

5. The User must not use Bright software products to develop its own software. Specifically, the User must not use or copy all or any part of Bright software products 'graphical user interface', 'operating logic' or 'database structure' for it to be used as part of, or to develop, any software or other product or technology.
6. The User must not make any use of the Services which damages or is likely to damage the Provider's business or reputation, the availability or integrity of Bright software products, or which causes or threatens to cause the Provider to incur any legal, tax or regulatory liability.

#### **11. Support;**

1. The Provider aims to provide the User with 24-hour support 7 days a week through the self-help tools (although there may be times where the Provider is unable to do so for reasons outside its control). The Provider will also provide support by [email] and [telephone] during working hours Monday to Friday between the hours of 8am and 6pm GMT. In the event that the Provider is required to access the User's system to provide such support the User duly authorises such access.
2. The Provider reserves the right to change how it provides support to the User (and if any applicable charges will become payable) by posting a notification on Bright software products or emailing the User with details of the changes. The Provider will aim to give the User as much advance notice as possible of these changes.
3. The Provider will not at any time however, give the User technical support or other assistance for any hardware, third-party software or other equipment issue on which Bright software products have been installed.

#### **12. Intellectual Property Rights;**

1. Although the User has the right to use Bright software products as described in clause 4, the User, and any Delegated Users, will not own any of the Intellectual Property Rights in Bright software products. The Provider (or the third party from whom the Provider obtains the rights if the Provider is not the owner) will continue to own the Intellectual Property Rights in Bright software products, including any software the Provider provides to replace all or part of Bright software products. The only rights the User will have to Bright software products are as set out in this agreement.
2. The Provider (or its licensors) owns the rights to Bright software products and any related logos or images. By allowing the User to use Bright software products, the Provider does not give the User ownership of any of those rights, logos or images.
3. The User undertakes not to use the Providers name or brand in any promotion or marketing or announcement without its prior written consent.

#### **13. Obligations on The Provider;**

(a) Whilst the Provider aims to provide uninterrupted use of Bright software products, this cannot be guaranteed. The Provider will not be responsible for any failure to perform its obligations under this agreement, in the event that it is prevented from providing a continuous service due to circumstances beyond its control. Wherever possible, the Provider will provide an advance warning notification on Bright software products or by email of any known or planned

interruptions and the Provider will use its best endeavours to keep any interruption to as short as possible.

(b) The Provider gives no warranties to the User in respect of the following matters:

1. That Bright software products will meet the User's own needs;
2. That the User will be able to use Bright software products in any particular way;
3. That the User will get particular outputs from Bright software products;
4. That the standard of the results the User derives from using Bright software products will meet a particular standard; or
5. that, where the User uses the Provider's technical support services, the Provider will be able to correct or remedy the User's particular problem

(c) The User cannot rely on any statement or representation made by any party prior to the registration of the User as a user of Bright software products.

(d) The Provider agrees that it will use its reasonable skill and care to provide the Services to the User under this agreement.

#### **14. Providers Responsibilities;**

(a) The Providers liability in contract, tort (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise arising under or in connection with this agreement will (if applicable) be limited to an amount equal to the total of all fees paid or payable by the User for its use of Bright software products in the 1-month period in which the claim arose.

(b) The Provider will not be responsible, whether in contract, tort (including negligence or breach of statutory duty), misrepresentation, and restitution or otherwise for any of the following in consequence of its use of the providers software products (even if the Provider knew or should have known there was a possibility that the User could suffer or incur such loss or damage):

1. Loss of profit;
2. Loss of business or revenue;
3. Depletion of goodwill or similar losses;
4. Loss of use or loss of or damage to data/information inputted by the User into Bright software products;
5. Any interruption to the User's business or damage to information, however that interruption or damage is caused;
6. Any loss or damage which the Provider could not have reasonably foreseen at the time the User engaged the Provider including, without limitation, any special, indirect or consequential loss or damage.

(c) Nothing in this agreement will exclude or limit the liability of either the User or the Provider in respect of:

1. Fraud
2. Death of or personal injury to any person as a result of negligence

3. Any other matter which cannot be excluded or limited under applicable law including the European Union or a member state of the European Union.
4. Any infringement of the General Data Protection Regulation 2016/679 (GDPR)

**15. Force Majeure;**

Neither party shall be liable for any default except for any obligations to make payments owed under the agreement arising due to act of God, war, any industrial action including strike and lockout, fire, flood, drought, tempest or other natural disaster, or any other event beyond either party's reasonable control.

**16. Termination;**

(a) No longer used

(b) No longer used

**(c) Termination generally;**

1. If either the User or the Provider discover that there has been a breach of the terms of this agreement by then it can:-
  1. Require the party in breach by notice in writing to rectify it within 30 days of the date of service of such notice.
  2. If the breach is not rectified within that period to terminate this agreement by giving written notice that this agreement will terminate forthwith.
2. If either party shall;
  1. become insolvent or bankrupt or
  2. have a receiving order or administration order made against it or compound with its creditors, or
  3. being a corporation commences to be wound up (not being a member's voluntary winding up for the purposes of reconstruction or amalgamation), or
  4. carries on its business under an administrator or administrative receiver for the benefit of its creditors or any of them then the other party shall have the right forthwith by notice in writing to that party or to the administrator, administrative receiver or to the liquidator or to any person in whom this agreement shall have become vested to terminate this agreement, to terminate this agreement.
    1. No matter how this agreement ends, the information the User stores in Bright software products remains the User's information and the User can access it in a format provided by Bright software products before the end of the agreement. After this agreement ends, the information the User may have stored in Bright software products will be retained for a period of 6 years.

(d) This Agreement shall continue and automatically after the initial contract period for the same period unless terminated by either party giving a minimum of 90 days' written notice to expire at the end of the initial contract period or any subsequent renewal period.

(e) BrightHR shall be entitled, at the end of the initial contract period and any subsequent renewal period, to increase the fees under the agreement by up to 7% for the following contract period.

#### **17. Miscellaneous;**

1. If any provision of this Agreement is held illegal or unenforceable such provision shall be severed and shall be inoperative, and, provided that the fundamental terms and conditions of this agreement remain legal and enforceable, the remainder of this agreement shall remain operative and binding on the Parties
  1. If the User or the Provider fails to, or delays in, exercising any rights under this agreement, that will not mean that those rights cannot be exercised in the future.
  2. This agreement and the documents the Provider refers to above (including the contract for those users who use Bright software products by virtue of that written contract) constitute is the entire agreement between the User and the Provider for use of Bright software products, and replaces all documents, information and other communications (whether spoken or written) between them for such use.
  3. This agreement is personal to the User and may not be transferred, assigned, subcontracted, licensed, charged or otherwise dealt with or disposed of (whether in whole or in part) by the User without the Provider's prior written consent. The Provider may transfer, assign, subcontract, license, charge or otherwise deal with or dispose of (whether in whole or in part) this agreement at any time without the User's consent.
  4. A person who is not a party to this agreement has no right to enforce any term of it.
  5. Where either party is required to notify the other party by email, the party shall be deemed to have received the email on the first business day following transmission.

#### **18. Which laws govern this agreement?**

1. If the User subscribes to Bright software products in the United Kingdom, then this agreement (and all non-contractual claims and disputes) is governed by the laws of England and Wales and the User and the Provider both agree that the courts of England and Wales shall be the only courts competent to decide disputes in relation to this agreement.

#### **19. Disclaimer;**

1. The Furlough Navigator is a tool designed to assist employers with their submission of information to HMRC in respect of any furloughed workers under the Coronavirus Job Retention Scheme (CJRS). The Furlough Navigator tool is based on guidance published by the Government on its website ([www.gov.uk](http://www.gov.uk)) concerning the CJRS which is regularly being updated. Bright HR Limited does not accept any liability or responsibility for the submission or accuracy of information provided by employers under the CJRS to HMRC. All claims submitted to HMRC under the CJRS remain the sole responsibility of the employer.

2. VaccTrak Lite is an online tool designed to assist employers facilitate the safe return of their employees to the workplace. It records the vaccination status of employees based on the information they provide to their employer. It does not however warrant or validate whether an employee has been vaccinated, given that it is reliant upon the truthfulness of the employee when submitting evidence of their vaccination to their employer.
3. Bright Exchange is a platform available to customers in order to advertise their services, offer a discount or benefits to other BrightHR users. The content of an advert remains the responsibility of the customer and must be compliant with any relevant legislation. BrightHR will not assess compliance or approve any advert that is not compliant with relevant legislation, is damaging to other BrightHR customers or could cause offence.

## **Changelog**

**Update to Legal Terms 30th July 2024** Customers Affected: BrightHR Payroll customers Legal – Clause 8 (a) has been updated to include **Over-utilisation of BrightHR Payroll**

### **Update to termination terms**

**19th June 2024**

Customers Affected: All customers with agreements made on or after 19/06/2024

Changes: Main Terms

- Termination clause 16 (d) updated to 90 days' notice

### **Introduction of the Delegation Feature**

**26th September 2023**

Customers Affected: All

Changes: Main Terms, Data Processing Policy

- Main Terms - Clause 1 - Updated to include "Contracting Entity"
- Data Processing Policy - Updated to refer to "Contracting Entity"

### **Introduction of the Delegation Feature**

**13th July 2023**

Customers Affected: All

Changes: Main Terms, Privacy Policy and the Data Protection Impact Assessment (DPIA)

- Main Terms - Clause 1, 4, 10 and 12 – Updated to include Delegated Users
- Privacy Policy - Updated to include Delegated Users
- DPIA - Updated to include Delegated Users

### **Introduction of BrightHR Lite and BrightSafe Lite**

**31st January 2023**

Customers Affected: BrightHR Lite and BrightSafe Lite customers

Changes: Data processing

- Clause 2 – changed to include Lite products

### **Clairfy Force Majeure**

**1st December 2022**

Customers Affected: All

Changes: Main Terms

- Clause 15 - Changed to include obligation to make payments

### **Update to auto-renewal**

**19th November 2021**

Customers Affected: All customers with agreements made on or after 19/11/2021

Changes: Main Terms

- Clause 16b - no longer used
- Clause 16d - 6 months notice for termination included
- Clause 16e - renewal fee increase included

### **Data Protection Impact Assessment added**

**11th November 2021**

Customers affected: All

Changes: Data Protection Impact Assessment guidance added to Terms to aid customers

### **Bright Exchange Launch**

**1st November 2021**

Customers Affected: Bright Exchange users

Changes: Main Terms

- Clause 19 - Add disclaimer for Exchange

### **Clarify Providers Responsibility for customer use of software/CJRS**

**27th August 2021**

Customers Affected: All

Changes: Main Terms

- Clause 14a, 14b,- Clarify software use
- Clause 19 - Define Coronavirus Job Retention Scheme

### **Cooling Off Period for individuals**

**13th May 2021**

Customers Affected: 'Individuals' within the meaning of the Consumer Credit Act 2006

Changes: Main Terms

- Change cooling off period from 5 working days to 14 working days

### **VaccTrak Lite Launch**

**4th March 2021**

Customers Affected: VaccTrakLite users

Changes: Main Terms

- Add Setting up a free product
- Add disclaimer for validation of vaccination status

### **Removal of Monthly Subscription**

**7th July 2020**

Customers Affected: None, no customers on subscriptions at point of deprecation

Changes: Main Terms

- Deprecated clauses for setting up a contract and termination for subscription customers.

### **Offer Proactive Advice Calls**

**13th March 2019**

Customers Affected: Advice Customers

Changes: Data Processing Terms

- add provision of insights as purpose of processing

### **BrightSafe Launch**

**13th March 2019**

Customers Affected: Customers subscribing to BrightSafe

Changes: Main Terms, Privacy Policy for Users Employees, Data Processing Term

- Replace all references to BrightHR with Bright Software Products or The Provider.
- Add Health and Safety advice
- Add Health and safety as type of data processed
- Add Health and Safety as type of data help

### **GDPR**

**25th May 2018**

Customers Affected: All customers.

Changes: New privacy policies, updated main terms, added data protection clauses to support compliance with GDPR