

## Terms and conditions

Version 3.01

The following terms and conditions apply to the services, including the BrightCat Software-as-a-Service service, of Brightmotive Services bv, hereinafter called: Brightmotive, registered with the Chamber of Commerce under number 71910956.

### Article 1 Rules of use

- 1.1 Brightmotive's services may not be used for acts that violate Dutch or other applicable laws and regulations.
- 1.2 If you have been given access to any of Brightmotive's services or systems via a username and password, you must keep the password strictly secret. Brightmotive may assume that everything that happens from your account after logging in with your username and password is done under your direction and supervision. You are therefore liable for all these actions.
- 1.3 Misuse or potential misuse of your account or services purchased should be reported to Brightmotive in writing immediately.
- 1.4 You consent to all forms of processing of personal data that fall within the scope of the services.
- 1.5 If, in Brightmotive's opinion, disruption, damage or another threat to the functioning of the services of Brightmotive and/or third parties arises, in particular due to excessive sending of e-mail or other data, leaks of (personal) data or the actions of viruses, Trojans and similar software, Brightmotive is entitled to take all measures it reasonably deems necessary to avert or prevent this threat without notification or notice of default. The cost of this will be borne by you.
- 1.6 If Brightmotive finds that you are in breach of the terms and conditions, or receives a complaint about this, Brightmotive may intervene to end the breach without notification or notice of default. The cost of this will be borne by you.
- 1.7 Brightmotive may recover from you any loss resulting from your breach of one or more terms and conditions. You indemnify Brightmotive against all third party claims relating to loss as a result of your breach of one or more terms and conditions.

### Article 2 Availability and maintenance

- 2.1 Brightmotive will endeavour to ensure optimum availability and a rapid response time of the systems as well as ensuring that the systems are free of errors, defects and viruses as much as possible. Specific agreements can be recorded in a separate Service Level Agreement.
- 2.2 For the use of the services and the availability and response time of the systems, Brightmotive depends on web services and/or data that you or third parties need to make available and/or web services and/or data from suppliers or other external parties, e.g. web services or data from ERP systems, TecDoc, Teccom, TecRMI, RDW, HaynesPro, RDC, A2SP, VWE, etc. Any liability on Brightmotive's part as a result of the unavailability of these web services and/or data is excluded. You indemnify Brightmotive against any unlawful use of these web services and/or data.
- 2.3 Improvements and other changes to the functionality of

services and systems are made whenever Brightmotive deems it necessary. Brightmotive always has the right to alter the functionality of the systems. The availability of the systems will be restricted as little as possible when carrying out maintenance and modifications.

### Article 3 Intellectual property and data

- 3.1 All services, including BrightCat, and all associated Brightmotive software and data are the (intellectual) property of Brightmotive and its licensors. These services, software and data of Brightmotive and its licensors may not be copied or replicated in any way. The services, software and data of Brightmotive and its licensors, or copies or counterfeit versions thereof, may also not be used without Brightmotive's prior written permission, or used in a way that may harm the interests of Brightmotive and its licensors.
- 3.2 Brightmotive does not guarantee the accuracy and completeness of the data, and any liability on the part of Brightmotive is excluded. Brightmotive and its licensors always have the right to use any data within the services and systems in current or future services.
- 3.3 You may only use the services and systems for the purpose agreed with you and only for your own organisation(s) to which the right of use has been granted. Where necessary, Brightmotive provides you with a non-exclusive and non-transferable right to use the services and systems. You may not modify, copy, sell, encumber, rent or otherwise grant use of the services and systems to third parties, or otherwise use them such that Brightmotive's intellectual property rights are affected or its interests are harmed.

### Article 4 Service fee

- 4.1 You will be charged a fee for using the services. If the service has a fixed monthly fee, this should always be paid quarterly in advance. If the service has a dynamic usage fee, this fee should be paid monthly in arrears.
- 4.2 The fee for using Brightcat can be based on the total turnover over the most recent full calendar year of your organisation(s) that will be using BrightCat and the usage fee table or usage fee percentage provided to you. After concluding the agreement, you will always provide a statement of turnover for the previous calendar year at the first request or proactively if the turnover differs by more than 10%. Brightmotive has the right to adjust the usage fee on the basis of that turnover for the year following the calendar year to which the turnover relates.
- 4.3 You will provide a declaration from your accountant that the turnover data you have provided is correct at Brightmotive's first request. In addition, Brightmotive always has the right to examine your records (or have them examined) to check the accuracy of the turnover data. You will fully cooperate with any such examination at the first request. This can be done by sampling.
- 4.4 If it is found that the turnover differs by more than 10% from the previously reported turnover, Brightmotive always has the right to correct this retrospectively. If the turnover is found to be too low, Brightmotive has the right to charge a 25% surcharge on the amounts to be charged retrospectively.
- 4.5 Brightmotive has the right to index the fee payable by you

at the end of each calendar year.

- 4.6 If you fail to comply with your obligations, Brightmotive has the right to suspend its services. This does not release you from your obligation to pay the agreed fees.

#### **Article 5 Liability**

- 5.1 Except in cases of intent or gross negligence, Brightmotive's liability is limited to the amount you owe and have paid to Brightmotive in the three months prior to the time of the loss-causing event.
- 5.2 Brightmotive is explicitly not liable for indirect loss, consequential loss, lost sales and/or profits, missed savings, loss or corruption of data and loss due to business interruption.
- 5.3 A condition for any right to compensation is that you report the loss to Brightmotive in writing within two months after discovery or after you could have discovered the loss.
- 5.4 In the event of force majeure, Brightmotive shall never be obliged to compensate you for any resultant loss. Force majeure includes faults or failures of the Internet or telecommunications infrastructure, power failures, foreign or domestic unrest, pandemics, viruses, hacking and other unlawful breaches, mobilisation, war, transport disruption, strikes, lack of staff, fire and flooding.

#### **Article 6 Duration and termination**

- 6.1 The agreement with you starts when you first use the service (unless agreed otherwise) and will then run for two years
- 6.2 After this period, the agreement will be automatically renewed each time for a period equal to the duration of the first term. The parties can always terminate the agreement in writing with effect from the end of each period with three months' notice.
- 6.3 In the event of Brightmotive's bankruptcy, either party may terminate this agreement. Brightmotive's parent company can offer you a proposal for continued service from another company within the group.

#### **Article 7 Amendments to terms and conditions**

- 7.1 Without prejudice to all other rights, Brightmotive may unilaterally amend these terms and conditions, rules of use, the fee and payment period. The amendments take effect from the time of entry into force as announced by Brightmotive.
- 7.2 If you do not wish to accept an amendment as described above, you can terminate the agreement up to the date of entry into force, subject to two months' notice. Use of the service after the date of entry into force constitutes acceptance of the amended terms and conditions.
- 7.3 Deviations from these terms and conditions shall only be binding if expressly accepted in writing by Brightmotive.

#### **Article 8 Other provisions**

- 8.1 All Brightmotive's services are governed by Dutch law. All other laws and regulations including the Vienna Sales Convention are excluded.
- 8.2 All disputes between Brightmotive and you will be submitted in the first instance exclusively to the competent Dutch court in the district in which Brightmotive is based.

- 8.3 Any agreed deadlines are not of the essence, unless otherwise agreed and with the exception of payment periods.
- 8.4 If a provision in these terms and conditions requires a communication to be made "in writing", this is also met if the communication is made by e-mail.
- 8.5 The version of the communication or information as stored by Brightmotive is deemed to be correct, subject to proof to the contrary.
- 8.6 Brightmotive is entitled to assign its rights and obligations under agreements with you to a third party. You give your unconditional and irrevocable consent to this now.
- 8.7 If any provision of these terms and conditions is found to be invalid, this shall not affect the validity of the entire terms of use. In that case, the parties will agree (a) new provision(s) to replace the original provision(s), which will follow the intention of the original provision as much as legally possible.