

BRIGHTMILE AXA TERMS AND CONDITIONS

1. Definitions and Interpretation

- 1.1. Definitions In these Conditions, the following definitions apply:

Additional Driver Licenses means any Driver Licenses in excess of the Initial Driver License Volume, as purchased by the Customer in an Order from time to time;

Additional Fees means, in relation to each purchase of Additional Licenses, the number of Additional Driver Licenses multiplied by the Driver Rate multiplied by the number of whole calendar months remaining until the relevant Annual Billing Date;

Annual Fees means the Driver License Volume multiplied by the Driver Rate multiplied by 12;

Brightmile means Drivalytix Limited, a company incorporated in England and Wales (registration number: 10996843) having its registered address at 24 Old Queen Street, London, SW1H 9HP, UK;

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

Business Hours means 9am to 5pm on any Business Day;

Commencement Date means the date of acceptance of the Order by Brightmile or such later date as may be stated on the Order;

Conditions means the terms and conditions set out in this document as amended from time to time;

Confidential Information means any and all know-how, documentation and information, whether commercial, financial, technical, operational or otherwise, relating to the business, affairs, customers, suppliers, employees, affiliates, products and/or methods of Brightmile or the Customer and disclosed to or otherwise obtained by the other party in connection with the Contract;

Contract means this contract between Brightmile and the Customer for the Services which incorporates these Conditions and the Order;

Customer means the person or firm who procures the Services from Brightmile, as stated in the Order;

Customer Default means any act or omission of the Customer or failure by the Customer to perform any relevant obligation which results in the prevention or delay of Brightmile's performance of any of its obligations under the Contract;

Data Protection Laws means the Data Protection Act 2018 and the General Data Protection Regulation (EU) 2016/679 on the protection of natural persons with regard to the processing of Personal Data and on the free movement of such data, and the terms "Controller", "Processor" and "Personal Data" have the meanings given to them in such laws;

Downtime means the time in which any Service is Unavailable to the Customer, as monitored by Brightmile, other than (a) Service unavailability caused by scheduled maintenance of the

platform used to provide the applicable Service (as notified to the Customer in writing at least three Business Days in advance); or (b) Service unavailability caused by events outside of the direct control of Brightmile or its subcontractor(s), including any force majeure event, the failure or unavailability of the Customer's systems, the internet, or the failure of any other technology or equipment used to connect to or access the Service;

Driver means any driver added to the Portal by the Customer and who has signed up to the Driver App;

Driver App means the application operated by Brightmile to be downloaded by each Driver to connect to the Platform;

Driver License means a license for one Driver to use the Driver App for a period of one month;

Driver License Volume means the Initial Driver License Volume plus any Additional Driver Licenses;

Driver Rate means the fee payable for each Driver License, as set out in an Order;

Fees means the Annual Fees and/or the Additional Fees, as applicable;

Force Majeure Event means any event which hinders, delays or prevents performance of a party's obligations and which is either beyond that party's reasonable control, which by its nature could not have been foreseen, or, if it could have been foreseen, was unavoidable, including strikes, lock-outs or other industrial disputes (whether involving its own workforce or a third party's), failure or interruption of energy sources, other utility service or transport network, acts of God, war, threat of or preparation for war, armed conflict, terrorism, riot, civil commotion, interference by civil or military authorities, sanctions, embargo, export or import restriction, collapse of building structures, fire, flood, drought, storm, earthquake, epidemic, pandemic or similar events, or default of suppliers or subcontractors;

Initial Driver License Volume means the number of Driver Licenses purchased by a Customer as of the Commencement Date, as set out in the Order;

Intellectual Property Rights means patents, rights to inventions, copyright and related rights, moral rights, trade marks, business names and domain names, rights in get-up, goodwill and the right to sue for passing off, rights in designs, database rights, rights to use and protect the confidentiality of, confidential information (including know-how and trade secrets) and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world;

Monthly Uptime Percentage means the total number of minutes in a calendar month minus the number of minutes of Downtime suffered in a calendar month, divided by the total number of minutes in a calendar month;

Order means the Customer's order for the supply of the Services as set out in a signed order document or quotation;

Platform means Brightmile's fleet management software back-end platform, through which Brightmile administers the

Portal and the Driver App;

Portal means the driver management portal created and maintained by Brightmile, through which the Customer can access the Services;

Privacy Policies means Brightmile's website and Portal privacy policy found at <https://portal.brightmile.io/privacy>, and the Driver App privacy policy found at <https://portal.brightmile.io/privacy/android> and <https://portal.brightmile.io/privacy/ios>, as applicable and as updated from time to time;

Service Data means the information and data made available by Brightmile to the Customer in connection with the Services including all data arising out of the use of the Driver App which shall include, but not be limited to, journey data;

Services means the driver management software services (including access to the Portal and the Driver App) to be provided by Brightmile under this Contract;

Special Conditions means any additional terms and conditions or amendments to these Conditions which may be agreed between the parties, and as set out in the Order;

Term means the period from the Commencement Date until termination or expiry of this Contract, howsoever caused, as more particularly set out in Condition 9;

Tier 1 Issue is a critical issue meaning that any Service is not capable of being accessed or used by the Customer;

Tier 2 Issue is an issue which renders the performance of any Service degraded but operational;

Tier 3 Issue means non-critical product questions relating to development, feature issues, and/or documentation;

Unavailable means (i) any Service fails to respond to a valid user request during two or more consecutive 90 second intervals by either timeout or server error, or (ii) data stored becomes inaccessible to Service users for a period longer than 90 seconds; and

VAT means value added tax at the then prevailing rate.

1.2. Interpretation

In these Conditions, the following rules apply:

- (a) a reference to a statute or statutory provision is a reference to such statute or provision as amended, re-enacted or superseded from time to time and includes any subordinate legislation made under that statute or statutory provision, as amended or re-enacted;
- (b) any phrase introduced by the terms including, include, in particular or any similar expression shall be construed as illustrative and shall not limit the sense of the words preceding those terms;
- (c) In the event of any inconsistency between these Conditions and any Special Conditions, the Special Conditions shall take precedence.

2. Performance of the Services

- 2.1. Brightmile shall from the Commencement Date and for the duration of the Term provide the Services to the Customer in accordance with this Contract in all material respects.

- 2.2. Brightmile shall ensure a 99.5% Monthly Uptime Percentage ("**Monthly Uptime SLA**") and shall deliver a Monthly Uptime Percentage report to the Customer each month.

- 2.3. To the extent that the Monthly Uptime SLA is not met for a given month, Brightmile will provide a credit ("**Credit**") calculated as follows:

Monthly Uptime Percentage	Service Credit
Less than 99.5% but greater than or equal to 99.2%	5% of the monthly Fees
Less than 99.2% but greater than or equal to 99.0%	10% of the monthly Fees
Less than 99.0% but greater than or equal to 98.7%	15% of the monthly Fees
Less than 98.7%	20% of the monthly Fees

Any Credit due under this Clause shall be automatically applied by Brightmile against any Fees payable by the Customer after the month for which the Monthly Uptime SLA was not met. In the event that this Contract is terminated before any further Fees are payable by the Customer, Brightmile shall refund the Customer the Credit amount, and the Customer may invoice Brightmile for the Credit amount on the date of termination of the Contract.

- 2.4. Brightmile warrants that it shall provide the Services and the Service Data with reasonable care and skill.
- 2.5. During the Term, Brightmile shall provide a support service to the Customer and use best endeavours to respond promptly (and in any event within five Business Hours in relation to Tier 1 Issues, two Business Days in relation to Tier 2 Issues, and three Business Days in relation to Tier 3 Issues) to requests for support from the Customer and from Drivers as notified to (a) support@brightmile.io or via the in-app chat function of the Driver App, or (b) in the event of a Tier 1 Issue only, by phone call to Brightmile at +44 1780 322040.

3. Customer obligations

- 3.1. When using the Services, the Customer must comply with all applicable laws and the terms of this Contract. In particular, the Customer must not (and shall procure that (where applicable) each Driver shall not):
 - (a) use the Services or the Service Data in any unlawful manner or in a manner which promotes or encourages illegal activity or act fraudulently or maliciously, for example, by hacking into or inserting malicious code, including viruses, or harmful data, into the Platform, any Service or any operating system;
 - (b) attempt to gain unauthorised access to the Platform or any networks, servers, operating systems or computer systems connected to the Platform;
 - (c) modify, adapt, translate or reverse engineer any part of the Platform or re-format or frame any portion of the Service Data, save to the extent expressly permitted by this Contract or applicable laws;
 - (d) infringe Brightmile's Intellectual Property Rights (including, without limitation, copyright infringement) or those of any third party in relation to the Customer's use

of the Portal, the Platform, the Service Data or the Services (to the extent that such use is not licensed by this Contract);

- (e) transmit any material that is defamatory, offensive or otherwise objectionable or which may or is likely to damage the reputation of Brightmile in relation to the Customer's use of the Services or the Portal; and/or
- (f) collect any information or data from the Portal (save as required for the purpose of obtaining the benefit of the Services) or Brightmile's systems or attempt to decipher any transmissions to or from the servers hosting the Platform or running any Service.

4. Licenses, Fees and Payment

- 4.1. The Customer shall pay Brightmile the Fees, and Brightmile shall invoice the Customer for the Fees, as set out in this Condition 4.
- 4.2. Brightmile shall invoice the Customer on an annual basis for the Annual Fees as follows:
 - (a) on or after the Commencement Date for the Annual Fees; and
 - (b) on or after each subsequent anniversary date of the Commencement Date (the "**Annual Billing Date**"), the Annual Fees.
- 4.3. Brightmile shall invoice the Customer for any Additional Fees on or after the date of the Order for the relevant Additional Driver Licenses.
- 4.4. Fees are payable by the Customer in local currency by direct debit or bank transfer within 30 days of the date of invoice. Fees are exclusive of VAT and/or any other applicable taxes.
- 4.5. No refunds shall be made other than in the event of an error by Brightmile or the termination of the Contract by the Customer under Condition 9.3.
- 4.6. Brightmile reserves the right to review the Fees on a yearly basis in accordance with the conditions set out in the Master Framework and Data Processing Agreement.
- 4.7. All payments to be made by the Customer to Brightmile under this Contract will be made in full without any set-off, restriction or condition and without any deduction or withholding for or on account of any counterclaim or any present or future taxes, levies, duties, charges, fees, deductions or withholdings of any nature, unless the Customer is required by law to make any such deduction or withholding or the Customer has provided notice in writing that it disputes a particular amount.
- 4.8. If the Customer fails to make payment of undisputed Fees when due, Brightmile may:
 - (a) suspend the Customer's access to the Portal until all outstanding payments are received in cleared funds; and/or
 - (b) charge interest on the amount from the due date to the date of receipt by Brightmile (whether or not after judgment), at the annual rate of the lower of (i) 2% above the base lending rate from time to time of Barclays Bank plc, and (ii) the maximum amount permitted under UK law, in each case accruing on a daily basis and being compounded Quarterly until payment is made, whether before or after any judgment.
- 4.9. In the event that any undisputed sums due and owing under this Contract remain unpaid for 20 Business Days after their due

date, and, provided always that Brightmile has notified the Customer that such outstanding sums remain unpaid, Brightmile shall be entitled to terminate this Contract on giving 5 Business Days' notice to the Customer.

5. Intellectual Property Rights

- 5.1. The Customer acknowledges that all Intellectual Property Rights used by or subsisting in the Services and the Service Data are and shall remain the sole property of Brightmile or (as the case may be) the third party rights owner.
- 5.2. The Customer may use the Service Data only for the purpose of receiving the Services, and to that extent Brightmile grants to the Customer a limited, revocable, non-exclusive, royalty-free license to use the Service Data during the Term. The Customer shall not supply the Service Data to any third party or use the Services or the Service Data to provide a service to any third party without Brightmile's prior written consent.
- 5.3. Brightmile may inform third parties that it provides or has provided the Services to the Customer. The Customer licenses Brightmile to use its name and logo(s) for this sole purpose.

6. Liability

- 6.1. Nothing in these Conditions shall limit or exclude either party's liability for:
 - (a) death or personal injury caused by its negligence, or the negligence of any person acting on its behalf;
 - (b) fraud or fraudulent misrepresentation; or
 - (c) any matter in respect of which it would be unlawful for either party to exclude or restrict liability.
- 6.2. Brightmile shall indemnify the Customer from and against all losses, costs, expenses and demands suffered by the Customer as a direct result of any actual or alleged infringement of a third party's Intellectual Property Rights arising out of or in connection with the receipt, use or supply of the Services (**Infringement Claim**), provided that:
 - (a) the Customer shall, where reasonably practicable, give Brightmile a reasonable opportunity to remedy the Infringement Claim before the Customer incurs any liabilities in responding to the Infringement Claim itself, or as soon as practicable thereafter;
 - (b) where it is not possible to remedy the Infringement Claim in accordance with Condition 6.2(a), the Customer shall promptly allow Brightmile to assume full management of each Infringement Claim (at Brightmile's cost) and shall provide all reasonable assistance to Brightmile in managing the Infringement Claim; and
 - (c) Brightmile's liability in respect of each Infringement Claim, or series of related Infringement Claims, shall not exceed three times the total amount of Fees paid to the Brightmile under this Contract.
- 6.3. Subject to Condition 6.1, Brightmile shall under no circumstances be liable to the Customer, whether in contract, tort (including negligence), misrepresentation, breach of statutory duty, or otherwise, for (a) any indirect,

special, consequential or pure economic loss or damage; (b) any loss of profits, anticipated profits, revenue or business opportunities; or (c) damage to goodwill, in each case arising as a direct or indirect result of the relevant claim.

- 6.4. Subject to Conditions 6.1, 6.2 and 6.3, Brightmile's total aggregate liability for any event or series of related events, whether arising in contract, tort (including negligence and breach of statutory duty howsoever arising), misrepresentation (whether innocent or negligent), restitution or otherwise, arising in connection with the performance or contemplated performance of this Contract or any collateral contract shall not exceed the total amount of Fees paid to the Brightmile under this Contract.

7. Confidentiality

- 7.1. Each party may be given access to Confidential Information from the other party in order to perform its obligations under this Contract. A party's Confidential Information shall not be deemed to include information that:
- (a) is or becomes publicly known other than through any act or omission of the receiving party; was in the other party's lawful possession before the disclosure;
 - (b) is lawfully disclosed to the receiving party by a third party without restriction on disclosure; is independently developed by the receiving party, which independent development can be shown by written evidence; or
 - (c) is required to be disclosed by law, by any court of competent jurisdiction or by any regulatory or administrative body.
- 7.2. Each party shall hold the other's Confidential Information in confidence and, unless required by law, not make the other's Confidential Information available to any third party, or use the other's Confidential Information for any purpose other than the implementation of this Contract.
- 7.3. Each party shall take all reasonable steps to ensure that the other's Confidential Information to which it has access is not disclosed or distributed by its employees or agents in violation of the terms of this Contract.
- 7.4. This Condition 7 shall survive termination of this Contract, however arising.

8. Data Protection

- 8.1. Each term used in this Condition 8 shall have the meaning given in the Data Protection Laws unless otherwise stated.
- 8.2. Brightmile shall process Personal Data only for the purpose of performing the Services during the Term, in accordance with its Privacy Policy, on the instructions that the Customer may give to it from time to time, and in compliance with the Data Protection Laws.
- 8.3. Brightmile acknowledges and agrees that for the purposes of this Contract, to the extent more fully set out in the Privacy Policies, the Customer is the Data Controller and Brightmile is a Data Processor in respect of all Personal Data processed

pursuant to this Contract.

- 8.4. Notwithstanding any other provision of this Contract, Brightmile and the Customer agree that the Standard Contractual Clauses as set out in Annex 1 to this Contract (including, for the avoidance of doubt, Appendix 1 and Appendix 2 thereto) shall be incorporated into this Contract and shall apply to any processing of Personal Data in connection with this Contract.
- 8.5. The Customer shall comply with its obligations under Data Protection Laws in respect of all Personal Data Processed pursuant to this Contract. In particular:
- (a) the Customer acknowledges and agrees that Personal Data may be transferred or stored outside the EEA or the country where the Customer is located in order to carry out the Services; and
 - (b) the Customer shall ensure that the Customer is entitled to transfer the relevant personal data to Brightmile so that Brightmile may lawfully use, process and transfer the personal data in accordance with this agreement on the Customer's behalf.
- 8.6. Brightmile shall use its reasonable commercial endeavours to:
- (a) not do anything that would put the Customer in breach of the Data Protection Laws;
 - (b) put in place, before undertaking any processing, and maintain thereafter appropriate technical and organisational measures to protect against the unauthorised loss, disclosure or destruction of or damage to such personal data;
 - (c) maintain a record of all of its processing activities under or in connection with this Contract and of the measures implemented under this Condition 8;
 - (d) only transfer personal data to sub-processors where Brightmile has entered into a written contract with that third party under which that third party agrees to obligations that are equivalent to Brightmile's obligations set out in this Condition 8.5;
 - (e) at any time upon request, and in any event upon termination or expiry of this Contract, deliver up or securely delete or destroy all Personal Data in Brightmile's possession (except for such Personal Data which it is required to keep in compliance with applicable laws and/or the Data Protection Laws); and
 - (f) ensure its employees are subject to binding obligations of confidentiality in respect of Personal Data processed under this Contract.
- 8.7. If Brightmile becomes aware of or suspects a Personal Data Breach it shall notify the Customer without undue delay and in any event within 72 hours of becoming aware of it. Brightmile shall, at the Customer's cost, provide all assistance reasonably requested by the Customer. Brightmile shall take all reasonable steps to mitigate any risks of a Personal Data Breach occurring in the future.

9. Term and Termination

- 9.1. The Contract shall commence on the Commencement Date

and shall continue until terminated in accordance with this Condition 9.

- 9.2. The Customer may terminate the Contract at any time contract by giving one calendar month's written notice to Brightmile, however for the avoidance of doubt no Fees shall be refunded or voided in the event of termination under this Condition 9.2.
- 9.3. Without limiting its other rights or remedies, either party may terminate the Contract with immediate effect by giving written notice to the other party if the other party:
- (a) commits a material breach of any term of the Contract and (if such a breach is remediable) fails to remedy that breach within 5 Business Days of being notified in writing to do so;
 - (b) is declared or becomes insolvent, has a moratorium declared in respect of any of its indebtedness, enters into administration, receivership, administrative receivership or liquidation or threatens to do any of these things, or takes or suffers any similar action in any jurisdiction or any step is taken (including the making of an application, the entering into of a board resolution or the giving of any notice) by it or by any other person in respect of any of these circumstances (an "Insolvency Event"); or
 - (c) suspends, or threatens to suspend, or ceases or threatens to cease to carry on all or a substantial part of its business.
- 9.4. Without limiting its other rights or remedies, Brightmile may suspend provision of the Services under the Contract or any other contract between Brightmile and the Customer if the Customer becomes subject to an Insolvency Event or Brightmile reasonably believes that the Customer is about to become subject to any of them.
- 9.5. On expiry or termination of the Contract for any reason:
- (a) the parties' rights and remedies that have accrued as at termination shall be unaffected;
 - (b) Conditions that expressly or by implication survive termination of the Contract shall continue in full force and effect;
 - (c) Brightmile shall automatically switch off all linked Driver Apps and access to the Portal within 5 Business Days from the date of notice of termination or, if later, the date of termination; and
 - (d) the Customer shall pay all rendered but unpaid invoices within 30 days of the date of the invoice, and Brightmile shall be entitled to render invoices to the Customer in respect of any Services rendered but which have not yet been invoiced, such invoices to be paid by the Customer within 30 days of the date of the invoice.

10. Force majeure

- 10.1. Neither party shall be liable for any failure or delay in performing its obligations under the Contract to the extent that such failure or delay is caused by a Force Majeure Event.
- 10.2. If either party is affected by a Force Majeure Event, it shall promptly notify the other party of the nature and extent of

the circumstances and will make reasonable endeavours to mitigate the effects of such event on the performance of its obligations under this Contract.

11. General

11.1. Assignment, subcontracting and other dealings

Neither party shall, without the prior written consent of the other party, assign, transfer, charge, sub-contract or deal in any other manner with all or any of its rights or obligations under this Contract.

11.2. Entire agreement

The Contract (incorporating these Conditions) constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter. The Customer acknowledges that it has not relied on any statement, promise, representation, assurance or warranty made or given by or on behalf of Brightmile which is not set out in the Contract.

11.3. Variation

Except as set out in these Conditions, no variation of the Contract, including the introduction of any additional terms and conditions, shall be effective unless it is agreed in writing and signed by Brightmile.

11.4. Waiver

No failure or delay by a party to exercise any right or remedy provided under the Contract or by law shall constitute a waiver of or prevent or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.

11.5. Severance

If any provision of the Contract is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision shall be deemed deleted. Any modification or deletion of a provision under this Condition shall not affect the validity and enforceability of the rest of the Contract.

11.6. Notices

- (a) Any notice given to a party under or in connection with the Contract shall be in writing and shall be delivered by hand, by electronic mail or by pre-paid first-class post or by a signed-for next working day delivery service at its registered office (if a company) or its principal place of business (in any other case).
- (b) Any notice shall be deemed to have been received:
 - (i) if delivered by hand, on signature of a delivery receipt or, if not signed for, at the time the notice is left at the correct address;
 - (ii) if by electronic mail, on the day of delivery at the time recorded on the read-receipt;
 - (iii) if sent by pre-paid first-class post, at 09:00 on the second Business Day after posting;
 - and (iv) if sent by a signed-for next working day delivery service, at the time recorded by the delivery service.

11.7. Third party rights

No one other than a party to the Contract and their permitted assignees shall have any right to enforce any of its terms and the terms of the Contracts (Rights of Third Parties) Act 1999 are excluded to the fullest extent.

11.8. Relationship

Nothing in the Contract is intended to, or shall be deemed to, establish any partnership or joint venture between Brightmile and the Customer, constitute either party the agent of the other party or authorise either party to make or enter into any commitments for or on behalf of the other party.

11.9. Governing law

The Contract and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by, and construed in accordance with, the law of England and Wales.

11.10. Jurisdiction

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

Annex 1 - Standard Contractual Clauses (Processors)



EUROPEAN COMMISSION
DIRECTORATE-GENERAL
JUSTICE

Directorate C: Fundamental
rights and Union citizenship
Unit C.3: Data protection

Commission Decision C(2010)593 Standard Contractual Clauses (processors)

For the purposes of Article 26(2) of Directive 95/46/EC for the transfer of personal data to processors established in third countries which do not ensure an adequate level of data protection,

The Customer under the Contract (the data **exporter**)

And

Drivalytix Limited (Trading as Brightmile) (the data **importer**)

each a "party"; together "the parties",

HAVE AGREED on the following Contractual Clauses (the Clauses) in order to adduce adequate safeguards with respect to the protection of privacy and fundamental rights and freedoms of individuals for the transfer by the data exporter to the data importer of the personal data specified in Appendix 1.

Clause 1

Definitions

For the purposes of the Clauses:

- (a) *'personal data', 'special categories of data', 'process/processing', 'controller', 'processor', 'data subject' and 'supervisory authority'* shall have the same meaning as in Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data;
- (b) *'the data exporter'* means the controller who transfers the personal data;
- (c) *'the data importer'* means the processor who agrees to receive from the data exporter personal data intended for processing on his behalf after the transfer in accordance with his

instructions and the terms of the Clauses and who is not subject to a third country's system ensuring adequate protection within the meaning of Article 25(1) of Directive 95/46/EC;

- (d) *'the subprocessor'* means any processor engaged by the data importer or by any other subprocessor of the data importer who agrees to receive from the data importer or from any other subprocessor of the data importer personal data exclusively intended for processing activities to be carried out on behalf of the data exporter after the transfer in accordance with his instructions, the terms of the Clauses and the terms of the written subcontract;
- (e) *'the applicable data protection law'* means the legislation protecting the fundamental rights and freedoms of individuals and, in particular, their right to privacy with respect to the processing of personal data applicable to a data controller in the Member State in which the data exporter is established;
- (f) *'technical and organisational security measures'* means those measures aimed at protecting personal data against accidental or unlawful destruction or accidental loss, alteration, unauthorised disclosure or access, in particular where the processing involves the transmission of data over a network, and against all other unlawful forms of processing.

Clause 2

Details of the transfer

The details of the transfer and in particular the special categories of personal data where applicable are specified in Appendix 1 which forms an integral part of the Clauses.

Clause 3

Third-party beneficiary clause

1. The data subject can enforce against the data exporter this Clause, Clause 4(b) to (i), Clause 5(a) to (e), and (g) to (j), Clause 6(1) and (2), Clause 7, Clause 8(2), and Clauses 9 to 12 as third-party beneficiary.
2. The data subject can enforce against the data importer this Clause, Clause 5(a) to (e) and (g), Clause 6, Clause 7, Clause 8(2), and Clauses 9 to 12, in cases where the data exporter has factually disappeared or has ceased to exist in law unless any successor

entity has assumed the entire legal obligations of the data exporter by contract or by operation of law, as a result of which it takes on the rights and obligations of the data exporter, in which case the data subject can enforce them against such entity.

3. The data subject can enforce against the subprocessor this Clause, Clause 5(a) to (e) and (g), Clause 6, Clause 7, Clause 8(2), and Clauses 9 to 12, in cases where both the data exporter and the data importer have factually disappeared or ceased to exist in law or have become insolvent, unless any successor entity has assumed the entire legal obligations of the data exporter by contract or by operation of law as a result of which it takes on the rights and obligations of the data exporter, in which case the data subject can enforce them against such entity. Such third-party liability of the subprocessor shall be limited to its own processing operations under the Clauses.
4. The parties do not object to a data subject being represented by an association or other body if the data subject so expressly wishes and if permitted by national law.

Clause 4

Obligations of the data exporter

The data exporter agrees and warrants:

- (a) that the processing, including the transfer itself, of the personal data has been and will continue to be carried out in accordance with the relevant provisions of the applicable data protection law (and, where applicable, has been notified to the relevant authorities of the Member State where the data exporter is established) and does not violate the relevant provisions of that State;
- (b) that it has instructed and throughout the duration of the personal data processing services will instruct the data importer to process the personal data transferred only on the data exporter's behalf and in accordance with the applicable data protection law and the Clauses;
- (c) that the data importer will provide sufficient guarantees in respect of the technical and organisational security measures specified in Appendix 2 to this contract;
- (d) that after assessment of the requirements of the applicable data protection law, the security measures are appropriate to protect personal data against accidental or unlawful destruction or accidental loss, alteration,

unauthorised disclosure or access, in particular where the processing involves the transmission of data over a network, and against all other unlawful forms of processing, and that these measures ensure a level of security appropriate to the risks presented by the processing and the nature of the data to be protected having regard to the state of the art and the cost of their implementation;

- (e) that it will ensure compliance with the security measures;
- (f) that, if the transfer involves special categories of data, the data subject has been informed or will be informed before, or as soon as possible after, the transfer that its data could be transmitted to a third country not providing adequate protection within the meaning of Directive 95/46/EC;
- (g) to forward any notification received from the data importer or any subprocessor pursuant to Clause 5(b) and Clause 8(3) to the data protection supervisory authority if the data exporter decides to continue the transfer or to lift the suspension;
- (h) to make available to the data subjects upon request a copy of the Clauses, with the exception of Appendix 2, and a summary description of the security measures, as well as a copy of any contract for subprocessing services which has to be made in accordance with the Clauses, unless the Clauses or the contract contain commercial information, in which case it may remove such commercial information;
- (i) that, in the event of subprocessing, the processing activity is carried out in accordance with Clause 11 by a subprocessor providing at least the same level of protection for the personal data and the rights of data subject as the data importer under the Clauses; and
- (j) that it will ensure compliance with Clause 4(a) to (i).

Clause 5

Obligations of the data importer

The data importer agrees and warrants:

- (a) to process the personal data only on behalf of the data exporter and in compliance with its instructions and the Clauses; if it cannot provide such compliance for whatever reasons, it agrees to inform promptly the data exporter of its inability to comply, in which case the data exporter is entitled to suspend

the transfer of data and/or terminate the contract;

- (b) that it has no reason to believe that the legislation applicable to it prevents it from fulfilling the instructions received from the data exporter and its obligations under the contract and that in the event of a change in this legislation which is likely to have a substantial adverse effect on the warranties and obligations provided by the Clauses, it will promptly notify the change to the data exporter as soon as it is aware, in which case the data exporter is entitled to suspend the transfer of data and/or terminate the contract;
- (c) that it has implemented the technical and organisational security measures specified in Appendix 2 before processing the personal data transferred;
- (d) that it will promptly notify the data exporter about:
 - (i) any legally binding request for disclosure of the personal data by a law enforcement authority unless otherwise prohibited, such as a prohibition under criminal law to preserve the confidentiality of a law enforcement investigation,
 - (ii) any accidental or unauthorised access, and
 - (iii) any request received directly from the data subjects without responding to that request, unless it has been otherwise authorised to do so;
- (e) to deal promptly and properly with all inquiries from the data exporter relating to its processing of the personal data subject to the transfer and to abide by the advice of the supervisory authority with regard to the processing of the data transferred;
- (f) at the request of the data exporter to submit its data processing facilities for audit of the processing activities covered by the Clauses which shall be carried out by the data exporter or an inspection body composed of independent members and in possession of the required professional qualifications bound by a duty of confidentiality, selected by the data exporter, where applicable, in agreement with the supervisory authority;
- (g) to make available to the data subject upon request a copy of the Clauses, or any existing contract for subprocessing, unless the Clauses or contract contain commercial information, in which case it may remove such commercial information, with the exception of

Appendix 2 which shall be replaced by a summary description of the security measures in those cases where the data subject is unable to obtain a copy from the data exporter;

- (h) that, in the event of subprocessing, it has previously informed the data exporter and obtained its prior written consent;
- (i) that the processing services by the subprocessor will be carried out in accordance with Clause 11;
- (j) to send promptly a copy of any subprocessor agreement it concludes under the Clauses to the data exporter.

Clause 6

Liability

1. The parties agree that any data subject, who has suffered damage as a result of any breach of the obligations referred to in Clause 3 or in Clause 11 by any party or subprocessor is entitled to receive compensation from the data exporter for the damage suffered.
2. If a data subject is not able to bring a claim for compensation in accordance with paragraph 1 against the data exporter, arising out of a breach by the data importer or his subprocessor of any of their obligations referred to in Clause 3 or in Clause 11, because the data exporter has factually disappeared or ceased to exist in law or has become insolvent, the data importer agrees that the data subject may issue a claim against the data importer as if it were the data exporter, unless any successor entity has assumed the entire legal obligations of the data exporter by contract or by operation of law, in which case the data subject can enforce its rights against such entity.

The data importer may not rely on a breach by a subprocessor of its obligations in order to avoid its own liabilities.
3. If a data subject is not able to bring a claim against the data exporter or the data importer referred to in paragraphs 1 and 2, arising out of a breach by the subprocessor of any of their obligations referred to in Clause 3 or in Clause 11 because both the data exporter and the data importer have factually disappeared or ceased to exist in law or have become insolvent, the subprocessor agrees that the data subject may issue a claim against the data subprocessor with regard to its own processing operations under the Clauses as

if it were the data exporter or the data importer, unless any successor entity has assumed the entire legal obligations of the data exporter or data importer by contract or by operation of law, in which case the data subject can enforce its rights against such entity. The liability of the subprocessor shall be limited to its own processing operations under the Clauses.

Clause 7

Mediation and jurisdiction

1. The data importer agrees that if the data subject invokes against it third-party beneficiary rights and/or claims compensation for damages under the Clauses, the data importer will accept the decision of the data subject:
 - (a) to refer the dispute to mediation, by an independent person or, where applicable, by the supervisory authority;
 - (b) to refer the dispute to the courts in the Member State in which the data exporter is established.
2. The parties agree that the choice made by the data subject will not prejudice its substantive or procedural rights to seek remedies in accordance with other provisions of national or international law.

Clause 8

Cooperation with supervisory authorities

1. The data exporter agrees to deposit a copy of this contract with the supervisory authority if it so requests or if such deposit is required under the applicable data protection law.
2. The parties agree that the supervisory authority has the right to conduct an audit of the data importer, and of any subprocessor, which has the same scope and is subject to the same conditions as would apply to an audit of the data exporter under the applicable data protection law.
3. The data importer shall promptly inform the data exporter about the existence of legislation applicable to it or any subprocessor preventing the conduct of an audit of the data importer, or any subprocessor, pursuant to paragraph 2. In such a case the data exporter shall be entitled

to take the measures foreseen in Clause 5 (b).

Clause 9

Governing Law

The Clauses shall be governed by the law of the Member State in which the data exporter is established.

Clause 10

Variation of the contract

The parties undertake not to vary or modify the Clauses. This does not preclude the parties from adding clauses on business related issues where required as long as they do not contradict the Clause.

Clause 11

Subprocessing

1. The data importer shall not subcontract any of its processing operations performed on behalf of the data exporter under the Clauses without the prior written consent of the data exporter. Where the data importer subcontracts its obligations under the Clauses, with the consent of the data exporter, it shall do so only by way of a written agreement with the subprocessor which imposes the same obligations on the subprocessor as are imposed on the data importer under the Clauses. Where the subprocessor fails to fulfil its data protection obligations under such written agreement the data importer shall remain fully liable to the data exporter for the performance of the subprocessor's obligations under such agreement.
2. The prior written contract between the data importer and the subprocessor shall also provide for a third-party beneficiary clause as laid down in Clause 3 for cases where the data subject is not able to bring the claim for compensation referred to in paragraph 1 of Clause 6 against the data exporter or the data importer because they have factually disappeared or have ceased to exist in law or have become insolvent and no successor entity has assumed the entire legal obligations of the data exporter or data importer by contract or by operation of law. Such third-party liability of the subprocessor shall be limited to its own processing operations under the Clauses.

3. The provisions relating to data protection aspects for subprocessing of the contract referred to in paragraph 1 shall be governed by the law of the Member State in which the data exporter is established.
4. The data exporter shall keep a list of subprocessing agreements concluded under the Clauses and notified by the data importer pursuant to Clause 5 (j), which shall be updated at least once a year. The list shall be available to the data exporter's data protection supervisory authority.

Clause 12

Obligation after the termination of personal data processing services

1. The parties agree that on the termination of the provision of data processing services, the data importer and the subprocessor shall, at the choice of the data exporter, return all the personal data transferred and the copies thereof to the data exporter or shall destroy all the personal data and certify to the data exporter that it has done so, unless legislation imposed upon the data importer prevents it from returning or destroying all or part of the personal data transferred. In that case, the data importer warrants that it will guarantee the confidentiality of the personal data transferred and will not actively process the personal data transferred anymore.
2. The data importer and the subprocessor warrant that upon request of the data exporter and/or of the supervisory authority, it will submit its data processing facilities for an audit of the measures referred to in paragraph 1.

APPENDIX 1 TO THE STANDARD CONTRACTUAL CLAUSES

This Appendix forms part of the Clauses and must be completed and signed by the parties.

The Member States may complete or specify, according to their national procedures, any additional necessary information to be contained in this Appendix.

Data exporter

The data exporter is the Customer (as defined in the Contract between the data exporter and the data importer).

Activities relevant to the transfer: Personal Data of the employees and/or contractors of the data exporter shall be transferred to the data importer in order to enhance the safety and welfare of such employees whilst driving on business trips.

Data importer

The data importer is: Drivalytix Limited (Trading as Brightmile).

Activities relevant to the transfer: Processing Personal Data of the employees and/or contractors of the data exporter in accordance with its Privacy Policies and Data Protection Laws.

Data subjects

The personal data transferred concern the following categories of data subjects (please specify): employees and/or contractors of the data exporter.

Categories of data

As set out in the Privacy Policies.

Special categories of data (if appropriate)

None.

Processing operations

As per the 'Data Privacy Memorandum' and 'IT Security Memorandum' as supplied by the data importer to the data exporter (as may be updated from time to time provided that any updates are provided to the data importer).

Subprocessors

As per the 'Data Privacy Memorandum' and 'IT Security Memorandum' as supplied by the data importer to the data exporter (as may be updated from time to time provided that any updates are provided to the data importer).

Description of the technical and organisational security measures implemented by the data importer in accordance with Clauses 4(d) and 5(c) (or document/legislation attached):

As per the 'Data Privacy Memorandum' and 'IT Security Memorandum' as supplied by the data importer to the data exporter (as may be updated from time to time provided that any updates are provided to the data importer).

APPENDIX 2 TO THE STANDARD CONTRACTUAL CLAUSES

This Appendix forms part of the Clauses and must be completed and signed by the parties.