

**BRIGHTREE HOME HEALTH & HOSPICE LLC
SERVICES AGREEMENT**

TERMS AND CONDITIONS

The Brightree Home Health & Hospice LLC Services Agreement (the “**Agreement**”) consists of these terms and conditions (the “**Terms and Conditions**”) and one or more Order Forms. These Terms and Conditions shall apply to each Order Form executed by Brightree and Client.

1. DEFINITIONS.

- 1.1** “**Active Patients**” means accepted and admitted patients of Client.
- 1.2** “**Active Patient Census**” means the rolling 3 month average number of Active Patients as determined by Brightree’s records established by the Application Services.
- 1.3** “**Agency Management Software**” means Brightree’s proprietary clinical point of care, mobile clinical, advanced front office and private duty software licensed to Client for use in conjunction with the Application Services.
- 1.4** “**Authorized Users**” means persons authorized by Client to access and use the Services and who possess an authorized user ID and password.
- 1.5** “**Application Services**” means hosting and operating a Brightree Application to provide Client with access to and use of such Brightree Application over the Internet.
- 1.6** “**Brightree Application**” means all software and databases used by Brightree to provide the Agency Management Software or the Private Duty Software to Client.
- 1.7** “**Content**” means all Client Confidential Information, software applications, text, pictures, sound, graphics, video and other data transmitted by Authorized Users using the Services.
- 1.8** “**Hours**” means the verified Private Duty billable hours recorded in the Private Duty Software.
- 1.9** “**Licensed Software**” means the Agency Management Software or the Private Duty Software licensed by Client under an Order Form.
- 1.10** “**Order Form**” means the written description of the Services to be provided by Brightree to Client that is executed by Client and Brightree and expressly refers to this Agreement.
- 1.11** “**Private Duty**” means the provision of a broad range of services by caregivers to allow persons to remain independent in their personal residences.
- 1.12** “**Private Duty Software**” means Brightree’s proprietary private duty software licensed to Client for use in conjunction with the Application Services.
- 1.13** “**Private Duty Visits**” means, in connection with the use of the Agency Management Software, the rolling 3 month average number visits for the non-Medicare certified service line visits as determined by Brightree’s records established by the Application Services.
- 1.14** “**Professional Services**” shall mean any training, consulting, data migration, additional site and location setup, conversion, integration, implementation and/or other services provided by Brightree to Client, with associated fees for such services as described explicitly in an Order Form.
- 1.15** “**Services**” means the Application Services, Professional Services and Support Services.
- 1.16** “**Support Services**” means the provision of technical support to Authorized Users via email and telephone during Brightree’s regular business hours, in accordance with Brightree’s then-current technical support policies, and any other support services set forth in an Order Form.

2. SERVICES.

- 2.1** **Services.** Brightree shall use commercially reasonable efforts to provide the Services in accordance with the terms and conditions of this Agreement. In the event of any conflict between the body of this Agreement and an Order Form, the terms and conditions set forth in the body of this Agreement shall govern. Brightree shall not be obligated to provide any particular service to Client, including without limitation installation, additional site or location setup, implementation, training and data migration services, unless such service is explicitly described in a fully executed Order Form.

- 2.2 Client Operating Environment.** Unless otherwise explicitly set forth in an Order Form, Client shall, at its sole expense, be responsible for procuring, installing and maintaining the telecommunications services, hardware (including point of care devices on which the Licensed Software will be installed by Client) and software needed to access the Application Services that meets Brightree's then-current telecommunications, hardware and software specifications (the "**Client Operating Environment**"). Client shall be solely responsible for the security of the Client Operating Environment.
- 2.3 Brightree Application Changes.** Brightree may from time to time develop enhancements, upgrades, updates, improvements, modifications, extensions and other changes to the Application Services ("**Brightree Application Changes**"). Client hereby authorizes Brightree to implement such Brightree Application Changes for use with the Application Services, provided that such Brightree Application Changes do not have a material adverse effect on the functionality or performance of the Application Services. When commercially practicable, Brightree shall notify Client in advance of the implementation of any material Brightree Application Changes.
- 2.4 Cooperation; Access.** Client acknowledges that the successful and timely rendering of the Services shall require the good faith cooperation of Client. Brightree shall not be liable for any failure to perform the Services that arises from Client's failure to cooperate with Brightree.
- 2.5 Special Terms.** The Application Services provided to Client shall be subject to any specific terms or limitations set forth in the Order Form. In addition, terms and conditions applicable to certain third party services included within the Application Service are located at <http://www.Brightree.com/Contracts> ("Third Party Terms"), which are incorporated herein by reference. Client's use of the Application Services is subject to its compliance with all Third Party Terms.
- 2.6 Business Associate Agreement.** By executing a Services Order under which Brightree will provide Services involving the use of Protected Health Information (as defined in HIPAA), Brightree and Client hereby agree to be bound by Brightree's standard Business Associate Agreement set forth at <http://www.Brightree.com/Contracts>.

3. USE OF THE APPLICATION SERVICES.

- 3.1 Application Service.** Brightree hereby grants to Client a nontransferable, non-exclusive, license during the term of the applicable Order Form, to allow Authorized Users to access and use, over public and private networks, the Application Services for its homecare and hospice service business.
- 3.2 Licensed Software.** Brightree hereby grants to Client, a nontransferable, nonexclusive, license during the term of an Order Form under which Client purchases access to the Application Services to be used in conjunction with the Licensed Software. Client shall have the right to make additional copies of the Licensed Software for such use. Client shall be responsible for its Authorized Users use of the Licensed Software in compliance with the terms of this Agreement.
- 3.3 Restrictions.**
- 3.3.1** Brightree owns all right, title and interest in and to the Application Services, Brightree Application and Licensed Software. The Application Services, Brightree Application and Licensed Software are provided to Client for use only as expressly set forth in this Agreement, and Client will not use the Application Services, Brightree Application or Licensed Software in whole or in part for any other use or purpose. Client will not, and will not allow any third party to (i) decompile, disassemble, reverse engineer or attempt to reconstruct, identify or discover any source code, underlying ideas, underlying user interface techniques or algorithms of the Brightree Application or Licensed Software by any means, or disclose any of the foregoing; (ii) except as expressly set forth in this Agreement, provide, rent, lease, lend, or use the Brightree Application or Licensed Software for timesharing, subscription, or service bureau purposes; or (iii) sublicense, transfer or assign the Brightree Application or Licensed Software or any of the rights or licenses granted under this Agreement.
- 3.3.2** Client shall not use the Application Services for storage, possession, or transmission of any information, the possession, creation or transmission of which violates any state, local or federal law, including without limitation, those laws regarding stolen materials, obscene materials or child pornography. Client shall not transmit Content over the Application Services that infringes upon or misappropriates the intellectual property or privacy rights of any third party.
- 3.3.3** Brightree shall provide a password allowing Client to give each Authorized Users a user name and password to access the Application Services. Client shall establish and maintain lists of Authorized Users and comply with Brightree's procedures for verification of Authorized Users, revision of access rights to Application Services, security, and assignment and use of passwords. Client shall notify Brightree immediately in writing if the security or integrity of a password or authority level has been compromised. Client shall be fully responsible, and indemnify and hold Brightree harmless, for any charges, costs, expenses, and third party claims that may result from unauthorized use of or access to the Application Services using Client's user names.
- 3.3.4** Client is responsible for its use of the Application Services. Brightree may, from time to time, require a person to agree to Brightree's then-current Terms of Services for the Application Service (or any part thereof) prior to permitting such person to use the Application Services. Client hereby authorizes Brightree to prominently display within the Application Services, Brightree's then-current Privacy Policy and Terms of Service. Brightree shall be free to terminate an individual's access to the Application

Services if it determines, in its sole discretion, that such individual's use of the Application Services is in breach of Brightree's then-current Terms of Service, or could harm Brightree's reputation.

3.3.5 Regardless of whether Brightree requires its Authorized Users to agree to Brightree's then-current Terms of Service, Client agrees that it is responsible for developing and implementing appropriate policies for use of the Application Services by such persons including policies regarding such persons compliance with the terms hereof.

3.3.6 Brightree is not responsible for Client's access to or use of patients' protected health information (as defined under the Health Insurance Portability and Accountability Act of 1996 ("HIPAA")) stored within the Application Services. Any such access or use shall be in accordance with all applicable laws, rules and regulations, including, without limitation HIPAA.

3.4 Client Content. Client hereby grants to Brightree a worldwide, non-exclusive, fully paid-up license to use, copy, modify, enhance, display, publish, distribute, create derivative works of and otherwise use the Content in any manner reasonably necessary to perform the Services. Client represents and warrants that it has all rights necessary to grant Brightree the foregoing license. Client further represents and warrants that Client owns or all right, title and interest in and to the Content or has a license granting it the rights necessary to permit it to grant the foregoing license. If Client licenses any Content, it shall not provide such Content to Brightree until it provide Brightree with a copy of the license.

4. PAYMENTS.

4.1 Fees. Client agrees to pay Brightree for the performance of the Services in accordance with the rates and fees specified in the Order Form. Following the initial three year term, on each one year anniversary of an Order Form, Brightree may increase the rates and fees set forth in such Order Form (i) by up to the annual percentage change reflected in the 12-month CPI published by the U.S. Bureau of Labor Statistics and found on the website: <http://www.bls.gov/cpi/> and (ii) for increases in the Active Patient Census. Brightree shall give Client notice of such increase prior to its effective date, at that time the Customer will be given the option of auto-renewing for one year or to negotiate for another 3 year agreement with Brightree. Unless otherwise set forth in the Order Form, all payments shall be made in United States dollars no later than thirty (30) days after the date of invoice. All payments not received when due shall accrue interest at a rate per month of one and one-half percent (1.5%) OR \$75 per month, whichever is greater.

4.2 Growth Clause. Client acknowledges that the initial fees for its use of the Application Services are based upon the Active Patient Census figures identified in the Services Order. At any time during the term, if the number of Active Patients under such Active Patient Census exceeds the Active Patient Census range upon which the fees were previously based, the fees shall be increased at Brightree's then-current rates, or if pre-determined at the rate set forth in the Order Form. Installation and implementation of the Application Services at additional sites or locations (regardless of the reason for such expansion) shall be subject to the negotiation and execution of an Order Form for the appropriate Professional Services, which Services will be performed at Brightree's then-current rates.

4.3 Expenses. Client shall reimburse Brightree for its out-of-pocket travel expenses to include food, lodging and incidentals. Transportation will be reimbursed to Brightree by Client at the current IRS mileage rates or at current coach airfare rate for providing services to Client at facilities of Client. Client will bear the travel and other out-of-pocket expenses incurred by its employees and other designees who receive training at Brightree's facilities.

4.4 Taxes. The fees payable under this Agreement shall not include taxes or duties now in force or enacted in the future imposed on the transaction and/or the delivery of the Services, all of which Client shall be responsible for and pay in full.

5. TERM AND TERMINATION.

5.1 Term. Unless earlier terminated in accordance with its terms, each Order Form will have the initial term set forth in the Order Form (the "Initial Term"). Unless otherwise set forth in an Order Form, upon the expiration of each Initial Term, the term of an Order Form will renew automatically for additional terms of one (1) year each ("Renewal Term", and together with the Initial Term, the "Term"), unless either a party notifies the other party, at least ninety (90) days prior to the end of the then-current Term that it has elected to terminate such Order Form, in which event such Order Form will terminate at the end of such Term. Unless earlier terminated in accordance with its terms, this Agreement will expire on the date the last Order Form then in effect expires or is terminated pursuant to the terms and conditions set forth in this Agreement.

5.2 Termination for Cause. Except as otherwise provided herein, upon the material breach of the other party, either party may terminate this Agreement or the applicable Order Form, if such breach remains uncured for thirty (30) days following written notice to the breaching party. Notwithstanding the foregoing, if the breaching party certifies to the other party in writing within the thirty (30) day period that a curable breach (other than a breach relating to the payment of fees owing under the Agreement) cannot reasonably be cured in thirty (30) days but that it will be remedied by a specified date (which date may be no later than is commercially reasonable under the circumstances), the termination will be effective on the date specified in the certification if the breach has not been remedied by that date.

- 5.3 Suspension of Services.** In the event any payment hereunder is not received by Brightree within thirty (30) days of the due date, Brightree may, in addition to any other remedies available to it hereunder or at law, suspend access to Support Services and/or the Application Services in whole or in part under any Order Form to which Client is a party.
- 5.4 Effect of Termination.** Upon the expiration or termination of an Order Form or this Agreement, (i) Brightree will terminate Client's access to the Application Services under affected Order Forms and will cease the provision of all Services under such Order Forms and (ii) to the extent Brightree has stored patient and clinical data as part of the Application Services provided under the affected Order Forms, it will provide such patient and clinical data to Client pursuant to its then-current data retrieval options, which are currently (i) the right to remotely access and view patient and clinical data on an annual basis or (ii) to receive a copy of the data at Brightree. The provision of such Professional Services shall be subject to Client's execution of an Order Form and payment of applicable then-current fees.

6. WARRANTIES; DISCLAIMER

- 6.1** Brightree hereby warrants that during the term of an Order Form, the Application Service provided thereunder will perform, in all material respects, in accordance with its then-current published functional specifications. (specifications includes clinical and billing support) In the event of any reproducible failure of the Application Services to perform in a material respect to such specifications, Brightree will, as Client's sole and exclusive remedy for breach of the warranty set forth in this Section 6.1, use commercially reasonable efforts repair the applicable Application Service.
- 6.2** Brightree shall use commercially reasonable efforts to ensure that System Availability of the www.Brightree.com website does not drop below 99.5%. System Availability at 100% is calculated on a 24 hour basis over the course of a calendar month (i.e., one-half percent (.5%) total Downtime during a 30 day month not to exceed 3.6 hours). "Downtime" shall mean any period of time when the Application Service is off-line to Authorized Users for more than fifteen consecutive minutes. Downtime does not include scheduled maintenance, packet loss or network/internet/telecommunications service unavailability caused by third parties or Client or Client's computer systems, electricity outages, connectivity or other operational matters, or any other event beyond Brightree's reasonable control. If total Downtime during any calendar month exceeds one percent (1%) per the calculation above, Client shall be entitled to a credit in an amount equal to two (2%) of a month's access fees, and for each one (1%) Downtime increment another two (2%) of the month's access fees up to 100% maximum of the given month's access fees, but only if Client requests the credit in writing within five business days of the services-affecting event(s). Credits issued under this Section 6.2 shall constitute Client's sole remedy and Brightree's sole and exclusive liability for any Downtime.
- 6.3** **DISCLAIMER OF WARRANTIES.** EXCEPT AS SET FORTH IN SECTION 6.1, BRIGHTREE MAKES NO WARRANTIES REGARDING THE SERVICES, AND BRIGHTREE HEREBY DISCLAIMS ALL WARRANTIES, EXPRESS AND IMPLIED, WITH RESPECT TO THE SERVICES, INCLUDING WITHOUT LIMITATION ANY IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NONINFRINGEMENT, COMPATIBILITY OR SECURITY. BRIGHTREE DOES NOT WARRANT THAT ACCESS TO OR USE OF THE APPLICATION SERVICES WILL BE UNINTERRUPTED OR ERROR-FREE, THAT ALL DEFECTS AND ERRORS IN THE APPLICATION SERVICE WILL BE CORRECTED, OR THAT THE SERVICES WILL MEET ANY PARTICULAR CRITERIA OF PERFORMANCE OR QUALITY. BRIGHTREE DOES NOT PROVIDE ANY WARRANTIES REGARDING THE ACCURACY OF DATA OR INFORMATION PROVIDED BY THIRD PARTIES. The provisions of this Section allocate the risks under this Agreement between Brightree and Client. Brightree's pricing reflects this allocation of risk and the limitation of liability specified herein.

7. INDEMNITY.

- 7.1 Infringement.** Brightree shall defend, indemnify and hold harmless Client, its subsidiaries, affiliates, officers, directors, agents, employees and assigns, from and against any and all claims, suits, proceedings, losses, damages, liabilities, costs and expenses (including, without limitation, reasonable attorneys' fees) (collectively, "Losses") suffered or incurred by them in connection with a third party claim arising out of any actual or threatened claim that the Application Services infringes upon or misappropriates any copyright, patent, trademark, trade secret, or other proprietary or other rights of any third party. Brightree shall have no obligation to indemnify Client to the extent the alleged infringement arises out of (i) the use of the Application Services in combination by Client with other data products, processes or materials not provided by Brightree and such infringement would not have occurred but for Client's combination; or (ii) the Content. Should the Application Services as used by Client become, or in Brightree's opinion be likely to become, the subject of an infringement claim, Brightree shall at its option and sole expense either: (i) procure for Client the right to continue to use the Application Services as contemplated hereunder, or (ii) modify the Application Services to eliminate any such claim that might result from its use hereunder or (iii) replace the Application Services with an equally suitable, compatible and functionally equivalent non-infringing Application Services at no additional charge to Client. If none of these options is reasonably available to Brightree, then this Agreement may be terminated at the option of either party hereto without further obligation or liability on the part of either party hereto except that Brightree agrees to promptly refund to Client the pro-rata portion of any fees prepaid by Client amortized on a straight-line basis based over the term of this Agreement.
- 7.2 Client Indemnity.** Client shall defend, indemnify and hold harmless Brightree, its subsidiaries, affiliates, officers, directors, agents, employees and assigns, from and against any and all Losses suffered or incurred by them in connection with a third party claim arising out of (i) a breach by Client of this Agreement, (ii) Client's use of the Licensed Software or Application Services or (iii) Client's failure to comply with laws, rules, regulations or professional standards.

7.3 Mechanics of Indemnity. The indemnifying party's obligations are conditioned upon the indemnified party: (i) giving the indemnifying party prompt written notice of any claim, action, suit or proceeding for which the indemnified party is seeking indemnity; (ii) granting control of the defense and settlement to the indemnifying party; and (iii) reasonably cooperating with the indemnifying party at the indemnifying party's expense.

8. CONFIDENTIAL INFORMATION.

8.1 Except as expressly permitted in this Section 8, no party will, without the prior written consent of the other party, disclose any Confidential Information of the other party to any third party. Information will be considered Confidential Information of a party if either (i) it is disclosed by the party to the other party in tangible form and is conspicuously marked "Confidential", "Proprietary" or the like; or (ii) (a) it is disclosed by a party to the other party in non-tangible form and is identified as confidential at the time of disclosure; and (b) it contains the disclosing party's customer lists, customer information, technical information, pricing information, pricing methodologies, or information regarding the disclosing party's business planning or business operations. In addition, notwithstanding anything in this Agreement to the contrary, the terms of this Agreement will be deemed Confidential Information of Brightree. Brightree may, in any manner, publicly announce the relationship with Client. Brightree may also develop, with customer review and approval, a business use case that may be used for Brightree marketing purposes.

8.2 Other than the terms and conditions of this Agreement, information will not be deemed Confidential Information hereunder if such information: (i) is known to the receiving party prior to receipt from the disclosing party directly or indirectly from a source other than one having an obligation of confidentiality to the disclosing party; (ii) becomes known (independently of disclosure by the disclosing party) to the receiving party directly or indirectly from a source other than one having an obligation of confidentiality to the disclosing party; (iii) becomes publicly known or otherwise ceases to be secret or confidential, except through a breach of this Agreement by the receiving party; or (iv) is independently developed by the receiving party.

8.3 Each party will secure and protect the Confidential Information of the other party (including, without limitation, the terms of this Agreement) in a manner consistent with the steps taken to protect its own trade secrets and confidential information, but not less than a reasonable degree of care. Each party may disclose the other party's Confidential Information where (i) the disclosure is required by applicable law or regulation or by an order of a court or other governmental body having jurisdiction after giving reasonable notice to the other party with adequate time for such other party to seek a protective order; (ii) if in the opinion of counsel for such party, disclosure is advisable under any applicable securities laws regarding public disclosure of business information; or (iii) the disclosure is reasonably necessary and is to that party's, or its Affiliates', employees, officers, directors, attorneys, accountants and other advisors, or the disclosure is otherwise necessary for a party to exercise its rights and perform its obligations under this Agreement, so long as in all cases the disclosure is no broader than necessary and the person or entity who receives the disclosure agrees prior to receiving the disclosure to keep the information confidential. Each party is responsible for ensuring that any Confidential Information of the other party that the first party discloses pursuant to this Section 8 (other than disclosures pursuant to clauses (i) and (ii) above that cannot be kept confidential by the first party) is kept confidential by the person receiving the disclosure.

9. LIMITATIONS OF LIABILITY. NOTWITHSTANDING ANYTHING TO THE CONTRARY CONTAINED IN THIS AGREEMENT, BRIGHTREE AND ITS SHAREHOLDERS, AFFILIATES, DIRECTORS, MANAGERS, EMPLOYEES OR OTHER REPRESENTATIVES SHALL NOT BE LIABLE TO CLIENT, AUTHORIZED USERS OR ANY THIRD PARTY FOR ANY INDIRECT, INCIDENTAL, SPECIAL, OR CONSEQUENTIAL DAMAGES (INCLUDING REASONABLE ATTORNEYS' FEES AND LOST PROFITS) THAT RESULT FROM OR ARE RELATED TO THIS AGREEMENT, EVEN IF BRIGHTREE HAS BEEN INFORMED OF THE POSSIBILITY OF SUCH DAMAGES. IN ANY EVENT, BRIGHTREE'S AGGREGATE LIABILITY TO CLIENT FOR DAMAGES, COSTS, AND EXPENSES SHALL NOT EXCEED THE AMOUNTS RECEIVED BY BRIGHTREE FROM CLIENT IN THE TWELVE MONTHS PRECEDING THE EVENT GIVING RISE TO SUCH DAMAGES.

10. GENERAL PROVISIONS.

10.1 Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Georgia, without regard to the choice of law provisions thereof. The United Nations Convention on Contracts for the International Sale of Goods shall not apply to this Agreement. Any contract dispute or claim arising out of, or in connection with, this Agreement shall be finally settled by binding arbitration in Atlanta, Georgia, and the then current rules and procedures of the Judicial Arbitration and Mediation Services (JAMS) by one (1) arbitrator appointed by JAMS. The arbitrator shall apply the law of the State of Georgia, without reference to rules of conflict of law or statutory rules of arbitration, to the merits of any dispute or claim. Judgment on the award rendered by the arbitrator may be entered in any court of competent jurisdiction. The parties agree that, any provision of applicable law notwithstanding, they will not request, and the arbitrator shall have no authority to award punitive or exemplary damages against any party. In the event that any arbitration, action or proceeding is brought in connection with this Agreement, the prevailing party shall be entitled to recover its costs and reasonable attorneys' fees. Notwithstanding the foregoing, nothing herein shall preclude either party from seeking injunctive relief in any state or federal court of competent jurisdiction without first complying with the arbitration provisions of this Section.

10.2 Severability. If any provision of this Agreement is held to be invalid or unenforceable for any reason, it shall be deemed omitted and the remaining provisions will continue in full force without being impaired or invalidated in any way. The parties agree to replace any invalid provision with a valid provision that most closely approximates the intent and economic effect of the invalid provision.

- 10.3 Waiver.** The waiver by either party of a breach of any provision of this Agreement will not operate or be interpreted as a waiver of any other or subsequent breach.
- 10.4 Assignment.** This Agreement shall be binding upon the parties' respective successors and permitted assigns. Client shall not assign this Agreement, and/or any of its rights and obligations hereunder, without the prior written consent of Brightree, which consent shall not be unreasonably withheld. This Agreement, and the rights and obligations herein, may be assigned by Brightree to any person or entity without the written consent of the Client.
- 10.5 Reference Site.** One day per month, Client shall provide Brightree and its prospective clients with reasonable access to one of its locations using the Application Services. This one-day site visit would typically include limited product demonstrations and discussions with Client's clinical and billing staff and senior agency administrators. Client is not responsible for any out-of-pocket travel expenses (transportation, food, lodging and incidentals) incurred by Brightree or said prospective clients during any site visits.
- 10.6 Public Relations.** Following the execution of an Order Form, Client and Brightree shall work together to issue a press release, mutually agreed upon in writing, regarding Client's purchase of the Application Services. The Client also agrees to be a reference source for Brightree prospective clients.
- 10.7 Independent Contractors.** Brightree is acting in performance of this Agreement as an independent contractor.
- 10.8 Notices.** All notices required to be given under the terms of this Agreement or which any of the parties hereto may desire to give hereunder, shall be in writing, shall be delivered via one of the following methods, and shall be deemed to have been received: (i) on the day given delivered by hand (securing a receipt evidencing such delivery); or (ii) on the second day after such notice is sent by a nationally recognized overnight or two (2) day air courier service, full delivery cost paid; or (iii) on the fifth day after such notice was mailed, registered mail, prepaid, return receipt requested, and addressed to the party to be notified at the addresses set forth in the Order Form.
- 10.9 Survival.** All provisions of Sections 3.3.1, 4, 6.3, 7, 8, 9 and 10 of this Agreement shall survive the expiration or termination of any Order Form or any termination of this Agreement.
- 10.10 Legal Fees.** In the event of any proceeding or lawsuit brought by Brightree or Client in connection with this Agreement, the prevailing party shall be entitled to recover its costs and legal fees (including, but not limited to, allocated costs of in-house staff counsel) and court costs.
- 10.11 Force Majeure.** Neither party will be liable to the other for failure to meet its obligations under this Agreement where such failure is caused by events beyond its reasonable control such as fire, failure of communications networks, riots, civil disturbances, embargos, storms, acts of terrorism, pestilence, war, floods, tsunamis, earthquakes or other acts of God.
- 10.12 Subsequent Modifications.**
- 10.12.1** No amendment, alteration or modification of this Agreement shall be effective or binding unless it is set forth in a writing signed by duly authorized representatives of both parties.
- 10.12.2 Notwithstanding anything herein to the contrary, Brightree may modify the Terms and Conditions (the "Modified Ts & Cs"), effective upon renewal of the term of any Order Form or the execution of new Order Forms, as further described below.** If Brightree creates Modified Ts & Cs that it wishes to replace this Agreement, Brightree shall post such Modified Ts & Cs on its website located at www.Brightree.com, and shall notify Client of such Modified Ts & Cs (which notice may be via email to Client's email address on record with Brightree). Such Modified Ts & Cs shall be effective (and Client shall be deemed to have accepted the Modified Ts & Cs) upon the earlier of (i) the effective date of the renewal of the term of any Order Form to which it is a party following such notice, provided that if such date is less than thirty (30) days following the date of such notice, then Client shall have the right to terminate this Agreement by providing written notice to Brightree within thirty (30) days of the date of such notice; or (ii) Client executing a new Order Form. Upon the effectiveness of Modified Ts & Cs, such Modified Ts & Cs shall apply to all Order Forms to which Client is a party, and shall supersede all prior versions of these Terms and Conditions.
- 10.13 Entire Agreement.** This Agreement and any exhibits and schedules attached hereto, constitutes the entire agreement between the parties in connection with the subject matter hereof and supersedes all prior and contemporaneous agreements, understandings, negotiations and discussions, whether oral or written, of the parties, and there are no warranties, representations and/or agreements among the parties in conjunction with the subject matter hereof except as set forth in this Agreement.