

## Brilliant Working Limited

### BRILLIANT WORKING LIMITED - LICENCE OF TRAINING MATERIALS (ONLINE)

#### 1. DEFINITIONS AND INTERPRETATION

1.1 The definitions and rules of interpretation in this clause apply in this Agreement.

**Authorised User:** each Subscriber and each person given access to Brilliant Working Content by a Subscriber.

**Brilliant Working Content:** any content, data or other materials provided by Brilliant Working via the Platform.

**Confidential Information:** any information (including, without limitation, in written, oral, visual or electronic form, or on tape or disk) which is not publicly available including, but not limited to, any information specifically designated by the disclosing party as confidential; any information supplied to the disclosing party by any third party in relation to which a duty of confidentiality is owed or arises; and any other information which should otherwise be reasonably regarded as possessing a quality of confidence. This includes know-how and information about design, development, specifications, manuals, instructions, customer lists, sales, marketing, promotion, distribution, business plans, forecasts, and technical or other expertise. Brilliant Working Content is Brilliant Working's Confidential Information.

**Derivative Work:** work generated or developed following the date of this Agreement which is based on the Brilliant Working Content or an underlying work in relation to the Brilliant Working Content (including translations, abridgements, condensations, or any other form in which a work may be recast, transformed or adapted).

**Intellectual Property Rights:** patents, utility models, rights to inventions, copyright and neighbouring 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, rights in computer software, 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.

**Licence Fee:** the amount in respect of each period of twelve months which is specified on the Platform from time to time.

**Licence Period:** the term of this Agreement beginning on the date of subscription.

**Platform:** Brilliant Working's website at brilliantworking.com or such other URL as is notified by Brilliant Working from time to time.

**Purpose:** internal use for training only.

**Reserved Rights:** all rights in, or in relation to, the Brilliant Working Content that are not expressly granted to the Authorised User under this Agreement, including rights in any and all Derivative Works, and any other rights (whether known now, or created later, and whether or not in the contemplation of the parties at the time of this Agreement).

**Services:** the subscription services provided by Brilliant Working under this Agreement via the Platform.

**Software:** the online software applications provided by Brilliant Working as part of the Services.

**Subscriber:** the person paying a Licence Fee to Brilliant Working to allow the Authorised User to use the Services.

**Virus:** any thing or device (including any software, code, file or programme) which may: prevent, impair or otherwise adversely affect the operation of any computer software, hardware or network, any telecommunications service, equipment or network or any other service or device; prevent, impair or otherwise adversely affect access to or the operation of any programme or data, including the reliability of any programme or data (whether by re-arranging, altering or erasing the programme or data in whole or part or otherwise); or adversely affect the user experience, including worms, trojan horses, viruses and other similar things or devices.

- 1.2 Any words following the terms **including, include, in particular, for example** or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.

## **2. GRANT OF ACCESS**

- 2.1 Brilliant Working hereby grants to the Authorised User a non-transferable, non-exclusive, global right to use the Brilliant Working Content on the Platform during the Licence Period for the Purpose. Unless Brilliant Working expressly agrees otherwise in writing, the rights shall only extend to employees and self-employed consultants of the Subscriber and not to any group companies of the Subscriber.
- 2.2 The rights granted to the Authorised User are strictly limited to, and the Authorised User shall use the Brilliant Working Content solely for, the Purpose.
- 2.3 Brilliant Working may require remove, or make editorial revisions to, any of the Brilliant Working Content supplied under this Agreement at any time.

## **3. BRILLIANT WORKING'S OBLIGATIONS AND RIGHTS**

- 3.1 Brilliant Working shall, during the Licence Period, use reasonable care and skill in providing the Services and making available the Brilliant Working Content to the Authorised User on and subject to the terms of this Agreement.
- 3.2 Brilliant Working shall use commercially reasonable endeavours to make the Services available 24 hours a day, seven days a week, except for:
- (a) planned maintenance carried out during the maintenance window of 10.00 pm to 2.00 am UK time; and
  - (b) unscheduled maintenance performed outside normal UK business hours, provided that Brilliant Working has used reasonable endeavours to give the Subscriber advance notice.
- 3.3 Brilliant Working expressly retains the Reserved Rights for its own and third party exploitation.
- 3.4 Brilliant Working may develop, market, sell and promote Derivative Works and may exploit (including by licensing it to third parties) the Brilliant Working Content in any media, format or products and for purposes other than the Purpose.
- 3.5 Brilliant Working may require any Authorised User to cease all use of any of the Brilliant Working Content if it reasonably believes that the Authorised User's use of this Brilliant Working Content infringes the Intellectual Property Rights of any third party, or breaches any applicable law or regulation. In this instance, Brilliant Working may, at its option either:
- (a) provide the Authorised User with alternative Brilliant Working Content so as to avoid the infringement; or
  - (b) terminate this Agreement immediately on written notice in respect of the affected Brilliant Working Content.

## **4. AUTHORISED USER'S OBLIGATIONS AND RIGHTS**

- 4.1 The Authorised User may not change, amend or develop the Brilliant Working Content in any way without Brilliant Working's prior written consent.

4.2 The Authorised User shall:

- (a) ensure that its network and systems comply with the relevant specifications provided by Brilliant Working from time to time;
- (b) be, to the extent permitted by law and except as otherwise expressly provided in this Agreement, solely responsible for procuring, maintaining and securing its network connections and telecommunications links from its systems to Brilliant Working's data centres, and all problems, conditions, delays, delivery failures and all other loss or damage arising from or relating to the Authorised User's network connections or telecommunications links or caused by the internet;
- (c) comply with all applicable laws in performing its obligations and exercising its rights under this Agreement; and

4.3 The Subscriber shall ensure that its authorised users use the Brilliant Working Content and the Services in accordance with the terms and conditions of this Agreement and shall be responsible for any Authorised User's breach of this Agreement and in particular shall procure that each Authorised User shall not, infringe any moral rights (as defined in Chapter IV of the Copyright, Designs and Patents Act 1988) that subsist in respect of the Brilliant Working Content.

4.4 The Authorised User shall not:

- (a) except as may be allowed by any applicable law which is incapable of exclusion by agreement between the parties and except to the extent expressly permitted under this Agreement:
  - (i) attempt to copy, modify, duplicate, create derivative works from, frame, mirror, republish, download, display, transmit, or distribute all or any portion of the Brilliant Working Content and/or Software (as applicable) in any form or media or by any means; or
  - (ii) attempt to de-compile, reverse compile, disassemble, reverse engineer or otherwise reduce to human-perceivable form all or any part of the Software or the Services; or
- (b) access all or any part of the Brilliant Working Content and Services in order to build a product or service which competes with the Brilliant Working Content and/or Services; or
- (c) use the Brilliant Working Content and/or the Services to provide services to third parties; or
- (d) license, sell, rent, lease, transfer, assign, distribute, display, disclose, or otherwise commercially exploit, or otherwise make the Brilliant Working Content and/or the Services available to any third party; or
- (e) attempt to obtain, or assist third parties in obtaining, access to the Brilliant Working Content and/or the Services, other than as provided under clause 2; or
- (f) introduce or permit the introduction of, any Virus into the Services or Brilliant Working's (or its supplier's) network and information systems.

4.5 The Authorised User shall prevent any unauthorised access to, or use of, the Services and/or the Brilliant Working Content and, in the event of any such unauthorised access or use, promptly notify Brilliant Working.

4.6 The Subscriber shall ensure that the Brilliant Working Content is kept secure and in an encrypted form, and shall use the best available practices and systems to:

- (a) enforce the use restrictions of this Agreement; and

- (b) prevent, and take prompt and proper remedial action against, unauthorised access, copying, modification, storage, reproduction, display or distribution of the Brilliant Working Content.

4.7 If the Authorised User becomes aware of any misuse of any Brilliant Working Content, or any security breach in connection with this Agreement that could compromise the security or integrity of the Brilliant Working Content or otherwise adversely affect Brilliant Working, the Authorised User shall promptly notify Brilliant Working and fully co-operate with Brilliant Working to remedy the issue as soon as reasonably practicable. Brilliant Working may suspend the Authorised User's rights under this Agreement until the misuse or security breach is remedied.

4.8 Brilliant Working, or any other person authorised by Brilliant Working, may inspect the Authorised User's records, premises and/or servers during normal business hours, and take away copies to verify that the Authorised User is complying with its obligations under this Agreement.

## **5. INTELLECTUAL PROPERTY RIGHTS**

Brilliant Working (or its licensor) retains ownership of all Intellectual Property Rights in the Brilliant Working Content, and in any Derivative Works which it may create.

## **6. LICENCE FEE**

The Subscriber undertakes to pay to Brilliant Working the Licence Fee in advance on the date of subscription and each anniversary of that date.

## **7. INFRINGEMENT**

7.1 Each party shall promptly notify the other of any actual or suspected infringement of the Brilliant Working Content that comes to its attention (**Infringement**).

7.2 The Authorised User shall co-operate fully with Brilliant Working by taking all steps required by Brilliant Working (in its sole discretion) in connection with any Infringement, including, without limitation, legal proceedings in the name of Brilliant Working or in the joint names of the parties. Brilliant Working shall be responsible for the cost of any legal proceedings it requires, and is entitled to any damages, account of profits and/or awards of costs recovered. The Authorised User shall use its best endeavours to assist Brilliant Working in any legal proceedings relating to any Infringement.

## **8. TERMINATION AND SUSPENSION**

8.1 Without affecting any other right or remedy available to it, Brilliant Working may suspend provision of the Services for any period during which a Licence Fee is due but outstanding from the Subscriber.

8.2 This Agreement shall automatically renew each year unless the Subscriber notifies Brilliant Working in writing of its intention not to renew in advance of the renewal date.

8.3 On any termination of this Agreement:

- (a) all rights and authorisations granted by Brilliant Working to the Authorised User under this Agreement shall automatically terminate and immediately revert to Brilliant Working; and
- (b) the Authorised User shall immediately cease all use of Brilliant Working Content, and shall, at Brilliant Working's option and according to Brilliant Working's instructions, immediately return to Brilliant Working or destroy all Brilliant Working Content in the Authorised User's possession or subject to its control including from back-up systems and any cached Brilliant Working Content within the Authorised User's control.

## **9. LIMITATION OF LIABILITY**

9.1 Brilliant Working:

- (a) does not warrant that:

- (i) the Authorised User's use of the Services will be uninterrupted or error-free; or
- (ii) the Software or the Services will be free from Viruses;
- (b) is not responsible for any delays, delivery failures, or any other loss or damage resulting from the transfer of data over communications networks and facilities, including the internet.

9.2 Except as expressly and specifically provided in this Agreement:

- (a) the Authorised User assumes sole responsibility for results obtained from the use of the Brilliant Working Content by the Authorised User, and for conclusions drawn from such use;
- (b) all warranties, representations, conditions and all other terms of any kind whatsoever implied by statute or common law are, to the fullest extent permitted by applicable law, excluded from this Agreement; and
- (c) the Brilliant Working Content is provided to the Authorised User on an "as is" basis.

9.3 Nothing in this Agreement excludes the liability of Brilliant Working:

- (a) for death or personal injury caused by Brilliant Working's negligence; or
- (b) for fraud or fraudulent misrepresentation.

9.4 Subject to clause 9.1 and clause 9.3:

- (a) Brilliant Working shall have no liability for any special, indirect or consequential loss, costs, damages, charges or expenses; and
- (b) Brilliant Working's total aggregate liability to the Subscriber (which for the purposes of this clause includes all of the persons authorised by the Subscriber to use the Services), in any period of twelve months shall not exceed an amount equal to the Licence Fee payable in respect of that period of twelve months; and
- (c) No claim may be brought against Brilliant Working by an Authorised User which is not a Subscriber.

## **10. WAIVER**

No failure or delay by a party to exercise any right or remedy provided under this Agreement or by law shall constitute a waiver of that or any other right or remedy, nor shall it 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. GOVERNING LAW**

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

## **12. JURISDICTION**

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