

General Terms and Conditions

for the Bright River Service

1. Definitions

The following terms shall have the meaning set forth below:

Account:	The Client's personal and secured web page, accessible via the Website or as otherwise agreed and in which the Client can, amongst other things, submit Images and retrieve Materials;
AFP Folder:	The storage location, designated by the Client, as meant in clause 6;
Agreement:	The agreement, including these Terms and Conditions, concluded between Bright River and the Client for provision of the Service either in the form of a written agreement or as the result of Bright River's confirmation of the acceptance of an Offer by the Client in accordance with clause 3.1;
API:	A programming interface consisting of a direct and secured internet connection between a Client's systems and the Bright River Systems (and Software);
Auto Fetch and Push Function:	The function as meant in clause 6;
Auto-Processing:	The form of provision of the Service by Bright River whereby Bright River and the Client have agreed the applicable fee for the Images in the Agreement and for the avoidance of doubt, whereby Bright River does not make separate Offers for particular Images;
Bright River	Bright River USA LLC is a Delaware limited liability company, with its principal place of business at 85 Broad Street, 16th Floor New York, NY 10004
Bright River Systems and Software:	The systems, databases, Account, API's, Storage Location, plugins, software and any other programmed code provided to and used or accessed by the Client in accordance with the Agreement;
Client:	Any individual or business that has entered into an Agreement with Bright River;
Images:	All photos and other images submitted by the Client to Bright River within Client's Account with regard to which Images Bright River will provide its Service;
IP Rights:	All intellectual property and ancillary rights, such as copyrights, trademark rights, patent rights, design rights, trade name rights, as well as know-how rights;
Login Details:	Any usernames and passwords, keys and other codes used by the Client in order to be provided with the Service;
Material:	The clipped and/ or edited Images resulting from the Service;

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85 Broad Street, 16th Floor New York, NY 10004 United States Telephone +1 (646) 396 5460

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Offer:	An offer or quote by Bright River either for providing the Service for i) particular Images or ii) Images on the basis of an Agreement;
Parties:	Bright River and Client, each being a Party;
Personal Data:	Any information relating to an identified or identifiable natural person;
Service:	The services provided by Bright River to Client under the terms of an Offer or an Agreement comprising of the editing of Images provided by the Client and converting them into Material, in accordance with the agreed specifications in the accepted Offer or in the Agreement and - if applicable - the use of or access to the Bright River Systems and Software;
Service Fee:	The charges, fees or price for the Service;
Service Network:	The service network Bright River has established, apart from its own corporate group, and which consists of a number of carefully selected professional companies, with which Bright River has agreements in place and which are engaged in the provision of the Bright River Service;
Storage Location:	The location in or on Bright River Systems and Software where, in case of use of the Auto Fetch and Push Function, the AFP Folder is located;
Terms and Conditions:	These general terms and conditions;
Website:	The website of Bright River, accessible via www.bright-river.com , through which Website the Client can obtain access to its personal Account, submit Images and retrieve Materials.

2. Applicability

- 2.1. The Terms and Conditions apply to all Agreements pursuant to which Bright River will provide the Service.
- 2.2. Any other terms and conditions or provisions proposed by the Client, whether orally or in writing, shall be of no effect and the Services provided by Bright River shall not constitute acceptance of such terms and conditions or provisions, unless Bright River has expressly accepted such terms, conditions or provisions in writing.
- 2.3. In the event of a conflict between the Terms and Conditions and a subsequent Agreement, the Agreement shall prevail over the Terms and Conditions.
- 2.4. Except in the case of clause 2.3 of these Terms and Conditions, Bright River is entitled, at any time, to amend these Terms and Conditions. The most up-to-date version of the Terms and Conditions can be found on the Website or will be brought to Client's attention.

3. Agreement

- 3.1. Offers by Bright River shall be understood to be non-binding. An Agreement becomes effective only subject to Bright River's confirmation of a Client's acceptance of an Offer. Bright River starting to provide the Service shall be considered as a confirmation.
- 3.2. Offers which are not accepted become invalid after the expiration of thirty days from the date

they were made and/or published on the Website, unless otherwise indicated in the Offer or in the Agreement.

- 3.3. The Client shall provide accurate and complete information to Bright River, including with respect to the Images and the Client specifications for the Materials upon which information Bright River bases its Offer and the details for creation of the Client's Account. If the aforementioned information proves to be inaccurate or incomplete, Bright River will have the right to amend its Offer or to terminate the Agreement.
- 3.4. Amendments or additions to the agreed Service at the request of the Client may only take place with the written consent of Bright River. Bright River is not obligated to implement an amendment or addition and may require a separate written agreement to be concluded in respect thereof.
- 3.5. Bright River will only provide its Services:
 - 3.5.1. with regard to the supported file types, which file types are displayed on the Website or specified in the Agreement;
 - 3.5.2. if the Images are submitted by means of one of the approved methods of submission, which are listed on the Website or in the Agreement, which may include the Auto Fetch and Push Function;
 - 3.5.3. if the Client uses one of the approved payment methods, which are listed on the Website or in the Agreement; and
 - 3.5.4. if the submitted Images are of the quality of the then-current industry standards.
- 3.6. If Bright River is not able to provide the Service due to the Client's failure to comply with the conditions for the provision of the Service by Bright River set forth in clause 3.5 of these Terms and Conditions, Bright River will so notify the Client. Bright River cannot be held liable for failure to provide the Service in those circumstances.
- 3.7. If there are amendments or additions which result in a change to the scope of the agreed Service, for example through additional work, the extra activities arising therefrom will be paid for in accordance with the then-current rates of Bright River, unless otherwise agreed to in writing. In so far as a fixed price has been agreed for the Service, Bright River will inform the Client about the additional charges of the extra activities as referred to in this article.
- 3.8. The Client acknowledges and agrees that Bright River, notwithstanding clause 13.1 of the Terms and Conditions, will be permitted to engage its Service Network for the provision of the Service, subject to the terms and conditions of the Agreement.

4. Service

- 4.1. Bright River will provide the Service on the basis of a reasonable endeavours obligation.
- 4.2. Bright River will, subject to the Agreement, use its reasonable endeavors to provide the Service to the Client within 24 hours either:
 - 4.2.1. after the Client's acceptance of the Offer made by Bright River following a successful submittal of the Images by the Client and Bright River's assessment of those Images; or,
 - 4.2.2. after successful submittal of the Images by the Client.
- 4.3. Notwithstanding clause 4.2 of the Terms and Conditions, the Client understands and accepts that the turnaround time depends on several circumstances, such as the number of Images provided by the Client, the quality of the Images and any additional information provided by the Client. If, despite the reasonable endeavors of Bright River, Bright River fails to provide the Materials in accordance with clause 4.2 of these Terms and Conditions, Bright River will endeavor, as an exclusive remedy to the Client, to provide the Materials within the next 48 hours.
- 4.4. All delivery dates in relation to the Service issued by Bright River are estimates only. The Client

may not suspend its payment obligation if the anticipated time of delivery is exceeded by Bright River.

- 4.5. The Client accepts that additions or amendments demanded to the agreed Service by the Client may influence the turnaround time and the reciprocal responsibilities of Bright River and the Client. The fact that additional work arises during the provision of the Service as a result of the Client demanding such additional work will not entitle the Client to cancel or terminate the Agreement.
- 4.6. The Materials as provided by Bright River shall be deemed to be in conformity with the Agreement if the Materials substantially meet the specifications in the accepted Offer or the specifications described in the Agreement. If the Materials do not substantially meet the applicable specifications, the Client is, as an exclusive remedy and subject to clauses [4.7](#) and [4.8](#) of the Terms and Conditions, entitled to request Bright River to re-execute the relevant Service at no additional costs by rejecting the relevant Material, using the reject-function in the online application. The Client understands and accepts, however, that the quality of the delivered Materials depends on, among other things, the quality of the Images provided by the Client. Bright River is therefore free to decide whether re-executing of the Service will result in Materials of a higher level of conformity. If, at Bright River's sole discretion, the level of conformity of the delivered Materials cannot be improved, Bright River shall not be obligated to re-execute the Service and the Client shall pay the fee for the Material in the form initially provided.
- 4.7. The Client's right to request Bright River to re-execute the Service will lapse after 14 days following notification by Bright River of delivery of the Materials. Upon the Client's download or any other use of the Materials or lapse of the 14 days' period, the Materials will be deemed to have been accepted and to be in conformity with the Agreement.
- 4.8. Bright River shall be entitled to charge an additional fee to the Client if re-executing the Service requires Bright River to make additions to or to amend the agreed Service in order to achieve a higher level of conformity of the Material.

5. Access to the Service

- 5.1. In order to create an Account and to use the Service, the Client is required to submit its contact details via the Website, after which submission an Account is created on behalf of the Client. After accessing its Account with its Login Details, the Client will be able to submit Images and to retrieve Materials. For making payments to Bright River, the Client will be redirected to the payment service provider of Bright River or, if so agreed, Bright River shall send an invoice.
- 5.2. After the Service has been rendered, the Materials will be made available through the Account of the Client. An e-mail will be sent to the Client upon delivery of these Materials. Bright River does not accept any liability concerning the correct reception of this notification e-mail and Bright River therefore advises the Client to regularly check its Account in order to retrieve the Materials. The Service shall be deemed to have been completed by Bright River at the moment the Materials are made available in the User's Account.
- 5.3. The Client shall be responsible at all times for all the use made of the Service and, if applicable, the Bright River Systems and Software with the Login Details, including use by third parties, whether authorized or unauthorized. As soon as the Client knows or has reason to suspect that Login Details have come into the hands of an unauthorized party, the Client must promptly notify Bright River thereof, without prejudice to the Client's own obligation to take effective measures, including but not limited to, where applicable, changing the Login Details.
- 5.4. The Client accepts that the Website and, if applicable, the Bright River Systems and Software only contain the functionalities and information that are present at the moment of use ("as is"

basis).

- 5.5. Bright River shall in no way whatsoever be liable to the Client for any damage arising out of or resulting from the Client's Account or the Website being (temporarily) unavailable or for failures or outages.
- 5.6. The Client shall solely be responsible for the purchase and/or the proper operation of the infrastructure necessary to properly use the Service and the Website. Bright River shall not be liable for damage or costs on account of transmission errors, malfunctions or non-availability of computer, data or telecom facilities, including the internet.

6. Auto Fetch and Push

- 6.1. If so agreed, Bright River shall provide the Services inclusive of the Auto Fetch and Push Function.
- 6.2. The Auto Fetch Function enables Bright River to fetch Images from a folder on an (s)FTP Server designated by the Client (the "**AFP Folder**") and to subsequently push Material to the AFP Folder.
- 6.3. An AFP Folder can be stored at a Client's own location or in a Bright River Storage Location. In each case, the Client shall ensure that the AFP Folder has sufficient space available for the Client to upload Images and for Bright River to push the Material. The Client acknowledges and agrees that Bright River shall not be able to push any Material to the extent the size of Material exceeds the space available. Bright River cannot be held liable for failure to provide the Service in those circumstances.
- 6.4. If the parties agree that the AFP Folder shall be stored at the Client's location, the Client shall:
 - 6.4.1. ensure that the transfer speed of the internet connection is at least 50+ Mbps;
 - 6.4.2. enable Bright River to make five (5) (s)FTP connections simultaneously; and
 - 6.4.3. fully, properly and promptly make available to Bright River all information and data and give all cooperation reasonably deemed necessary to enable Bright River to access the AFP Folder, which shall include, but shall not be limited to providing Bright River with the (s)FTP account where the relevant AFP Folder is stored.
- 6.5. If the Parties agree that the AFP Folder shall be stored using a Bright River Storage Location:
 - 6.5.1. the maximum size of (i) all Images that can be uploaded by the Client and (ii) all Material that can be pushed by Bright River onto the AFP Folder on a Bright River Storage Location shall be agreed in writing.
 - 6.5.2. the Client can expand the maximum size upon agreement with Bright River, in which event Bright River shall charge an additional monthly fee, as agreed in writing.

7. IP Rights

- 7.1. All IP Rights in relation to the Images provided by the Client will at all times remain with the Client or its licensors.
- 7.2. Bright River shall only be allowed to use (and to allow the parties in Bright River's Service Network to use) the Images for provision of the Service to the Client and to the extent necessary for the provision of the Service by Bright River to the Client, the Client shall grant Bright River a royalty-free, revocable, non-exclusive right to so use the Images.
- 7.3. All Materials are "work made for hire", and all right, title and interest to the Materials automatically vest in the Client. If the Materials are not "work made for hire" under 17 U.S.C. Section 101, et. seq. or all right, title, and interest to the Materials did not automatically vest in the Client, Bright River hereby fully and irrevocably grants, assigns and conveys to the Client all IP Rights in and to all Materials.

- 7.4. All IP Rights in the Bright River Systems and Software to the extent used or made available to the Client by Bright River for the performance or provision of the Service, shall remain with Bright River or its licensors. Bright River grants the Client a limited, personal, non-sublicensable, non-transferable and non-exclusive licence to use the Bright River Systems and Software strictly only in order to be provided with the Service in accordance with and for the duration of the Agreement.
- 7.5. Bright River reserves the right to change the Bright River Systems and Software at any time or to provide the Client with new versions or updated access details. Bright River will announce material changes to the Bright River Systems and Software upon prior notice, allowing a Client sufficient time to prepare for any impact at the Client's end.

8. Price and Payment

- 8.1. After acceptance by the Client of an Offer, the Service Fee specified in the accepted Offer shall be due and payable by the Client, unless otherwise agreed to in writing under an Agreement. The Client shall use one of the payment methods specified on the Website, in the Offer or in the Agreement.
- 8.2. The Service Fee will be in USD, unless stated otherwise. All amounts due will be exclusive of any sales and turnover tax and other governmental levies or taxes.
- 8.3. Bright River shall only provide the Service upon receipt of full payment of the Service Fee due, unless otherwise agreed to in writing.
- 8.4. If payment (in full) has not yet been received by Bright River on the due date, the Client will be in default without prior demand or notice of default being required. As from the date of default the Client will be liable for an interest of 1% per month.
- 8.5. If the Client, despite demand or notice of default, still fails to pay the amounts due, Bright River may hand over the claim for collection. In that event all costs incurred by Bright River, in connection with overdue payments, such as legal costs and extra-judicial and judicial costs, including the costs of legal assistance, bailiffs and collection agencies, will be payable by the Client. The extrajudicial costs are fixed at no less than 15% of the invoiced amount subject to a minimum of USD 150.00 excluding any sales taxes.
- 8.6. Complaints in relation to invoices and/or the Services will not suspend the payment obligations of the Client.
- 8.7. Bright River will be entitled to suspend the fulfilment of its obligations until such time as the Client has fully paid all Service Fees due.

9. Privacy

- 9.1. When visiting the Website, creating an Account and making use of the Service, the Client will provide Personal Data to Bright River.
- 9.2. When dealing with Personal Data of the Client, Bright River shall:
 - 9.2.1. only use the data needed to provide the Service and, if applicable, to enable the processing of payments; and
 - 9.2.2. not share Personal Data of the Client with any third party without the Client's consent except where Bright River is required to do so by law.
- 9.3. To the extent that the Images would be considered Personal Data, Bright River, while rendering the Service, acts as the processor of such Personal Data and shall only use the Images for the purpose for which they were provided by the Client.

10. Representations, Covenants and Indemnities

- 10.1. The Client represents, warrants and covenants that:

- 10.1.1. it is fully entitled to upload the Images and that it has obtained any necessary consents with respect to any individual's data protection and the protection of privacy;
- 10.1.2. the Images are correct, complete, unencumbered and not limited or restricted by, and do not infringe upon, any third parties' rights, including IP Rights, and the use of the Images by Bright River is not in any other way unlawful in respect of third parties;
- 10.1.3. it will keep secure all Login details and any passwords, codes and related instructions provided by Bright River or used in relation with the Service;
- 10.1.4. it will never submit Images that:
 - 10.1.4.1. are in any way discriminating, offensive and/or obscene;
 - 10.1.4.2. contain violent or unlawful content; or
 - 10.1.4.3. harm the interests and reputation of Bright River
- 10.1.5. it will not intentionally use or enable or demand any third party to use or enable viruses, Trojan horses, worms, bots, or other software which may cause damage to the Service or the Website or any other technical aid which may render them inaccessible or which are intended to circumvent technical protective measures;
- 10.1.6. it will not carry out activities which may impede the functionality of the Service; and
- 10.1.7. it will not use applications that monitor the Service or that copy parts of it.
- 10.2. The Client shall indemnify, defend and hold Bright River harmless from and against any and all damages, losses, liabilities, claims and costs and expenses (including reasonable attorney's fees and expenses) (jointly "**Losses**") incurred by Bright River as a result of:
 - 10.2.1. any claims, demands, awards, judgments, actions and proceedings made by any third party against Bright River, arising out of or in any way connected with an alleged breach by the Client of its obligations under the Agreement, including the representations and warranties specified in clauses 10.1.1 and 10.1.2;
 - 10.2.2. any and all costs and damages which Bright River may incur as a result of the Client's breach of the representations and warranties contained in clauses 10.1.3, 10.1.4, 10.1.5, 10.1.6 and 10.1.7 or the Client's other unauthorized use of the Bright River Service.
- 10.3. Bright River represents, warrants and covenants that:
 - 10.3.1. it will not intentionally include or build in or have included or built in the Material any i) viruses, Trojan horses, worms, bots or other harmful software or ii) any commercial solicitation, chain letters, mass mailings, or any form of "spam";
 - 10.3.2. it will impose on the members of its Service Network:
 - 10.3.2.1. the obligation with respect to IP Rights as per clause 6.3 of these Terms and Conditions; and
 - 10.3.2.2. the confidentiality obligation as per clause 12.2 of these Terms and Conditions.
- 10.4. Bright River MAKES NO REPRESENTATIONS OR WARRANTIES OF ANY KIND WHATSOEVER, EXPRESS OR IMPLIED, IN CONNECTION WITH THESE TERMS AND CONDITIONS, THE WEBSITE OR THE ACCOUNT, INCLUDING BUT NOT LIMITED TO WARRANTIES OF MERCHANTABILITY, NON-INFRINGEMENT OR FITNESS FOR A PARTICULAR PURPOSE, OTHER THAN SET FORTH HEREIN.
- 10.5. Bright River will indemnify, defend and hold the Client harmless from and against any and all Losses incurred by the Client as a result of:
 - 10.5.1. any third party claim which is made against the Client in connection with a breach by Bright River of the representations and warranties contained in clause 10.3 of these Terms and Conditions; or
 - 10.5.2. the Client having had to initiate legal proceedings in order to obtain the IPRs of any

Materials from any member of Bright River's Service Network;

- 10.6. The indemnity obligations of both Parties under these Terms and Conditions are subject to the indemnified Party as soon as possible notifying the indemnifying Party of any such claims or proceedings.

11. Limitation of Liability

- 11.1. Bright River endeavors to ensure that the Service rendered is of the highest possible quality. However, since the quality of the Service depends on several factors, Bright River cannot guarantee that the quality of the Material lives up to the expectations of the Client.
- 11.2. The total liability of Bright River towards the Client for breach of contract, in tort (including negligence) or otherwise in any calendar year shall be limited to compensation of the direct damage the amount of which shall not exceed the total aggregate amount of the Service Fees paid or payable by the Client to Bright River during the calendar year immediately preceding the year in which the damage occurred.
- 11.3. Neither Party shall be liable for any indirect or consequential damages, or loss of exploitation, productivity, reputation, profits, contracts, investments, time, data, files (including Images and Material) programs and/or documentation.
- 11.4. Neither party limits or excludes its liability for wilful misconduct, gross negligence, fraud, fraudulent misrepresentation, death or personal injury.

12. Force Majeure

- 12.1. Bright River shall not be liable for any delay or failure to perform its obligations under the Agreement if that delay or failure arises directly or indirectly through force majeure, which is deemed to include an act of God or (without limitation), war or other civil disturbance, decisions of any civil authority, fires, flood, strikes or any other circumstances that can reasonably be deemed beyond the control of Bright River.
- 12.2. If Bright River cannot perform its obligations under the Agreement as a result of force majeure for a period of more than six (6) weeks, the Client shall have the right to terminate the Agreement with immediate effect without Bright River limiting its other rights or remedies or incurring any liability towards the Client in respect of such termination.

13. Confidentiality

- 13.1. Parties shall maintain all information they receive from or about each other strictly confidential, including information concerning Images and Materials. Information will in any case be regarded to be confidential, if one of the parties indicates in writing that it is confidential.
- 13.2. Parties will impose this obligation of confidentiality also on their employees and third parties hired for the performance of their obligations hereunder, in particular Bright River shall impose the confidentiality obligation of clause 13.1 of these Terms and Conditions on the members of its Service Network.
- 13.3. A Party shall not be required to maintain confidentiality with respect to any information that i) was already in the possession of such Party on a non-confidential basis ii) has lawfully come into the possession of such a Party on a non-confidential basis or iii) is legally required to be disclosed to a judicial or administrative authority.

14. Term and Termination

- 14.1. An Agreement shall be in effect for the term as agreed by the Parties or for as long a period as is required for the Materials to be considered as accepted in accordance with these Terms and

Conditions, or until the moment the Client's right to request Bright River to re-execute pursuant to clause [4.6](#) of these Terms and Conditions has lapsed.

14.2. Either Party may terminate the Agreement with immediate effect upon written notice to the other Party, if:

14.2.1. the other Party applies for a moratorium of payments, is declared bankrupt or otherwise will no longer be able to meet its financial obligations under the Agreement;

14.2.2. the other Party materially breaches the Agreement, including any breach of the representations and warranties of clause [10.1](#) and, if such breach can be remedied, fails within a reasonable period, after having been given notice of such breach in writing by the non-breaching Party to remedy such breach.

14.3. Subject to clause [14.2](#) of the Terms and Conditions, the Client shall not be entitled to terminate the Agreement early.

14.4. If the Client acts in a manner reasonably adjudged by Bright River to be detrimental, in particular when the Client does not fulfil its obligations under these Terms and Conditions, Bright River is entitled to suspend provision of the Service to the Client. Bright River shall not be liable for any loss arising in respect of the foregoing.

15. Miscellaneous

15.1. Severability: If any provision of these Terms and Conditions is void or voidable or is or becomes entirely or partly invalid for any other reason, the other provisions of these Terms and Conditions will remain in full force and effect. Bright River will replace the invalid provision with a provision that is valid and of which the legal consequences, having regard to the content and purpose of these Terms and Conditions, corresponds as much as possible with those of the invalid provision.

15.2. Waiver: the failure of Parties to enforce the provisions of these Terms and Conditions and the Agreement at any time, or the failure to require at any time the performance by the other Party of any of the provisions of these Terms and Conditions or the Agreement, shall in no way be construed to be a present or future waiver of such provision nor in any way affect the validity of either Party to enforce each and every such provision.

15.3. Assignment: neither Party is entitled to transfer rights and obligations arising from these Terms and Conditions and/or the Agreement to third parties, except as set forth in clause [3.8](#).

15.4. Survival: the provisions of clauses [7.4](#), ([transfer of IP Rights](#)), [9](#), ([Privacy](#)) and [13](#), ([Confidentiality](#)) of these Terms and Conditions shall survive termination of the Agreement for whatever reason, and, in addition, the obligations of the Parties under the Agreement that by their nature continue beyond the expiration of the Agreement, shall survive any termination or cancellation of the Agreement.

15.5. Counterparts: the Agreement may be executed in any number of counterparts, all of which taken together (when at least each Party has executed one) shall constitute one and the same Agreement.

16. Governing law, Arbitration

The Terms and Conditions, the Agreement and any use the Client makes of the Service are subject to New York law, excluding its conflict of laws principles. Any dispute relating in any way to the Client's visit to the Website and the Service, shall be submitted to arbitration in New York City, except that, to the extent the Client has in any manner violated or threatened to violate Bright River's Intellectual Property Rights, Bright River may seek injunctive or other appropriate relief in a federal or state court in New York City, and the Client consents to exclusive jurisdiction and venue in such court. Arbitration

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under the Terms and Conditions shall be conducted under the Expedited Procedures and Rules of the American Arbitration Association. The arbitrator's award shall be binding and may be entered as a judgment in any court of competent jurisdiction.

Bright River is a tradename of MisterClipping.com L.L.C..

85 Broad Street, 16th Floor New York, NY 10004 United States **Telephone** +1 (646) 396 5460

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