

BE THE BRAND EXPERIENCE LIMITED SOFTWARE AS A SERVICE AGREEMENT

DATE: [INSERT]

PARTIES:

- (1) **Be the Brand Experience Limited** (registered number 04177329), a company registered in England and Wales whose registered office is at C/O Gateley Legal Ship Canal House, 98 King Street, Manchester, England, M2 4WU ("**bethebrand**"); and
- (2) [], a company incorporated in England & Wales (registered number []) whose registered office is at [] ("**[]**") (the "**Client**").

WHEREAS:

- (A) bethebrand has agreed to provide the Client with access, via the Internet, to bethebrand's marketing workflow management, compliance and archiving system, on the terms and conditions set out in this Agreement;
- (B) Prior to and/or during the provision of such access, bethebrand will provide certain consultancy services in respect of the bethebrand system;
- (C) The provision of the consultancy services and access to the bethebrand system will be conditional upon the timely payment of the applicable charges by the Client.

IT IS AGREED as follows:

1. Definitions and Interpretation

- 1.1 In this Agreement the following words and expressions shall have the meanings set out below:

"Acceptance" means that all or part of the bethebrand System (or other deliverable under a Statement of Work) has successfully completed the Acceptance Tests in accordance with the Acceptance Procedure;

"Acceptance Procedure" means the Acceptance Procedure set out at Schedule 3 hereto;

"Agreement" means this Software as a Service Agreement including all Statement(s) of Work and Schedules hereto;

"bethebrand System" means bethebrand's marketing workflow management, compliance and archiving system, as is further described in the bethebrand System Schedule, and all related documentation;

"bethebrand SaaS Fees" means the charges set out in the bethebrand System Schedule, as may be increased from time to time in accordance with clause 7.3;

"bethebrand System Schedule" means the schedule that describes the software service, as set out at Schedule 2;

"Change" means a change to the bethebrand System Schedule or a Statement of Work;

"Change Request" means a written request for a Change;

"Change Control Notice" means a written response to a Change Request provided by bethebrand to the Client setting out the delays and additional cost, if any, that would arise as a result of the

requested Change and any other effects that such Change will have on the bethebrand System or Consultancy Services;

“Charges” means the bethebrand SaaS Fees and the Consultancy Charges;

“Client and User Data” means the data of the Client and the Users, which is processed using the bethebrand System;

“Client Assets” means the brand and marketing assets of the Client (including brand guidelines, logos, brochures, videos, images, high-resolution files, communications templates) which are uploaded to the bethebrand System by or on behalf of the Client;

“Concurrent Users” means the unique users accessing the bethebrand System at any one time (provided that if a unique user creates a page refresh within the bethebrand System, such refresh shall be deemed to be one additional unique user for a period of 20 minutes thereafter, for the purpose of calculating the Permitted Number);

“Consultancy Services” means the consultancy services to be supplied by bethebrand to the Client, as set out in the Statement(s) of Work;

“Consultancy Charges” means the charges set out in the Statement(s) of Work;

“Data Protection Laws” has the meaning set out in the Data Processing Addendum attached hereto at Schedule 5;

“Defaulting Party” shall have the meaning given to it in clause 8.2;

“Effective Date” means the date of this Agreement;

“Error” means a cessation, interruption or degradation of the usual functionality of the bethebrand System;

“Force Majeure” means acts of God, war, terrorism, hostilities, riot, fire, explosion, accident, flood, sabotage, lack of adequate power, raw materials or labour, strike, boycott, embargo, industrial dispute or disturbance, lock-out or injunction, compliance with governmental laws, regulations or orders, the act of any government or quasi-governmental authority, sickness or indisposition of key bethebrand employees, malicious damage, fraud of any person (other than an employee of bethebrand), damage or breakdown caused by a computer virus (subject to our using all reasonable endeavours to protect the bethebrand System against viruses), power supply failure or shortage, telecommunications failure and failure of suppliers to meet delivery requirements (to the extent they are beyond the affected party's reasonable control) or any other cause whether or not of the class or kind enumerated which affects performance of this Agreement arising from or attributable to acts, events, omissions or accidents beyond the reasonable control of the party affected;

“Intellectual Property Rights” means all intellectual property rights, including patents, utility models, trade and service marks, trade names, domain names, right in designs, copyrights, moral rights, topography rights, rights in databases, trade secrets and know-how, in all cases whether or not registered or registrable and including registrations and applications for registration of any of these and rights to apply for the same, and all rights and forms of protection of a similar nature or having equivalent or similar effect to any of these anywhere in the world;

“Release” means a new and significantly different version of the bethebrand System that provides a fix to one or more Errors and an update and/or an upgrade to the functionality of the bethebrand System ;

“Permitted Number” means the number of Concurrent Users who are permitted to use the bethebrand System, as set out in the bethebrand System Schedule;

“Service Levels” means the service levels set out in the Support Schedule;

“Services” means bethebrand’s provision of the bethebrand System, Consultancy Services and Support;

“Specification” means the functional specification for the bethebrand System to be agreed in writing between the parties and which, once so agreed, shall form part of this Agreement;

“Statement(s) of Work” means the Statement(s) of Works executed by the Client and bethebrand, substantially in the form of Schedule 1 to this Agreement;

“Support” means the support to be provided by bethebrand to the Client, as described in the Support Schedule;

“Support Schedule” means the support schedule set out at Schedule 4 hereto;

“Terminating Party” shall have the meaning given to it in clause 8.2;

“Territory” means the territory in which the bethebrand System may be used by the Client, as set out in the Statement(s) of Work;

“Use” means use for the Client’s, and the Client’s customers, own internal business purposes;

“Users” means the Client’s and the Client’s customers’ employees who are authorised by the Client to use the bethebrand System.

- 1.2 The headings are included for convenience only and shall not affect the interpretation or construction of this Agreement.

2. bethebrand System

- 2.1 bethebrand will provide or procure the provision of the bethebrand System and associated Support, to the Client, and the Client agrees to purchase the bethebrand System and Support from bethebrand in accordance with the terms and conditions set out in this Agreement.
- 2.2 Subject to the payment of the Charges, bethebrand hereby grants to the Client the non-exclusive, non-assignable, non-sub-licensable right to Use the bethebrand System and to permit the Permitted Number of Users to Use the bethebrand System from the Acceptance Date for the remainder of the term of this Agreement.
- 2.3 The Client shall and shall procure that each User shall use the bethebrand System only in accordance with the terms of this Agreement. The Client shall be responsible for all use of the bethebrand System by Users and shall be liable for breach of this Agreement by a User as if it were a breach by the Client.
- 2.4 The Client shall not, and shall procure that Users shall not, except as expressly permitted in this Agreement: (i) modify, translate, create or attempt to create derivative copies of or copy the bethebrand System in whole or in part; (ii) reverse engineer, decompile, disassemble or otherwise reduce the object code of the bethebrand System to source code form; (iii) distribute, sub-licence, assign, share, timeshare, sell, rent, lease, transmit, grant a security interest in or otherwise transfer the bethebrand System or the Client’s right to use the bethebrand System.
- 2.5 bethebrand shall use reasonable endeavours to ensure that access to the bethebrand System is available in accordance with the Service Levels, however the Client acknowledges and agrees that the bethebrand System may not be accessible to the Client from time to time. Wherever possible all scheduled service interruptions shall take place outside of office hours and 7 days prior written notice of such scheduled service interruptions shall be given to the Client.

3. Consultancy Services

- 3.1 Subject to the payment of the Charges and to all the terms of this Agreement, bethebrand shall provide the Consultancy Services in accordance with the relevant Statement of Work.
- 3.2 It is estimated that the Consultancy Services shall commence on the relevant estimated start date and shall be completed by the applicable estimated completion date. The Client acknowledges that estimated start date(s) and estimated completion date(s) are estimates and are provided for information only, and are dependent on the Client's performance of its obligations in accordance with this Agreement.
- 3.3 Where the relevant Statement of Work indicates that Acceptance Tests will be performed on all or part of the deliverables under such Statement of Work, the parties shall conduct such Acceptance Tests in accordance with the Acceptance Procedure.

4. Support

- 4.1 The Client shall procure that all Users are instructed to notify the Client of any Errors promptly. Following such notification the Client shall provide first level support to Users, including: product information, configuration guidance and assistance, product and problem analysis, fact and information gathering for correction of problems, as well as attempts to replicate problems.
- 4.2 Throughout the term of this Agreement, subject to payment of the Charges and provided always that in respect of each Error the Client has carried out its obligations under clause 4.1, bethebrand shall use reasonable endeavours to provide the Support in accordance with the Service Levels.
- 4.3 The Support may include (without limitation) the implementation of Releases from time to time at bethebrand's sole discretion. bethebrand will notify the Client in writing of its intention to implement a Release, including a description of the effect of the Release on the bethebrand System. The Client will notify bethebrand in writing within 5 Business Days of such notification if the Client wishes to delay implementation of the Release, such delay to be not more than twelve (12) weeks from the date of bethebrand's notification.
- 4.4 The Support shall not include the diagnosis and rectification of any Error resulting from:
 - (a) the improper use, operation or neglect of the bethebrand System by the Client and/or Users, or any other operator error or omission;
 - (b) the use of the bethebrand System for a purpose for which it was not designed by the Client and/or Users; or
 - (c) a fault in the Client's, the Client's customers' or any User's equipment or in Client or third party software or applications or any upgrade or new release in respect thereof.
- 4.5 The Support shall not include rectification of lost or corrupted data arising for any reason other than bethebrand's own negligence.
- 4.6 bethebrand may, upon receipt of a request by the Client, agree to provide the Support notwithstanding that the Client has not carried out its obligations pursuant to clause 4.1 or the Error results from any of the circumstances described in clause 4.4 above, or to provide services to the Client that are not covered by this Agreement. bethebrand shall in such circumstances be entitled to levy additional charges at its then current hourly or daily rate monthly in arrears and shall be paid by the Client (together with value added tax thereon) within 30 days of receipt of an invoice in respect of such additional charges.

5. Change Control

- 5.1 bethebrand and the Client may from time to time mutually agree to additional or alternative Services in accordance with the process set out in this clause 5.
- 5.2 Either party may submit a Change Request in respect of all or part of the Services at any time. Where such Change Request is submitted by the Client, the Client shall provide bethebrand with any information that bethebrand may reasonably request in connection with the Change Request.
- 5.3 Following submission of a Change Request by either party, bethebrand shall submit a Change Control Notice to the Client.
- 5.4 Following receipt of a Change Control Notice the Client may elect to accept the terms of the Change Control Notice, and shall notify bethebrand in writing or by e-mail of its decision to accept or not to accept such terms. In the event that the Client accepts the terms of the Change Control Notice, the Statement of Work (including any agreed dates) shall be deemed amended unless the parties agree to execute a new Statement of Work to reflect the Change.
- 5.5 Where a Change Request is submitted by the Client, bethebrand reserves the right to charge for time spent investigating the Change Request and preparing the Change Control Notice at its then current rates.
- 5.6 No changes to the scope of the Services shall have effect until agreed by both parties, in accordance with this clause 5 or by execution of a replacement or additional Statement of Work. Each additional or replacement Statement of Work executed under this clause 5 shall be subject to the terms and conditions set out in this Agreement.

6. Client's Obligations

- 6.1 The Client shall perform its obligations as set out herein and in the Statement(s) of Work, including, without limitation to provide bethebrand promptly with all necessary co-operation, information and data and access to staff and timely decision making which may be reasonably required by bethebrand for the performance of the Services.
- 6.2 The Client hereby acknowledges and agrees that it is responsible for the management of its Users, including issuing user names and passwords. bethebrand shall not be liable for:
 - (a) any delay or failure by the Client or User to issue or accept such user names and passwords;
 - (b) verifying whether the Client and User Data is correct and accurate; or
 - (c) verifying whether the usernames and passwords are sufficiently secure.
- 6.3 The Client shall procure that only one individual shall use or access the bethebrand System through any one user name and that the Client and Users shall keep their user names and passwords confidential. The Client shall be liable for all access to and use of the bethebrand System using its Users' user names, whether authorised by the Client or any User or not. The Client shall inform bethebrand immediately if it has any reason to believe that the user name and/or password of one or more Users has become known to any other person, or if the bethebrand System is being or is likely to be used in an unauthorised way.
- 6.4 The Client acknowledges and agrees that it is and the Users are solely responsible for procuring and paying for access to the internet to enable them to use the bethebrand System.
- 6.5 The Client represents, undertakes and warrants that, and shall procure that each User represents, undertakes and warrants that:

- (a) the Client owns all rights in the Client Assets and the Client and Users own all rights in the Client and User Data, and the Client has all rights necessary to grant bethebrand the right to carry out its obligations pursuant to this Agreement;
 - (b) the Client Assets, Client and User Data and the Client's and Users' use of the bethebrand System does not and will not contravene or breach any applicable law, regulation, code of practice, industry standard or directive including, without limitation, consumer or trade regulation or data protection legislation or regulation; and
 - (c) the Client Assets and Client and User Data do not and will not infringe any Intellectual Property Rights or other rights of any person, nor are they obscene, defamatory, libellous or slanderous, nor will it cause injury to, invade the privacy of or otherwise violate other rights of any person.
- 6.6 Client shall use its reasonable endeavours to ensure that all information contained in the Client Assets and the Client and User Data shall be true, accurate and complete. For the avoidance of doubt, Client hereby acknowledges and agrees that:
- (a) Client shall be responsible for verifying the Client Assets or the Client and User Data prior to its input onto the bethebrand System or other provision to bethebrand; and
 - (b) bethebrand shall bear no responsibility or liability for checking the Client Assets and the Client and User Data prior to or during its use by bethebrand pursuant to this Agreement.
- 6.7 The Client hereby grants bethebrand a non-exclusive, worldwide, royalty-free licence to use, copy, cache, store and display and reproduce the Client Assets and Client and User Data (including all Intellectual Property Rights therein) for the purposes of fulfilling its obligations under this Agreement.
- 6.8 In the event that the Client is in breach of this clause 6, bethebrand, without prejudice to any other rights it may have in respect of such breach, may suspend the provision of the Services without notice and shall not be liable for any such suspension of the Services.
- 6.9 bethebrand shall not be liable for any delay or failure to perform its obligations hereunder which arise as a result of a failure by the Client to comply with this clause 6.

7. Charges

- 7.1 In consideration for the provision of the Services, the Client shall pay the Charges.
- 7.2 bethebrand intends to invoice the Client: (i) for the Consultancy Charges in accordance with the relevant Statement of Work; and (ii) for the bethebrand SaaS Fees quarterly in advance. bethebrand reserves the right to invoice at other times as it deems appropriate.
- 7.3 When the number of Concurrent Users in the previous quarter exceeded the Permitted Number, bethebrand will notify the Client in writing of the revised Charges applicable for the following, and subsequent, quarters based on the increase in the Permitted Number. . bethebrand will not prevent Users that exceed the Permitted Number from accessing or using the bethebrand System, nor will bethebrand charge the Client retrospectively for exceeding the Permitted Number.
- 7.4 On each anniversary of the Acceptance Date, bethebrand shall be entitled to increase the Charges in respect of the bethebrand System in accordance with the corresponding increase in the UK Retail Prices Index since the last time such Charges were increased.
- 7.5 The Client shall pay bethebrand all amounts due in accordance with payment terms set out in the Statement(s) of Work or otherwise within 30 days of receipt of the invoice (the "Due Date").

- 7.6 All payments made or to be made under this Agreement shall be made in full, without any deduction, withholding, set-off or counterclaim on account of any taxes or otherwise.
- 7.7 bethebrand reserves the right to charge the Client interest on any payment not made by the Due Date. Interest will be calculated on a daily basis, both before and after any judgement, at the rate of 4 per cent per annum above the base rate from time to time of Barclay's Bank plc, for the period from the Due Date until the date on which it is actually paid, compounded quarterly and payable on demand.
- 7.8 In the event of a bona fide dispute regarding any invoice or other request for payment, the Client shall immediately notify bethebrand in writing and the parties shall attempt promptly and in good faith to resolve any dispute regarding amounts owed. The Client shall pay all undisputed amounts on the Due Date.
- 7.9 All Charges are exclusive of any applicable value added tax (or any successor tax) and any other applicable tax of any nature whatsoever, which will be added and shall be payable by the Client in accordance with the law applicable from time to time against receipt of an appropriate invoice.

8. Duration and Termination

- 8.1 This Agreement shall come into force on the Effective Date and shall remain in force, subject to termination in accordance with the remaining provisions of this clause 8, until Acceptance of the bethebrand System in accordance with the applicable Statement of Work. Thereafter, subject to termination in accordance with the remaining provisions of this clause 8, this Agreement shall continue for one (1) year and thereafter shall automatically renew for successive one (1) year periods unless or until terminated by either party on the provision of not less than ninety (90) days written notice to the other, such notice to take effect on any anniversary of the date of Acceptance of the bethebrand System.
- 8.2 Either party (the "Terminating Party") may terminate a Statement of Work or part thereof or this Agreement with immediate effect by written notice to the other party on or at any time after the occurrence of a material breach by the other Party of any of its obligations in the Statement of Work or this Agreement which (if the breach is capable of remedy) the Defaulting Party has failed to remedy within 30 days after receipt of notice in writing from the Terminating Party requiring the Defaulting Party to do so. For the avoidance of doubt, failure to pay the Charges shall be a material breach.
- 8.3 The Terminating Party may terminate this Agreement with immediate effect by notice to the other party on or at any time after the occurrence of any of the events specified below in relation to the Defaulting Party:
- (a) the Defaulting Party goes into liquidation either compulsorily or (except for the purpose of reconstruction or amalgamation) voluntarily;
 - (b) a receiver is appointed in respect of the whole or any part of the assets of the Defaulting Party;
 - (c) a provisional liquidator is appointed to the Defaulting Party or the Defaulting Party enters into a voluntary arrangement or any other composition or compromise with the majority by value of its creditors; or
 - (d) the Defaulting Party threatens to do any of the things listed in clauses 8.3 (a) to (c) or an administration order is made against the Defaulting Party or any similar occurrence under the laws of any jurisdiction affects the Defaulting Party.
- 8.4 On termination of this Agreement or any Statement of Work (or any part thereof) for any reason:
- (a) bethebrand shall be entitled to be paid all sums due and any additional sums specified in the relevant Statement(s) of Work; and

- (b) termination shall not affect the rights of either party accruing or accrued prior to the termination of this Agreement or the relevant Statement of Work as applicable.

- 8.5 Other than where bethbrand has terminated this agreement in accordance with clause 8.2 or 8.3, for a period of two (2) calendar months following the date of termination of this Agreement, bethebrand will provide reasonable assistance to the Client to transfer Client Assets and Client and User Data (including the asset meta data and report data, which shall be transferred as raw format data (i.e. without modification or cleansing in a CSV format) from the bethebrand System to such other suitable system as is provisioned by the Client and notified by the Client to bethebrand in writing. bethebrand will charge for all time spent in providing this assistance at its then current time and materials rates and will cap the duration at 5 days effort for the provision of the raw format data extract.
- 8.6 Unless otherwise agreed in writing between the parties, bethebrand will delete the Client Assets and Client and User Data (other than such Client and User Data as is reasonably required for bethebrand's records and administration) from the bethebrand System two (2) calendar months after the date of termination.
- 8.7 On termination of this Agreement for any reason this Agreement shall continue in force to the extent necessary to give effect to those of its provisions which expressly or impliedly have effect after termination, including but not limited to clause 7 (to the extent of any unpaid obligations), 8.4, 8.5, 8.6, 8.7, 8.5, 9, 10, 12, 14, 15, and 17, and all other provisions necessary for their interpretation.

9. Intellectual Property

- 9.1 bethebrand has sole and exclusive ownership (or a licence to use) all right, title, and interest in and to the bethebrand System including all copyright and any other Intellectual Property Rights therein. Nothing in this Agreement will serve to transfer from bethebrand to the Client any of the bethebrand System, and all right, title and interest in and to the bethebrand System will remain exclusively with bethebrand and/or bethebrand's licensors. All rights in and to the bethebrand System not expressly granted to the Client are reserved by bethebrand and the relevant third party licensors.
- 9.2 Except for the rights expressly granted in this Agreement, nothing in this Agreement will serve to transfer from the Client to bethebrand any of the Client Assets, and all right, title and interest in and to the Client Assets will remain exclusively with the Client.
- 9.3 The Client grants to bethebrand a non-exclusive, worldwide, non-assignable, royalty-free licence to use the Client Assets for the sole purpose of performing its obligations under this Agreement.
- 9.4 Nothing in this Agreement shall prevent bethebrand from using any know-how, methods, techniques or procedures owned or developed by bethebrand in the course of providing the Services for any purpose.
- 9.5 All third party Intellectual Property Rights required by the Client to enable them to Use the bethebrand System shall be procured by the Client. bethebrand shall not be liable for any delay or failure of the Client to procure such third party Intellectual Property Rights.

10. Warranties, Exclusions and Limitations of Liability

- 10.1 bethebrand warrants that the Services shall be performed with reasonable skill and care in a manner consistent with generally accepted standards for identical or similar services.
- 10.2 bethebrand cannot guarantee and does not warrant or represent that any specific results will be produced by the bethebrand System. Except as expressly set out herein, to the maximum extent permitted by law, bethebrand expressly excludes all representations, warranties, obligations and liabilities in connection with the bethebrand System and the Services, including but not limited to the warranties of merchantability, non-infringement of intellectual property, accuracy, completeness, fitness for a particular purpose, and any warranties arising by statute or otherwise in law or from course

of dealing, course of performance, or use of trade are hereby excluded and disclaimed.

- 10.3 Subject to clause 10.6, to the maximum extent permitted by law, bethebrand shall not be liable for any loss, injury, expenses, costs or damage caused in whole or part by, or resulting from:
- (a) any failure, delay, interruption or otherwise of the provision of the Services; or
 - (b) the Client's actions taken as a result of the use of or reliance on the bethebrand System.
- 10.4 Subject to clause 10.6, the maximum aggregate liability of bethebrand (including its respective agents and sub-contractors) under, arising from or in connection with this Agreement, whether arising in contract, tort (including negligence) or otherwise, shall not exceed in aggregate the Charges paid by the Client to bethebrand in the twelve months prior to the date of the claim.
- 10.5 Subject to clause 10.6, in no event shall bethebrand be liable for:
- (a) any loss of profits, loss of data, loss of business or business benefit, or the cost of procurement of substitute products or services by the Client, business interruption, loss of management time, loss of use, loss of contracts, loss of opportunity, loss of goodwill (whether direct or indirect); or
 - (b) any special, indirect, incidental or consequential losses of any nature whatsoever;
- whether or not caused by or resulting from its negligence or a breach of its statutory duties or a breach of its obligations hereunder, howsoever caused even if it is advised of the possibility of such loss.
- 10.6 For the avoidance of doubt, nothing in this Agreement shall be deemed to exclude, restrict or limit liability of either party (or their respective agents or sub-contractors) for death or personal injury resulting from their negligence or any liability for fraud or fraudulent misrepresentation.
- 10.7 Both parties accept that the limitations and exclusions set out in this Agreement are reasonable having regard to all the circumstances.
- 10.8 This clause 10 shall survive the termination of this Agreement for whatever cause.

11. Force Majeure

- 11.1 If either party is prevented or delayed from or in performing any of its obligations under this Agreement by Force Majeure, then:
- (a) its obligations under this Agreement (or, where the Force Majeure only affects some of the Services, such obligations as relate to those Services) shall be suspended for so long as the Force Majeure continues and to the extent that that party is so prevented, hindered or delayed;
 - (b) the parties shall, without prejudice to the other provisions of this clause 11.1 consult with a view to taking such steps as may be appropriate to mitigate the effects of such Force Majeure;
 - (c) that party shall use all reasonable efforts to mitigate the effects of the Force Majeure upon the performance of its obligations under this Agreement.
- 11.2 If any Force Majeure prevails for a continuous period in excess of two (2) months, either party shall be entitled to terminate this Agreement in its entirety (if all Services are affected by Force Majeure) or in part (insofar as it relates to the Services affected by Force Majeure) by giving not less than ten (10) working days' notice in writing to the other party.

12. Confidentiality

- 12.1 Each party (the "Receiving Party") shall use its reasonable endeavours to keep confidential the provisions of this Agreement and all information and documentation disclosed by the other party (the "Disclosing Party"), before or after the date of this Agreement, to the Receiving Party or of which the Receiving Party becomes aware which in each case relates to any software, operations, products, processes, dealings, trade secrets or the business of the Disclosing Party (including without limitation all associated software, specifications, designs and graphics) or which is identified by the Disclosing Party as confidential (the "Confidential Information") and will not use any Confidential Information for any purpose other than the performance of its obligations under this Agreement. The Receiving Party shall not disclose Confidential Information to any third party without the prior written consent of the Disclosing Party.
- 12.2 During the term of this Agreement the Receiving Party may disclose the Confidential Information to its employees and sub-contractors (any such person being referred to in this clause 12 as the "Recipient") to the extent that it is reasonably necessary for the purposes of this Agreement. The Receiving Party shall procure that each Recipient is made aware of and complies with all the Receiving Party's obligations of confidentiality under this Agreement as if the Recipient was a party to this Agreement.
- 12.3 The obligations contained in clauses 12.1 and 12.2 shall not apply to any Confidential Information which is:
- (a) at the date of this Agreement already in, or at any time after the date of this Agreement comes into, the public domain other than through breach of this Agreement by the Receiving Party or any Recipient;
 - (b) furnished to the Receiving Party or any Recipient without restriction by a third party having a bona fide right to do so; or
 - (c) required to be disclosed by the Receiving Party by law or regulatory requirements of any stock exchange, provided that the Receiving Party shall give the Disclosing Party as much notice as reasonably practicable of the requirement for such disclosure.
- 12.4 All tangible forms of Confidential Information, including, without limitation, all summaries, copies, excerpts of any Confidential Information whether prepared by the Disclosing Party or not, shall be the sole property of the Disclosing Party, and shall be immediately returned by the Receiving Party to the Disclosing Party or destroyed upon the Disclosing Party's request or the termination of this Agreement (whichever is earlier). The Receiving Party shall not copy, reproduce, publish or distribute in whole or in part any Confidential Information without the prior written consent of the Disclosing Party.

13. Publicity and Marketing

- 13.1 The Client agrees that bethebrand may in any of its marketing material refer to the Client as a client of bethebrand (including reproducing the Client's logo for such purpose) and may refer to the type of services that bethebrand has provided to the Client.
- 13.2 The Client agrees that bethebrand may (subject to prior Client approval) publish and circulate a case study describing the Services supplied by bethebrand to the Client (for use by bethebrand as a marketing tool).

14. Data Protection

- 14.1 The Client shall procure that its use of the bethebrand System is compliant with all relevant statutory provisions, including but not limited to e-commerce, data protection, fraud and anti-money laundering regulations.
- 14.2 Where the Client Assets contain personal data or the Client otherwise provides personal information (either through the Client's use of the bethebrand System or otherwise) for bethebrand to process on behalf of the Client, both parties agree that they will at all times comply with the Data Processing

Agreement (“DPA”) set out in the Addendum to this Agreement. Terms that are capitalised (in addition to the defined terms of this Agreement) in this clause 14 have the meaning given to them in the DPA in the Addendum to this Agreement.

- 14.3 Where any User uses the bethebrand System to store Client Assets containing personal data, the Client acknowledges and agrees that such personal data:
- (a) may be accessed by other Users who have permission to view such Client Assets;
 - (b) may be shared with Users and third parties (i) where a User provides a url to download the relevant Client Assets; and/or (ii) where the Client has implemented the API to permit the extraction of assets and asset data.
- 14.4 The parties agree that, for the Protected Data, the Client shall be the Data Controller and bethebrand shall be the Data Processor.
- 14.5 bethebrand shall process the Protected Data in compliance with:
- (a) the obligations of Data Processors under Data Protection Laws in respect of the performance of its obligations under the DPA; and
 - (b) the terms of the DPA.
- 14.6 The Client shall comply with:
- (a) all Data Protection Laws in connection with the processing of Protected Data, the Services and the exercise and performance of its respective rights and obligations under the DPA, including maintaining all relevant regulatory registrations and notifications as required under Data Protection Laws; and
 - (b) the terms of the DPA.
- 14.7 bethebrand shall have no liability for any losses, liabilities, damages, costs, claims and expenses arising from or incurred by any party as a result of any failure of the Client to comply with this clause 14.

15. Non-Solicitation of Employees

- 15.1 During the term of this Agreement and for a period of six (6) months thereafter, neither party shall solicit or offer employment to any employees of the other or any sub-contractors used by the other hereunder without the prior written consent of the other.
- 15.2 In the event that either party breaches clause 15.1, it shall be liable to pay, immediately on demand, and without prejudice to any other remedy that the other party may have, the equivalent of twelve (12) months gross salary of the employee so solicited and/or employed.

16. The Use of Sub-Contractors and Agents

- 16.1 bethebrand may engage any person, company or firm as its agent or sub-contractor to perform all or any of its obligations or duties under this Agreement.

17. General

- 17.1 This Agreement hereto constitutes the entire agreement and understanding of the parties and supersedes all prior agreements, understandings or arrangements (both oral and written) relating to the subject matter of this Agreement.
- 17.2 Each of the parties acknowledges that in entering into this Agreement on the terms set out herein it

has not relied on or been induced to enter into this Agreement by any representation, warranty, undertaking, promise or assurance made or given by any other party or any other person, whether or not in writing, at any time prior to the execution of this Agreement other than those expressly set out in this Agreement or any applicable Statement of Work.

- 17.3 If any part of any provision of this Agreement shall be invalid or unenforceable, then the remainder of such provision and all other provisions of this Agreement shall remain valid and enforceable.
- 17.4 No amendment or variation of the terms of this Agreement shall be effective unless it is made or confirmed in a written document signed by both parties.
- 17.5 No delay in exercising or non-exercise by either party of any of its rights under or in connection with this Agreement shall operate as a waiver or release of that right. Rather, any such waiver or release must be specifically granted in writing signed by the party granting it.
- 17.6 Nothing in this Agreement or any document referred to in it or any arrangement contemplated by it shall be construed as creating a partnership, joint venture relationship or agency relationship between the parties for any purpose whatsoever and neither party shall have the power or authority to bind the other party or impose any obligations on it to the benefit of any third party.
- 17.7 The parties do not intend any term of this Agreement to be enforceable pursuant to the Contracts (Rights of Third Parties) Act 1999.
- 17.8 The Client may not assign any of its rights under this Agreement without the prior written consent of bethebrand.
- 17.9 This Agreement shall be construed in accordance with English law and the parties irrevocably submit to the exclusive jurisdiction of the English courts to settle any disputes, which may arise in connection with this Agreement.
- 17.10 Any notice required or permitted under the terms of this Agreement or required by law must be in writing and must be:
 - (a) delivered in person; or
 - (b) sent by registered mail return receipt requested; or
 - (c) sent by overnight air courier; or
 - (d) transmitted by facsimile

in each case forwarded to the appropriate address set forth herein. Either Party may change its address for notice by written notice to the other Party. Notices will be considered to have been given at the time of actual delivery in person, or three (3) business days after posting, or one (1) day after: (i) delivery to an overnight air courier service or (ii) the moment of transmission by facsimile with receipt of such facsimile confirmed by telephone by the intended recipient.

EXECUTION:

The parties have shown their acceptance of the terms of this Agreement by executing it below.

For and on behalf of
Be the Brand Experience Limited

For and on behalf of
[]

Signed.....

Signed.....

Print Name.....

Title.....

Date.....

Print Name.....

Title.....

Date.....

Schedule 1 Pro Forma Statement of Work

STATEMENT OF WORK

Reference No.: []

DATE:

1. GOVERNING TERMS

This Statement of Work is subject to and forms part of the Software as a Service Agreement dated XX/XX/XXX, Ref No XXXX (the "Agreement") between **Be the Brand Experience Limited** (registered number 04177329), a company registered in England and Wales whose registered office is at Unit 5, Culford House, 1-7 Orsman Road, London, N1 5RA ("bethebrand") and **[Insert client's full name]** (registered number **[Insert number]**) whose [registered/ principal] office is at **[Insert address]** (the "Client").

2. CONSULTANCY SERVICES

2.1 Scope

bethebrand shall provide the Consultancy Services set out below:

[INSERT DETAILS OF CONSULTANCY SERVICES e.g.]

Scoping Services

[INSERT DETAILS]

Implementation Services

[INSERT DETAILS]

Training

[INSERT DETAILS].]

2.2 Location of Consultancy Services

The Consultancy Services shall be performed at **[bethebrand's offices]** unless otherwise agreed by the parties.

2.3 Deliverables

[INSERT DELIVERABLES]

2.4 Estimated Start Date

The start date for the performance of the Consultancy Services is **[INSERT DATE]**.

2.5 Estimated Completion Date

It is estimated that the Services will be completed by **[INSERT DATE]**. The Client acknowledges that all the time estimates contained in this Statement of Work are only estimates and are provided for information. It should be noted that the estimated completion date is dependent on the Client's performance of its obligations in accordance with the

Agreement and this Statement of Work and in a timely manner.

3. CLIENT OBLIGATIONS

The Client shall:

- [INSERT DETAILS OF ANY SPECIFIC OBLIGATIONS ON THE CLIENT, IN PARTICULAR ANY INFORMATION THAT THEY NEED TO PROVIDE TO YOU].

4. CHARGES

4.1 Charging Rates

The Charges shall comprise the following ("Charges"):

[INSERT CHARGES, e.g.

Setup fee for provision of the initial Consultancy Services

[INSERT CHARGES TABLE]

Expenses:

All disbursements and expenses (including reasonable travel and subsistence expenses) incurred by bethebrand in the performance of the Consultancy Services (the "Expenses").]

4.2 Payment

The Charges for Consultancy Services shall be due and payable commencing from the execution of this Agreement, and will be invoiced to the Client monthly in arrears.

4.3 Effect of Termination

Upon termination of this Statement of Work or the Agreement for any reason the Client will pay bethebrand all Charges for the Consultancy Services that have fallen due and that remain unpaid at the date of termination.

Upon termination of this Statement of Work or the Agreement for any reason, in respect of Expenses, the Client will pay bethebrand for all time completed and materials consumed up to the date of termination.

For and on behalf of
Be the Brand Experience Limited

Signed.....

Print Name.....

Title.....

Date.....

For and on behalf of
[INSERT CLIENT NAME]

Signed.....

Print Name.....

Title.....

Date.....

Schedule 2 bethebrand System Schedule

The following modules define the functionality to be included in the scope:

Asset Store Module

Project Module

API (1) – Single Sign On

HOSTING:

bethebrand's hosting option provides:

- A fully managed ASP service ensuring the hosting environment is monitored, maintained and updated.
- Hosted in Amazon Web Services (AWS) this provides, high availability infrastructure, including multiple levels of 24/7 security, stable high-capacity power supplies, fire protection, and environmental controls.
- The service utilizes EC2 virtual machines, and S3 file storage. These are replicated across availability zones in UK region, with a next level of backups stored in Ireland region. All data resides in UK or the EU.
- Daily and Weekly backups are stored in Ireland, along with warm standby data within availability zones in UK.
- There are server and system monitoring tools in place to ensure that services are being maintained and a business continuity plan is in place to manage a disaster recovery.

BACKUP SERVICES:

AWS provides real time replication of all uploaded and generated files within the UK Region. Additionally daily backups are performed to the Ireland region.

Databases are backed up daily and weekly to Ireland region. Incremental during day backups are taken every 3 hours and store in S3 in UK Region. These are then available to be restored in the event is availability zone change is needed. DR is managed from the availability zones in UK region.

bethebrand has internal processes in place to maintain the DR warm standby required to achieve RTO and RPO SLAs.

bethebrand have a full Business Continuity Plan ("BCP") in place to cover all core aspects of the business and key scenarios (office unavailability etc). The BCP includes action lists and instructions to enable a prioritised, phased resumption of services with priority being given to support provision.

Permitted Number of Concurrent Users

CHARGES:

Initial license & hosting charges:

Item	no	Unit cost	Monthly cost ex VAT
Base line hosting – first 50 GB storage/ 10 GB download / month			
Full Concurrent User license – Asset Store & Projects modules (1-10)			
Asset Store only Concurrent User license (1-10)			
Additional 200GB storage (total 300GB)			
MyStore module			
Continuous System Release Management (inc data at rest)			
Total Monthly Fee – excluding VAT			

Incremental License charges:

Item	Monthly cost ex VAT
Full Concurrent User license – Asset Store & Projects modules (11+)	£ / concurrent user license per month
Asset Store only Concurrent User license (11+)	£ / concurrent user license per month

Hosting charges:

Item	Monthly cost ex VAT
Incremental storage capacity per 10GB (301+GB)	£ per month per 10GB
Incremental download capacity per 10GB per month	£/ month per 10GB
Single Sign On	£ per month
API Usage Fee (based on average daily requests)	£ per month

Resource charges:

Item	Cost per day (7.5 hr day - ex VAT)
Process definition and documentation, Project Management, initial system development & testing	£
Training	£
IS Review Participation (above ½ day)	£
Administrative services	£

Schedule 3 Acceptance Procedure

“Acceptable Fault” means a Fault which the parties agree does not need to be corrected;

“Acceptance Test Period” means a period of thirty (30) days following provision of access to the test version of the part(s) of the bethebrand System or deliverables to which the Acceptance Tests relate;

“Acceptance Tests” means the tests to be performed by the Client during the Acceptance Test Period to demonstrate compliance of the bethebrand System or deliverable with the Specification;

“Acceptance Test Observations” means observations recorded by the Client whilst conducting the Acceptance Tests during the Acceptance Test Period;

“Fault” means the non-compliance of a Deliverable or Service with the expected Acceptance Test results which does not constitute an Acceptable Fault.

Acceptance Tests shall be carried out on the bethebrand System and/or deliverables as follows:

- (a) Acceptance Tests will be prepared by the Client and submitted to bethebrand;
- (b) bethebrand will review the Acceptance Tests within seven (7) days of receipt. In the event that bethebrand reasonably shows that the Acceptance Tests will not demonstrate the compliance of the relevant part(s) of the Services with the Specification, the Client will amend them as soon as reasonably possible.
- (c) The Client will complete the Acceptance Tests during the Acceptance Test Period and bethebrand hereby grants to the Client a licence to use the bethebrand System for such purpose during the Acceptance Test Period.
- (d) During the Acceptance Test Period the Client shall record Acceptance Test Observations where the results of the Acceptance Tests do not appear to match the expected results.
- (e) The project manager assigned by bethebrand to manage Acceptance Test Observations will promptly review and classify those Acceptance Test Observations as either Faults, new requirements or Acceptable Faults.
- (f) Other than in respect of Acceptable Faults, bethebrand will correct all Faults notified to it as soon as reasonably possible after the notification of them. New requirements will only be undertaken in accordance with clause 4.6 of the Agreement.
- (g) If the time taken to correct a Fault causes a delay in carrying out the Acceptance Tests in respect of all or part of the Services, the Acceptance Test Period for the relevant part of the Services shall be extended by the length of such delay. The Client shall use all reasonable endeavours to minimise such delays by re-planning Acceptance Tests where possible.
- (h) If bethebrand is asked by the Client to investigate any Acceptance Test Observation which is a Fault for which bethebrand is proved not to be responsible, bethebrand shall be entitled to charge the Client for such investigation at its then current daily rate for such work.
- (i) Where no Faults have been identified in accordance with the foregoing, or all Faults identified have been corrected, Acceptance shall be deemed to have occurred on completion of the Acceptance Test Period.
- (j) Where a Fault has been identified in accordance with the foregoing, Acceptance shall be deemed to have occurred at the end of the Acceptance Test Period in respect of all part(s) of the Services that are not affected by the identified Faults.

- (k) In any event, Acceptance shall be deemed to have occurred in the event of any use of the Services in a 'live' or 'production' environment or if the Services are used by any User who is not an employee of the Client.

Where a Statement of Work provides that there will be no Acceptance Tests in respect of any part(s) of the Services, Acceptance will be deemed on provision by bethebrand of access to the relevant part(s) of the Service to the Client.

Acceptance of the Services in accordance with this Acceptance Procedure shall be conclusive evidence that the Client has examined the Services and found them to be in accordance with the Specification.

Schedule 4 Support Schedule

"Available" means the bethebrand System is available and is not subject to any Priority 1 issues.

"Nominated Personnel" means employees of the Client who have received training in respect of the use of the bethebrand System and have access to all relevant documentation;

"Service Credits" means the amounts deducted from the Charges to be paid by the Client under the Agreement to bethebrand if bethebrand's performance fails to meet the performance standards set out in the Service Levels.

"Working Hours" means 08:00 to 18:00 Monday to Friday excluding all public holidays in England and Wales.

1. SUPPORT SERVICE

1.1 The Support shall be provided during Working Hours and shall comprise:

- (a) providing the Nominated Personnel with advice by telephone and email on the use of the Services;
- (b) the diagnosis of Errors in the bethebrand System and instructions as to the rectification of such Errors by email or by remote access; and
- (c) the provision of updates and upgrades from time to time at bethebrand's sole discretion.

1.2 The Client shall appoint one or more Nominated Personnel and shall keep bethebrand informed of the name, telephone number and email address of such Nominated Personnel from time to time.

1.3 The Client shall report all Errors to bethebrand by telephone and/or email as soon as they are detected and shall include sufficient material and information to enable bethebrand to duplicate the problem, including, but not limited to:

- (a) a clear and accurate description of the Error;
- (b) the area of the bethebrand System to which it relates;
- (c) what function was being performed when the Error occurred and/or the sequence of events leading up to the occurrence of the Error;
- (d) the error message displayed, if any;
- (e) sufficient details of the Error's effect on the Client or User's business operation to enable bethebrand to identify whether the Error is a Priority 1, Priority 2 or Priority 3 Error; and
- (f) any other information relating to the bethebrand System or the Error which bethebrand requires to perform its obligations hereunder.

1.4 The Nominated Personnel shall make all requests for Support to the email address:

e-mail support	support@be-thebrand.com
----------------	--

2. SEVERITY DESIGNATIONS, RESPONSE AND RESOLUTION TIMES

2.1 With respect to each Issue, the parties will reasonably and in good faith agree as to designations of

severity, based on the following:

Priority	Description/Impact
1 Very High	Service unavailable or the error renders service inoperable. Service function cannot be used and no usable work-around exists. Resulting situation is critical to the operation of the business.
2 Reasonable	Service impaired or the service function cannot be used or impacts user operations, but usable work-around exists. Resulting situation has some material and adverse impact on operation of the business and work-around allows business to continue with minor restrictions.
3 Low	Slight service degradation causes Client negligible immediate impact, yet is desirable to resolve because of restrictions to operations or usability issues to Client personnel.

- 2.2 bethebrand shall use reasonable endeavours to resolve Errors within the resolution times set out below. Failure to achieve the resolution times will mean Service Credits shall be payable where such failure results in loss of availability, and will be calculated in accordance with the formula set out in clause 4 below:

Priority	Interim response	Resolution
1 Very High	Response time during the defined Working Hours will be one (1) hour from notification with daily updates.	The problem will generally be resolved within twenty-four (24) hours (excluding weekends and holidays) after recreation of the Error.
2 Reasonable	Response time during the defined Working Hours will be three (3) hours from notification.	For Errors requiring a configuration or data change to correct the problem will generally be resolved within five (5) days (excluding weekends and holidays) after recreation of the Error. For Errors requiring a code change to the problem will generally be resolved within twenty (20) days (excluding weekends and holidays) after recreation of the Error. Client testing time is excluded from the duration calculation.
3 Low	Response time will be twenty-four (24) hours (excluding weekends and holidays) from call with weekly updates from notification.	Errors will be corrected in a future commercial release or in the normal course of business.

- 2.3 If the Error cannot be resolved within these timescales the issue will be escalated as a priority to bethebrand's Technical Operations Director for resolution.

3. BETHEBRAND SYSTEM AVAILABILITY

- 3.1 bethebrand will use reasonable endeavours to ensure that the bethebrand System is available for 99.5% of the time during each calendar month.

- 3.2 The Availability of the bethebrand System during each calendar month shall be calculated as:

$$\frac{\text{number of aggregate hours during which the bethebrand System is Available}}{\text{total number of hours in the relevant calendar month}} \times 100\%$$

4. SERVICE CREDITS

- 4.1 Where the bethebrand System has not performed in accordance with clause 3.1 of this Schedule 4, bethebrand will provide a Service Credit to the Client calculated as follows.

$$\frac{\text{number of aggregate hours during which any module of the bethebrand System is not Available}}{\text{total number of hours in the relevant calendar month}} \times \text{amount payable by the Client for that module(s) in the relevant calendar month}$$

- 4.2 Any Service Credits provided hereunder shall be shown as a credit in the invoice issued by bethebrand following the calendar month during which Service Credits accrued.
- 4.3 In no event shall the amount of any Service Credit payable hereunder exceed 100% of the amount payable by the Client in respect of the Hosting Services element of the bethebrand System for the calendar month in which bethebrand's liability to pay a Service Credit arose.
- 4.4 The capacity of the bethebrand System to deliver the agreed Service Level is based on a CommsBuilder usage of no more than twenty (20) executions in a three (3) hour period. The Service Levels will not apply where the number of executions exceeds such usage in any three (3) hour period.

Schedule 5 Data Processing Agreement

Background

The GDPR and UK GDPR require a written agreement between a controller and a processor in order to allow the processing of Personal Data by the processor on behalf of the controller. For this reason, the parties have agreed to enter into this Data Processing Agreement ("DPA").

This DPA forms part of and is subject to all provisions of the bethebrand Software as a Service Agreement ("Agreement"), or other agreement between bethebrand and the Client governing the Client's use of the Service. In the event of conflict or inconsistency between this DPA and the Agreement, this DPA shall prevail.

1 Definitions

Applicable Law	means as applicable and binding on the Client, bethebrand and/or the Services: (a) any law, statute, regulation, byelaw or subordinate legislation in force from time to time to which a party is subject and/or in any jurisdiction that the Services are provided to or in respect of; (b) the common law and laws of equity as applicable to the parties from time to time; (c) any binding court order, judgment or decree; or (d) any applicable direction, policy, rule or order that is binding on a party and that is made or given by any regulatory body having jurisdiction over a party or any of that party's assets, resources or business;
Data Controller	has the meaning given to that term (or to the term 'controller') in Data Protection Laws;
Data Processor	has the meaning given to that term (or to the term 'processor') in Data Protection Laws;
Data Protection Laws	means as applicable and binding on the Client, bethebrand and/or the Services any laws and regulations relating to privacy or processing of Personal Data, including: (a) EU Directive 2002/58/EC (as amended by 2009/136/EC) and The Privacy and Electronic Communications (EC Directive) Regulations 2003 (PECR); (b) EU Regulation 2016/679 (GDPR) (c) the GDPR as amended by Schedule 1 of The Data Protection, Privacy and Electronic Communications (Amendments etc) (EU Exit) Regulations 2019 (UK GDPR) and Data Protection Act 2018 (DPA); (d) any laws or regulations supplementing or replacing PECR, the GDPR, UK GDPR or DPA; (e) any relevant guidance or codes of practice issued by a regulator; and (f) any Applicable Laws replacing, amending, extending, re-enacting or

consolidating any of the above Data Protection Laws from time to time;

Data Subject	means a natural person who can be identified, directly or indirectly, by the Personal Data;
Data Subject Request	means a request made by a Data Subject to exercise any rights of Data Subjects in respect of the Protected Data under Data Protection Laws;
IDTA	means the International Data Transfer Agreement which parties must enter into where Personal Data is transferred outside the United Kingdom, and where the European Commission's standard contractual clauses (SCCs) do not apply;
IDTA Addendum	means the international data transfer addendum to the European Commission's standard contractual clauses (SCCs) for international data transfers;
Personal Data	means any information relating to an identified or identifiable natural person, including an identifier such as a name, an identification number, location data, an online identifier or one or more factors specific to the physical, physiological, genetic, mental, economic, cultural or social identity of that natural person;
Personal Data Breach	means any breach of security leading to the accidental or unlawful destruction, loss, alteration, unauthorised disclosure of, or access to, any Protected Data;
processing	means any operation or set of operations which is performed on Personal Data or on sets of Personal Data, whether or not by automated means, such as collection, recording, organisation, structuring, storage, adaptation or alteration, retrieval, consultation, use, disclosure by transmission, dissemination or otherwise making available, alignment or combination, restriction, erasure or destruction (and related terms such as process have corresponding meanings);
Processing Instructions	has the meaning given to that term in clause 3.1.1;
Protected Data	means Personal Data received from or on behalf of the Client in connection with the performance of bethebrand's obligations under this Agreement;
SCC	means the standard contractual clauses for the transfer of Personal Data from controllers to processors established in third countries, set forth in the European Commission Decision of 4 June 2021, or any such standard contractual clauses amending or replacing the SCC;
Services	shall have the meaning set out in the Agreement;
Sub-Processor	means another Data Processor engaged by bethebrand for carrying out processing activities in respect of the Protected Data on behalf of the Client; and
Supervisory Authority	means any local, national or multinational agency, department, official, parliament, public or statutory person or any government or professional body, regulatory or supervisory authority, board or other body responsible for administering Data Protection Laws.

2 Data Processor and Data Controller

- 2.1 The parties agree that, for the Protected Data, the Client shall be the Data Controller and bethebrand shall be the Data Processor.

- 2.2 The Client warrants, represents and undertakes, that:
- 2.2.1 all data sourced by the Client for use in connection with the Services shall comply in all respects, including in terms of its collection, storage and processing (which shall include the Client providing all of the required fair processing information to, and obtaining all necessary consents from, Data Subjects), with Data Protection Laws;
 - 2.2.2 all instructions given by it to bethebrand in respect of Protected Data shall at all times be in accordance with Data Protection Laws;
 - 2.2.3 it is satisfied that:
 - (a) where Personal Data is included in any Client Asset stored or managed within the bethebrand System, the Client has assessed the risk of sharing such Personal Data with all Users and that such sharing complies with the Client's and bethebrand's obligations to implement appropriate technical and organisational measures to protect the Protected Data; and
 - (b) bethebrand's processing operations are suitable for the purposes for which the Client proposes to use the Services and engage bethebrand to process the Protected Data; and
 - (c) bethebrand has sufficient expertise, reliability and resources to implement technical and organisational measures that meet the requirements of Data Protection Laws.

3 Instructions and details of processing

- 3.1 Insofar as bethebrand processes Protected Data on behalf of the Client:
- 3.1.1 unless required to do otherwise by Applicable Law, bethebrand shall (and shall take steps to ensure each person acting under its authority shall) process the Protected Data only on and in accordance with the Client's documented instructions as set out in this clause 3 and Annex A to this DPA (Data processing details), as updated from time to time (**Processing Instructions**);
 - 3.1.2 notwithstanding any other provision of this DPA, if the law in the United Kingdom ("UK"), the European Union ("EU") or any EU member state requires bethebrand to conduct processing of the Protected Data other than in accordance with the Client's Instructions, such processing shall not constitute a breach of this DPA;
 - 3.1.3 if Applicable Law requires it to process Protected Data other than in accordance with the Processing Instructions, bethebrand shall notify the Client of any such requirement before processing the Protected Data (unless Applicable Law prohibits such information on important grounds of public interest); and
 - 3.1.4 bethebrand shall promptly inform the Client if bethebrand becomes aware of a Processing Instruction that, in bethebrand's opinion, infringes Data Protection Laws, provided that:
 - (a) this shall be without prejudice to clause 2.2 of this DPA and clause 14.6 of the Agreement; and
 - (b) to the maximum extent permitted by mandatory law, bethebrand shall have no liability howsoever arising (whether in contract, tort (including negligence) or otherwise) for any losses, costs, expenses or liabilities arising from or in connection with any processing in accordance with the Client's Processing Instructions following the Client's receipt of that information.
- 3.2 The processing of Protected Data to be carried out by bethebrand under this DPA shall comprise the processing set out in Annex A to this DPA (Data processing details), as may be updated from time to time.

4 Technical and organisational measures

- 4.1 bethebrand shall implement and maintain appropriate technical and organisational measures in relation to the processing of Protected Data by bethebrand, as set out in Annex B to this DPA (Technical and organisational measures).

5 Using staff and other processors

- 5.1 The Client hereby gives bethebrand a general consent to engage Sub-processors for processing of Personal Data on behalf of the Client. bethebrand shall inform the Client before transferring any Personal Data to a new Sub-processor. Following receipt of such information the Client shall notify bethebrand if it objects to the new Sub-processor. If the Client does not object to the Sub-processor within seven (7) days of receiving the information, the Client shall be deemed to have accepted the Sub-processor. If the Client has raised a reasonable objection to the new Sub-processor, and the parties have failed to agree on a solution within reasonable time, the Client shall ensure that Protected Data is no longer processed by bethebrand. bethebrand shall not transfer any Protected Data to any Sub-processor to which the Client has raised a reasonable objection.
- 5.2 bethebrand shall enter into appropriate written agreements with all of its Sub-processors on terms substantially similar to this DPA, including without limitation the Client's right to conduct audits of the Sub-processor in accordance with Section 3.3 above, or ensure that the Sub-processor will conduct audits using external auditors at least once per year. bethebrand shall remain primarily liable to the Client for the performance or non-performance of the Sub-processor's obligations.
- 5.3 Upon the Client's request, bethebrand is obliged to provide information regarding any Sub-processor, including name, address and the processing carried out by the Sub-processor.

6 Assistance with the Client's compliance and Data Subject rights

- 6.1 bethebrand shall refer all Data Subject Requests it receives to the Client within one (1) business day of receipt of the request, provided that if the number of Data Subject Requests exceeds five (5) per calendar month, the Client shall pay bethebrand's charges calculated at bethebrand's then prevailing time and materials rates for professional services or such other charges as may, at the relevant time, be agreed by the parties in writing ("Charges"), for recording and referring the Data Subject Requests in accordance with this clause 6.1.
- 6.2 bethebrand shall provide such reasonable assistance as the Client reasonably requires (taking into account the nature of processing and the information available to bethebrand) to the Client in ensuring compliance with the Client's obligations under Data Protection Laws with respect to:
- 6.2.1 security of processing;
 - 6.2.2 data protection impact assessments (as such term is defined in Data Protection Laws);
 - 6.2.3 prior consultation with a Supervisory Authority regarding high risk processing; and
 - 6.2.4 notifications to the Supervisory Authority and/or communications to Data Subjects by the Client in response to any Personal Data Breach,

provided the Client shall pay bethebrand's Charges for providing the assistance in this clause 6.2.

7 International data transfers

- 7.1 If the processing carried out by bethebrand includes the transfer of Protected Data to a country outside of the UK which is not recognised by the United Kingdom government to have an adequate level of protection in accordance with Data Protection Law, the Client and bethebrand shall enter into a

supplementary agreement containing an IDTA or the SCCs. This will not apply if all such transfers are made to Sub-processors as described in the following paragraph.

- 7.2 If processing of Protected Data under this DPA includes the transfer of Protected Data to a Sub-processor located in a country outside of the UK which is not recognised by the United Kingdom government to have an adequate level of protection in accordance with Data Protection Law, bethebrand shall be entitled and obligated to enter into a supplementary agreement with the Sub-processor containing the SCC or an IDTA, in the name and on behalf of the Client or on behalf of all bethebrand's Clients, before any Protected Data is transferred to such Sub-processor. bethebrand shall provide the Client with a copy of such signed SCC agreement or IDTA..
- 7.3 If and to the extent this DPA and the SCC or IDTA are inconsistent, the provisions of the SCC or IDTA, as applicable, shall prevail.

8 Records, information and audit

- 8.1 bethebrand shall maintain, in accordance with Data Protection Laws binding on bethebrand, written records of all categories of processing activities carried out on behalf of the Client.
- 8.2 bethebrand shall, in accordance with Data Protection Laws, make available to the Client such information as is reasonably necessary to demonstrate bethebrand's compliance with its obligations under Article 28 of the GDPR (and under any Data Protection Laws equivalent to that Article 28), and allow for and contribute to audits, including inspections, by the Client (or another auditor mandated by the Client) for this purpose, subject to the Client:
- 8.2.1 giving bethebrand reasonable prior notice of such information request, audit and/or inspection being required by the Client;
 - 8.2.2 ensuring that all information obtained or generated by the Client or its auditor(s) in connection with such information requests, inspections and audits is kept strictly confidential (save for disclosure to the Supervisory Authority or as otherwise required by Applicable Law);
 - 8.2.3 ensuring that such audit or inspection is undertaken during normal business hours, with minimal disruption to bethebrand's business, the Sub-Processors' business and the business of other Clients of bethebrand; and
 - 8.2.4 paying bethebrand's reasonable costs for assisting with the provision of information and allowing for and contributing to inspections and audits.

9 Breach notification

- 9.1 In respect of any Personal Data Breach involving Protected Data, bethebrand shall, without undue delay:
- 9.1.1 notify the Client of the Personal Data Breach; and
 - 9.1.2 provide the Client with details of the Personal Data Breach.

10 Deletion or return of Protected Data and copies

- 10.1 The bethebrand shall, at the Client's written request, either delete or return all the Protected Data to the Client in such form as the Client reasonably requests within a reasonable time after the earlier of:
- 10.1.1 the end of the provision of the relevant Services related to processing; or
 - 10.1.2 once processing by bethebrand of any Protected Data is no longer required for the purpose of bethebrand's performance of its relevant obligations under this DPA,

and delete existing copies (unless storage of any data is required by Applicable Law and, if so, bethebrand shall inform the Client of any such requirement).

11 Governing Law, Jurisdiction and Dispute Resolution

- 11.1 This DPA forms part of and is subject to the terms of the Agreement and, as such, all limitations and exclusions of liability in the Agreement shall apply to this DPA. This DPA, and all matters and disputes arising from it, shall be governed by the laws of England and Wales and the parties hereby submit to the exclusive jurisdiction of the English Courts.

Annex A to Schedule 5 Details of Processing

bethebrand will only Process Personal Data in accordance with the Client's documented Instructions. This document forms part of the Client's Instructions, setting out the intended scope, nature, and purpose of bethebrand's Processing of Personal Data on behalf of the Client.

The Instructions may be amended in writing by the Client from time to time, as communicated in writing to bethebrand by an authorised representative of the Client or through the Client's use of the Service.

1. SCOPE OF PROCESSING

bethebrand shall Process Personal Data hereunder exclusively within the scope of the provision of the Services to the Client.

2. PURPOSE OF PROCESSING.

bethebrand shall Process Personal Data only for the purpose of enabling the Client to manage its marketing promotional material (including financial promotions) asset lifecycle through the Client's use of the Services, and to keep a record of its Users' activities in connection with the Client Assets managed using the bethebrand System.

3. CATEGORIES OF DATA SUBJECTS

Users, and other staff of the Client, including current and former employees, trainees and interns, pre-hires and applicants.

Staff of the Client's supply chain (including agencies, printers, sub-contractors) and staff of customers of the Client. Individuals (if any) whose personal data is included in the Client Assets.

4. TYPES OF PERSONAL DATA

bethebrand will capture and store the following types of Personal Data:

Identity Data:

- Name (first name and surname)

Profile Data:

- Password (encrypted)
- Mother's maiden name (encrypted)
- User name
- E-mail address
- Address (work)
- Telephone number (work)
- Job title

Technical Data:

- IP Address
- User interactions with the system, including:
 - Assets ownership, asset views and downloads
 - Asset review decisions/ outcomes and associated comments

- Asset annotations made as part of a review process
- Asset review timescales

5. SPECIAL CATEGORIES OF PERSONAL DATA

The Client shall not upload special category personal data (as defined in the UK GDPR) onto the bethebrand System.

6. PROCESSING ACTIVITIES

Ingestion/ uploading of data

Storing and copying (to back up locations)

Accessing, reading or consultation

Erasure or destruction

7. DURATION OF PROCESSING

Protected Data shall not be Processed for a period longer than is necessary for serving its purpose. In respect of all processing activities other than storage of the Protected Data, the processing shall cease on expiry or termination of the Services. In relation to storage of the Protected Data, the processing shall cease within two (2) months following termination or expiry of the Services at which point, the data bases will be permanently deleted.

8. SUB-PROCESSOR

bethebrand has engaged Sub-processor(s) for carrying out specific processing activities on behalf of the Client, namely:

Name of Sub-processor	Address of Sub-processor
AMAZON UK SERVICES LTD. (03223028)	1 Principal Place, Worship Street, London, EC2A 2FA

9. PROCESSING LOCATION

Processing takes place in the following locations where the application is hosted. The Client acknowledges that the system is accessible from any global location and that processing activities, such as accessing, viewing and creating content may be performed from any location by a registered User.

Primary Region	eu-west-2	UK
Backup Region	eu-west-1	Ireland

Annex B to Schedule 5 Technical and Organisational Measures

The following policies and procedures define the technical and organisational measures in place to protect Protected Data:

- IT Security Policy
- Business Continuity and Disaster Recovery Policy
- Incident Management Policy
- Staff Handbook (including Computer Acceptable Use Policy)
- Data Subject Request Procedure