

BrandStencil Framework Agreement

These Terms of Use set out the basis on which BrandStencil provides its software-as-a-service platform and related services.

Date of agreement

DD/MM/YYYY

Effective date

This agreement shall become effective on:

DD/MM/YYYY

Parties

- (1) BRANDSTENCIL LTD (Supplier) incorporated and registered in England and Wales with company number 11888291 whose registered office is at 45 Church Road, Hove, East Sussex, BN3 2BE, United Kingdom (Supplier). Contact email address is accounts@brandstencil.com
- (2) CLIENT NAME (Client) incorporated and registered in England and Wales with company number XXXXXXXX whose registered office is at ADDRESS HERE. Contact email address is:

Background

- (A) BrandStencil is a specialist provider of brand management software as a service BrandStencil ('the Service' as defined below), which it makes available to subscribers online by way of a pay-per-use basis.
- (B) BrandStencil has developed and is the sole legal owner of the Service and is willing to licence the same to the Client.

- (C) The Client has identified a need for the Service in its commercial operations and BrandStencil has agreed to provide the Service in accordance with the Terms and Conditions of this agreement.

Agreed terms

1. Interpretation

From time to time, the parties may agree additional Services Order Forms setting out specific configuration or setup work to be carried out by BrandStencil. Each such Services Order Form shall form part of this Agreement.

1.1. Definitions

Acceptable Use Policy: BrandStencil's acceptable use policy in force from time to time and made known to the Client and all Authorised Users available via <https://brandstencil.com/acceptable-use-policy/> or such other web address or sign-on gateway notified by BrandStencil from time to time.

Account Administrator: the [5] nominated representatives of the Client entitled to escalate user queries to BrandStencil as set out in the [Support Policy](#)

Affiliate: any business entity from time to time controlling, controlled by, or under common control with, either party.

Authorised Users: those employees, third parties, agents and independent contractors of the Client who are authorised by the Client to use the Service.

Background IP: all Intellectual Property in pre-existing Software code or other forms of IPR owned and developed by BrandStencil in the Software or Service (including, for the avoidance of doubt, in the non-bespoke elements of the Services used in support of other Client projects) together with any additional software code or other IPR created by BrandStencil for the Client which further develops, enhances or refines the Background IP, and other IPR owned by or licensed to BrandStencil and which may be accessible by the Client or Authorised Users through use of the Service, except for the Foreground IP, Input Material or Open Source Software;

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

Change of Control: the beneficial ownership of more than 50% of the issued share capital of a company or the legal power to direct or cause the direction of the general management of the company, and controls, controlled and the expression change of control shall be construed accordingly.

Confidential Information: means any and all information in whatsoever form relating to the Supplier or the Client, or the business, prospective business, finances, technical processes, computer software (both source code and object code), Intellectual Property Rights or finances of the Supplier or the Client (as the case may be), or compilations of two or more items of such information, whether or not each individual item is in itself confidential, which comes into a party's Company's possession by virtue of its entry into the agreement or provision of the Services, and which the party regards, or could reasonably be expected to regard, as confidential and any and all information which has been or may be derived or obtained from any such information;

Control: a business entity shall be deemed to "control" another business entity if it owns, directly or indirectly, more than 50% of the outstanding voting securities or capital stock of such business entity, or any other comparable equity or ownership interest with respect to a business entity other than a corporation.

Controller, Data Subject, Personal Data, Personal Data Breach,

Process/Processed/Processing, Processor, Binding Corporate Rules and Recipient: will have the meanings ascribed to them in the Data Protection Legislation.

Documentation: the user documents and instructions made available to the Client by BrandStencil online via <https://helpdocs.brandstencil.com> or such other web address notified by BrandStencil to the Client from time to time.

Data Protection Legislation: means collectively: (i) the General Data Protection Regulation (EU) 2016/679 (GDPR) and any amendment or replacement to it (including any corresponding or equivalent national law or regulation which implements it; (ii) other applicable legislation of the European Union (EU); (iii) the Data Protection Act 2018; (iv) to the extent applicable, the data protection or privacy laws of any other

country; and (v) any binding guidance or code of practice issued by a competent authority responsible for supervising compliance with applicable Data Protection Legislation.

Effective date: means the date agreed between the parties as the commencement of the Initial Set-Up Period, as specified in the applicable Services Order Form

Foreground IP: all Intellectual Property Rights in the bespoke elements of the Service created by BrandStencil for the Client and any Input Material provided by the Client but excluding any rights in Third Party IP and Open Source Software;

Free Trial: BrandStencil may make the Services available to a Client on a free 3-month trial basis, which free trial may include the creation of one Template (or up to 4 hours BrandStencil work time), or other number of Templates as may be agreed between the parties, from Input Material supplied to BrandStencil.

Initial Set-up Period: an initial term agreed by the parties, during which period BrandStencil will set up and configure the service..

Initial Subscription Term: the initial term of this agreement as set out in the Order Form which commences on the Initial Term Start Date after the Initial Set-up Period.

Initial Term Start Date: The agreed Initial Subscription Term start date agreed between the Client and Supplier. The Initial Term Start Date is always on the 1st day of the month.

Input Material: all documents, diagrams, images, drawings and information and materials provided by the Client, or Authorised Users, relating to the Services (including any third party materials or Third Party IP) or as part of the Client's use of the Service (including materials stored in the Service Account), including any information derived from such information, computer programs, data, reports and specifications and such other material applicable and necessary to the proper provision of the Services or stored in the Client's Account.

Intellectual Property Rights (IPRs): patents, utility models, rights to inventions, copyright and related rights, trademarks and service marks, trade names and domain names, rights in get-up, goodwill and the right to sue for passing off or unfair competition, rights in designs, rights in computer software, database rights, rights to

preserve the confidentiality of information (including know-how and trade secrets) and any other intellectual property rights, including all applications for (and rights to apply for and be granted), renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist, now or in the future, in any part of the world.

IPR Claim: any claim made against the Client and/or any Authorised User for actual or alleged infringement of a third party's Intellectual Property Rights, and/or breach of confidentiality arising out of, or in connection with, the supply of the Service and/or the use of the Background IP, and/or any Foreground IP, Template materials and/or Third Party IP introduced by BrandStencil.

Normal Business Hours: 9.30 am to 5.30 pm local UK time, each Business Day.

Open Source Software: open-source software comprised in the Service which is not owned or controlled by BrandStencil but which is freely available for redistribution (such as source libraries or plugins).

Output Material: the materials created by the Client, Customers or Authorised Users as a result of using the Service, which may comprise Input Material, Background IP, Foreground IP, Templates, Third Party IP and Open Source Software.

Privacy Policy: BrandStencil's privacy policy in force from time to time and made known to the Client and all Authorised Users available via <https://brandstencil.com/privacy> or such other web address or sign-on gateway notified by BrandStencil from time to time.

Professional Services Fees: Payable to BrandStencil by the Client for professional services including template development, set up and configuration, third party integrations and custom work as requested by the Client.

Renewal Period: means 12 months unless otherwise described.

Restricted Country: any country or territory outside the United Kingdom or the European Economic Area which does not provide an adequate level of protection for Personal Data (as determined under Data Protection Legislation).

Service: the BrandStencil marketing and brand management subscription service enabling Authorised Users of the Client to create, store and download resources,

provided by BrandStencil to the Client under this agreement via <https://youraccount.brandstencil.com> or such other website or gateway as notified to the Client by BrandStencil from time to time..

Set-up and Configuration Services: means the configuration of the Services, any agreed integrations and the provision of any associated training and consultancy services specified in the Order Form.

Support Policy: the support policy found at <https://brandstencil.com/support-policy>

Software: the online software applications provided by BrandStencil as part of the Service.

Source Code Material: the source code of the Software, and all technical information and documentation required to enable the Client to modify and operate it.

Order Form: a description of the products and services to be provided by the Supplier.

Subscription Fees: the subscription fees payable by the Client to BrandStencil for the User Subscriptions, as set out in the Subscription Plan in the Order Form and relating to the Client's Subscription Plan.

Subscription Plan: the Service subscription and user plan (including any plan provided for free), including the permitted number of User Subscriptions or Authorised Users, as set out in the Order Form or agreed by the Client with BrandStencil from time to time.

Subscription Term: means the Initial Subscription Term together with any subsequent Renewal Periods).

Templates: the brand and design templates created and deployed by BrandStencil, which may incorporate Input Material, for use by the Client with the Service which BrandStencil licences the Client to use under this agreement as Output Material.

Third Party IP: any third party Intellectual Property Rights in any third-party materials, including fonts, or data specified as dependencies for the Client's use of the Service, or provided by the Client in the form of Input Material or incorporated by the Client in Output Material;

User Subscriptions: the user subscriptions purchased by the Client, which entitle Authorised Users to access and use the Services in accordance with this agreement.

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

- 1.2. The definitions and rules of interpretation in this clause apply in this agreement.
- 1.3. Clause, schedule and paragraph headings shall not affect the interpretation of this agreement.
- 1.4. A person includes an individual, corporate or unincorporated body (whether or not having separate legal personality) and that person's legal and personal representatives, successors or permitted assignments.
- 1.5. A reference to a company shall include any company, corporation or other body corporate, wherever and however incorporated or established.
- 1.6. Unless the context otherwise requires, words in the singular shall include the plural and in the plural shall include the singular.
- 1.7. Unless the context otherwise requires, a reference to one gender shall include a reference to the other genders.
- 1.8. A reference to a statute or statutory provision is a reference to it as it is in force as at the date of this agreement.
- 1.9. A reference to a statute or statutory provision shall include all subordinate legislation made as at the date of this agreement under that statute or statutory provision.
- 1.10. A reference to writing or written includes e-mail.

- 1.11. References to clauses and schedules are to the clauses and schedules of this agreement; references to paragraphs are to paragraphs of the relevant schedule to this agreement.

2. Term

- 2.1. This agreement shall commence on the Effective Date of this Agreement and shall continue, unless terminated in accordance with Clause 16 -Termination.
- 2.2. The Service shall automatically renew for a period of 12 months at the end of the Initial Subscription Term and yearly thereafter (each a Renewal Period) unless terminated in accordance with Clause 16 - Termination. .

3. Set-up and configuration

- 3.1. We shall provide the Set-up and Configuration Services during the Initial Set-up Period promptly following the Effective Date.
- 3.2. The Services shall be configured in accordance with your Subscription Plan and shall be subject to the limitations applicable to your Subscription Plan, as specified in the Order Form.

4. Service

- 4.1. BrandStencil hereby grants to the Client:
- 4.1.1. a non-exclusive licence to use the Service; and
 - 4.1.2. a non-exclusive, non-transferable right, to sub-licence the Services to the Authorised Users to use the Service during the Subscription Term solely for the purposes of the Client's business and charitable operations.
- 4.2. BrandStencil shall, during the Subscription Term, provide the Service to the Client on and subject to the terms of this agreement.
- 4.3. BrandStencil shall use commercially reasonable endeavours to make the Service available 24 hours a day, seven days a week, except for:
- 4.3.1. scheduled maintenance, provided that BrandStencil has given the Client ten (10) Business Days' notice; and the maintenance time does not exceed 4 hours in any 24 hour period.

- 4.3.2. unscheduled maintenance performed outside Normal Business Hours, provided that BrandStencil has used reasonable endeavours to give the Client reasonable notice in advance, unless the issue requires immediate response when it will be performed as needed.
- 4.4. BrandStencil will, as part of the Service, provide the Client with BrandStencil's standard Support Services as set out in the Support Policy during Normal Business Hours.

5. User subscriptions

- 5.1. Subject to the Client purchasing the User Subscriptions under the Subscription Plan in accordance with Clause 11.1 - Charges and Payment, the restrictions set out in this Clause 5 and the other terms and conditions of this agreement, In relation to the Authorised Users, the Client undertakes that:
 - 5.1.1. the maximum number of Authorised Users that it authorises to access and use the Services shall not exceed the number of User Subscriptions it has purchased under a Subscription Plan;
 - 5.1.2. it will not allow or suffer any User Subscription to be used by more than one individual Authorised User unless it has been reassigned in its entirety to another individual Authorised User, in which case the prior Authorised User shall no longer have any right to access or use the Services;
 - 5.1.3. each Authorised User shall keep a secure password for his use of the Services and that each Authorised User shall keep his password confidential;
 - 5.1.4. it shall, on receipt of 10 Business Days' written notice, permit BrandStencil to audit the Service in order to confirm the Client's adherence with the Subscription Plan. Such an audit shall be conducted remotely by reviewing the number of users listed within the application. It shall be limited solely to verifying the number of Authorised Users and shall not involve access to any Client Content or Personal Data

- 5.1.5. if any audit referred to in Clause 5.1.5 reveal that the Client has underpaid Subscription Fees to, then without prejudice to BrandStencil's other rights, the Client shall pay an amount equal to such underpayment as calculated in accordance with the prices set out in the Order Form within 10 Business Days of the date of the relevant audit.
- 5.2. The Client shall not, and shall not allow any Authorised Users to, access, store, distribute or transmit any Viruses, or any material during the course of its use of the Services that, in BrandStencil's reasonable opinion:
 - 5.2.1. is unlawful, harmful, threatening, defamatory, obscene, infringing, harassing or racially or ethnically offensive;
 - 5.2.2. facilitates illegal activity;
 - 5.2.3. depicts sexually explicit images;
 - 5.2.4. promotes unlawful violence;
 - 5.2.5. is discriminatory based on race, gender, colour, religious belief, sexual orientation, disability;
 - 5.2.6. is otherwise illegal or causes damage or injury to any person or property;
 - 5.2.7. otherwise conflicts or contradicts with BrandStencil's Acceptable Use Policy,
 - 5.2.8. and BrandStencil reserves the right, without liability or prejudice to its other rights to the Client, to disable the Client's access to any material that breaches the provisions of this clause.
- 5.3. The Client shall not:
 - 5.3.1. except as may be allowed by any applicable law which is incapable of exclusion by agreement between the parties and except to the extent expressly permitted under this agreement:
 - 5.3.2. attempt to copy, modify, duplicate, create derivative works from, frame, mirror, republish, download, display, transmit, or distribute all or any portion of the Software and/or Documentation (as applicable) in any form or media or by any means; or

- 5.3.3. attempt to de-compile, reverse compile, disassemble, reverse engineer or otherwise reduce to human-perceivable form all or any part of the Software; or
- 5.3.4. (b) access all or any part of the Service in order to build a product or service which competes with the Services and/or the Documentation; or
- 5.3.5. (c) use the Service and/or Documentation to provide services to third parties; or
- 5.3.6. (d) subject to Clause 25.1, licence, sell, rent, lease, transfer, assign, distribute, display, disclose, or otherwise commercially exploit, or otherwise make the Service and/or Documentation available to any third party except the Authorised Users, or
- 5.3.7. (e) attempt to obtain, or assist third parties in obtaining, access to the Service and/or Documentation, other than as provided under this Clause 5; and
- 5.4. The rights provided under this Clause 5 are granted to the Client only, and shall not be considered granted to any subsidiary or holding company of the Client.

6. Features, services or resource quota

- 6.1. Subject to Clause 6.2 and Clause 6.3, the Client may, during any Subscription Term, purchase additional features, services or resource quotas under a Subscription Plan, or elevate its Subscription Plan in excess of the agreed features or services set out in the Order Form.
- 6.2. The Client shall notify BrandStencil in writing of its request. BrandStencil shall evaluate and respond to the Client with approval or rejection of the request. Where BrandStencil approves the request, BrandStencil shall activate the additional features or services within 7 days of its approval of the Client's request.
- 6.3. If BrandStencil approves the Client's request to purchase additional features, services or resource quotas or to elevate its Subscription Plan, the Client shall, within 30 days of the date of BrandStencil's invoice, pay to

BrandStencil the relevant fees for such additional services as agreed and, if such additional features are purchased by the Client part way through the Initial Subscription Term or any Renewal Period (as applicable), such fees shall be pro-rated from the date of activation by BrandStencil for the remainder of the Initial Subscription Term or then current Renewal Period (as applicable).

- 6.4. Where allocated features, services or resource quotas for a Subscription Plan have been exceeded by the Client during a Subscription Term BrandStencil will advise the Client of the change and the additional fee. The Client can choose to downgrade the feature or pay for the additional feature as set out in clause 6.3.

7. Client content

- 7.1. The Client shall own all right, title and interest in and to all of the Input Material and shall have sole responsibility for the legality, reliability, integrity, accuracy and quality of the Input Material, including that stored in the Client's Account or incorporated into any Templates as part of the Service (Client Content).
- 7.2. The Client and any Authorised Users shall be responsible for:
- 7.2.1. the backup of any Output Material exported from the Service;
 - 7.2.2. the use of any Third Party IP it introduces to the Services, including obtaining the necessary permissions or licences for such use (including any third party fonts used) and any materials uploaded or used with the Services by Authorised Users, and
 - 7.2.3. ensuring that all Client Content, Input Material, and Third Party IP provided by the Client complies with BrandStencil's Acceptable Use Policy and does not infringe any third party IPRs.
- 7.3. BrandStencil shall follow its standard backup procedures for the Service, which includes the back-up of Client Content.

- 7.4. BrandStencil shall, in providing the Service, comply with its [Privacy Policy](#) relating to the privacy and security of the Input Material as may be notified to the Client from time to time.
- 7.5. If BrandStencil processes any personal data on the Client's behalf when performing its obligations under this agreement, the parties record their intention that the Client shall be the data controller and BrandStencil shall be a data processor and in any such case, and always subject to Clause 19.2 - Conflict:
- 7.5.1. the Client shall ensure that the Client is entitled to transfer the relevant personal data to BrandStencil so that BrandStencil may lawfully use, process and transfer the personal data in accordance with this agreement on the Client's behalf;
- 7.5.2. each party shall take appropriate technical and organisational measures against unauthorised or unlawful processing of the personal data or its accidental loss, destruction or damage.

8. Third party providers

- 8.1. The Client acknowledges that the Service may enable or assist it to access the website content of, correspond with, and purchase products and services from, third parties via third-party websites and that it does so solely at its own risk.
- 8.2. BrandStencil makes no representation, warranty or commitment and shall have no liability or obligation whatsoever in relation to the content or use of, or correspondence with, any such third-party website, or any transactions completed, and any contract entered into by the Client, with any such third party. Any contract entered into and any transaction completed via any third-party website is between the Client and the relevant third party, and not BrandStencil. BrandStencil recommends that the Client refers to the third party's website terms and conditions and privacy policy prior to using the relevant third-party website. BrandStencil does not

endorse or approve any third-party website nor the content of any of the third-party websites made available via the Services].

- 8.3. In accordance with Clause 7.2 - Client Content and 10.1 - Other Obligations:
 - 8.3.1. the Client is entirely responsible for use of any third party font with the Service, including obtaining the necessary permissions or licences for use of such font it introduces to the Service, and
 - 8.3.2. for ensuring that the Authorised Users are responsible for the upload, storage or use of any materials (including images, artwork) they introduce to the Service and that the same does not infringe any third party rights.

9. Suppliers obligations

- 9.1. BrandStencil undertakes that the Service will perform substantially in accordance with this agreement.
- 9.2. The undertaking at Clause 9.1 shall not apply to the extent of any non-conformance which is caused by use of the Services contrary to BrandStencil's written instructions, or modification or alteration of the Service by any party other than BrandStencil or duly authorised contractors, agents or Authorised Users. If the Service does not conform with the foregoing undertaking, BrandStencil will, at its expense and without prejudice to the other rights of the Client accrued under this Agreement, use all reasonable commercial endeavours to correct any such non-conformance promptly, or provide the Client with an alternative means of accomplishing the desired performance.
- 9.3. Subject to Clauses 9.1 and 9.2 above, and unless specifically set out otherwise in this agreement, and subject to the Data Protection Legislation, BrandStencil:
 - 9.3.1. does not warrant that the Client's use of the Service will be uninterrupted or error-free; or that the Service, and/or the information obtained by the Client through the Service will meet the Client's requirements; and
 - 9.3.2. is not responsible for any delays, delivery failures, or any other loss or damage resulting from the transfer of data over communications

networks and facilities, including the internet, and the Client acknowledges that the Service may be subject to limitations, delays and other problems inherent in the use of such communications facilities.

9.4. This agreement shall not prevent BrandStencil from entering into similar agreements with third parties, or from independently developing, using, selling or licensing documentation, products and/or services which are similar to those provided under this agreement.

9.5. BrandStencil warrants that it has and will maintain all necessary licences, consents, and permissions necessary for the performance of its obligations under this agreement.

10. Other obligations

10.1. Each party shall;

10.1.1. provide the other with all necessary cooperation in relation to this agreement; and such information as may be reasonably required by the other party in order to provide the Service, including but not limited to Input Material, security access information and configuration services;

10.1.2. comply with all applicable laws and regulations with respect to its activities under this agreement;

10.1.3. carry out all its responsibilities set out in this agreement in a timely and efficient manner. In the event of any delays in the Client's provision of such assistance as agreed by the parties, BrandStencil may adjust any agreed timetable or delivery schedule as reasonably necessary;

10.1.4. ensure that the Authorised Users use the Service in accordance with the terms and conditions of this agreement and the BrandStencil End User Licence Agreement

10.1.5. obtain and shall maintain all necessary licences, consents, and permissions necessary for it, and its contractors and agents, to perform their respective obligations under this agreement, including (with regards to BrandStencil only) without limitation the Service;

- 10.1.6. ensure that its network and systems comply with the relevant specifications to provide the Service from time to time;
- 10.1.7. be solely responsible for procuring and maintaining its network connections and telecommunications links from its systems to relevant data centres;
- 10.1.8. ensure that sufficient measures, processes and protections are in place to ensure the necessary back up of Input Material and any Third Party IP used by the Client,
- 10.2. The Client warrants that all Input Material, Third Party IP or other materials it supplies to BrandStencil shall not infringe the rights of any third party or breach any applicable law and the Client shall fully indemnify BrandStencil against a breach of this clause.

11. Charges and payment

- 11.1. The Client shall pay the Subscription Fees to BrandStencil in accordance with these terms and as specified in the Order Form.
- 11.2. The Client shall provide to BrandStencil approved purchase order information acceptable to BrandStencil and any other relevant valid, up-to-date and complete contact and billing details.
 - 11.2.1. BrandStencil shall invoice the Client at least 30 days prior to the Initial Term Start Date for the Subscription Fees payable in respect of the Initial Subscription Term; and
 - 11.2.2. subject to Clause 16.1 - Termination, at least 30 days prior to each anniversary of the Initial Subscription Term Start Date the Subscription Fees payable in respect of the next Renewal Period, and the Client shall pay each invoice within 30 days after the date of such invoice; or
- 11.3. If BrandStencil has not received payment within 30 days after the due date, and without prejudice to any other rights and remedies of BrandStencil:
 - 11.3.1. BrandStencil may, without liability to the Client, disable the Client's password, account and access to all or part of the Service and

BrandStencil shall be under no obligation to provide any or all of the Service while the invoice(s) concerned remain unpaid; and

- 11.3.2. interest shall accrue on a daily basis on such due amounts at an annual rate equal to 4% over the then current base lending rate of the Bank of England from time to time, commencing on the due date and continuing until fully paid, whether before or after judgement.
- 11.4. All amounts and fees stated or referred to in this agreement:
 - 11.4.1. shall be payable in pounds sterling;
 - 11.4.2. are non-cancellable and non-refundable;
 - 11.4.3. are exclusive of value added tax, which shall be added to BrandStencil's invoice(s) at the appropriate rate.
- 11.5. If, at any time whilst using the Service, the Client exceeds the amount of features, services or quotas specified in the Subscription Plan, BrandStencil shall be entitled to elevate the Client to the next higher Subscription Plan or pay an additional fee as agreed.
- 11.6. BrandStencil shall be entitled to increase Subscription Fees and Professional Services Fees from time to time. BrandStencil will provide notice of any increase at least 60 days prior to the effective date of the increase.
- 11.7. BrandStencil will not vary the Subscription Fees during the first 12 months of the Agreement.

12. Proprietary rights

- 12.1. The Client acknowledges and agrees that BrandStencil and/or its licensors own all Intellectual Property Rights in the Service and all Background IP. Except as expressly stated in this Agreement, nothing in this Agreement grants the Client any rights to, under or in, any patents, copyright, database right, trade secrets, trade names, trademarks (whether registered or unregistered), or any other rights or licences in respect of the Service.
- 12.2. BrandStencil confirms that it has all rights in relation to the Service and the Background IP that are necessary to grant all rights it purports to grant under, and in accordance with, the terms of this Agreement.

- 12.3. The Client acknowledges and agrees that the Service and any Output Material may include or depend upon Open Source Software components, which BrandStencil is entitled to redistribute or make available to the Client only in accordance with the applicable open-source licence terms. The Client's use of such Open Source Software shall be governed by those licence terms, which shall take precedence over this Agreement to the extent required by those terms.
- 12.4. The Client shall own all right, title and interest in and to the Output Material it creates through use of the Service.
- 12.5. BrandStencil grants to the Client and each Authorised User a non-exclusive, irrevocable and perpetual licence to use any elements of BrandStencil's Background IP that are incorporated within the Output Material, solely to the extent necessary to use, reproduce and distribute that Output Material for any lawful business or charitable purpose.
- 12.6. BrandStencil shall not, without the Client's prior written consent, use the Client's Input Material for any other purpose or for the benefit of any person other than the Client.

13. Confidentiality

- 13.1. Each party may be given access to Confidential Information from the other party in order to perform its obligations under this agreement. A party's Confidential Information shall not be deemed to include information that:
- 13.1.1. is or becomes publicly known other than through any act or omission of the receiving party;
 - 13.1.2. was in the other party's lawful possession before the disclosure;
 - 13.1.3. is lawfully disclosed to the receiving party by a third party without restriction on disclosure; or
 - 13.1.4. is independently developed by the receiving party, which independent development can be shown by written evidence.
- 13.2. Subject to Clause 13.4, each party shall hold the other's Confidential Information in confidence and not make the other's Confidential

Information available to any third party, or use the other's Confidential Information for any purpose other than the implementation of this agreement.

- 13.3. Each party shall take all reasonable steps to ensure that the other's Confidential Information to which it has access is not disclosed or distributed by its employees or agents in violation of the terms of this agreement.
- 13.4. A party may disclose Confidential Information to the extent such Confidential Information is required to be disclosed by law, by any governmental or other regulatory authority or by a court or other authority of competent jurisdiction, provided that, to the extent it is legally permitted to do so, it gives the other party as much notice of such disclosure as possible and, where notice of disclosure is not prohibited and is given in accordance with this Clause 13.4, it takes into account the reasonable requests of the other party in relation to the content of such disclosure.
- 13.5. Subject to the terms of the Data Protection Legislation neither party shall be responsible for any loss, destruction, alteration or disclosure of Confidential Information caused by any third party unless caused by a third party duly appointed by a party, including but not limited to sub-contractors and agents.
- 13.6. The Client acknowledges that details of the Service, and the results of any performance tests of the Service, constitute BrandStencil's Confidential Information.
- 13.7. No party shall make, or permit any person to make, any public announcement concerning this agreement without the prior written consent of the other parties (such consent not to be unreasonably withheld or delayed), except as required by law, any governmental or regulatory authority (including, without limitation, any relevant securities exchange), any court or other authority of competent jurisdiction.

- 13.8. The above provisions of this Clause 13. shall survive termination of this agreement, however arising.

14. IPR indemnity

- 14.1. Subject to the limit of liability set out in the agreement, BrandStencil shall during the term of this agreement, on written demand indemnify the Client, and keep the Client indemnified, against all losses, damages, costs or expenses and other liabilities (including legal fees) incurred by, awarded against or arising from a successful IPR Claim.
- 14.2. If an IPR Claim is made, or BrandStencil anticipates that an IPR Claim might be made, BrandStencil may, at its own expense and sole option, either:
- 14.2.1. procure for the Client the right to continue using the relevant item which is subject to the IPR Claim; or
 - 14.2.2. replace or modify the relevant item with non-infringing substitutes provided that:
 - 14.2.2.1. the performance and functionality of the replaced or modified item is, in the reasonable opinion of the Client, at least equivalent to the performance and functionality of the original item;
 - 14.2.2.2. there is no additional Fee to the Client; and
 - 14.2.2.3. the terms and conditions of this agreement shall apply to the replaced or modified item, or
 - 14.2.3. terminate this Agreement and reimburse the Client for the Fees paid prior to the date of termination.
- 14.3. The provisions of above Clauses 14.1 and 14.2 (inclusive) shall not apply in respect of any IPR Claim caused by:
- 14.3.1. any use by or on behalf of the Client of the relevant item in combination with any item not supplied pursuant to this Agreement; or
 - 14.3.2. the use by the Client of the relevant item in a manner not reasonably anticipated by this Agreement.

- 14.4. In no event shall BrandStencil, its employees, agents and subcontractors be liable to the Client to the extent that the IPR Claim is based on:
- 14.4.1. a modification of the Service by anyone other than BrandStencil or duly appointed sub-contractors and/or agents; or
 - 14.4.2. the Client's use of the Service in a manner contrary to that reasonably anticipated by this Agreement; or
 - 14.4.3. the Client's use of the Service after notice of the alleged or actual infringement from BrandStencil or any appropriate authority.
- 14.5. The foregoing and Clause 15.3.2 state the Client's sole and exclusive rights and remedies, and BrandStencil's (including its employees', agents' and subcontractors') entire obligations and liability, for infringement of any patent, copyright, trade mark, database right or right of confidentiality.

15. Limitation of liability

- 15.1. Except as expressly and specifically provided in this agreement:
- 15.1.1. BrandStencil shall have no liability for any damage caused by errors or omissions in any information, instructions or scripts provided to BrandStencil by the Client in connection with the Service, or any actions taken by BrandStencil at the Client's direction;
 - 15.1.2. all warranties, representations, conditions and all other terms of any kind whatsoever implied by statute or common law are, to the fullest extent permitted by applicable law, excluded from this agreement; and
 - 15.1.3. the Service provided to the Client on an "as is" basis.
- 15.2. Nothing in this agreement excludes the liability of either party for:
- 15.2.1. death or personal injury caused by negligence; or
 - 15.2.2. fraud or fraudulent misrepresentation.
- 15.3. Subject to Clause 15.1 and Clause 15.2:
- 15.3.1. Neither party shall be liable whether in tort (including for negligence or breach of statutory duty), contract, misrepresentation, restitution or otherwise for any loss of profits, loss of business, depletion of goodwill and/or similar losses , or for any special, indirect or consequential loss,

costs, damages, charges or expenses however arising under this agreement;

- 15.3.2. BrandStencil's total aggregate liability in contract misrepresentation, restitution or otherwise, arising in connection with the performance or contemplated performance of this agreement shall be limited to:
 - 15.3.2.1. £1,000,000 for any and all liability arising under or in connection with Clause 14.1 - IPR Indemnity;
 - 15.3.2.2. £500,000 (plus reasonable legal fees, costs and expenses) for any and all liability under the Data Protection Legislation;
 - 15.3.2.3. three times the total Subscription Fees paid for the User Subscriptions during the 12 months immediately preceding the date on which the claim arose for all other claims not covered by Clauses 15.3.2.1 and 15.3.2.2.
- 15.3.3. The Client's total aggregate liability in contract, misrepresentation, restitution or otherwise, arising in connection with the performance or contemplated performance of this agreement, including any and all liability for a third party IP claim, and under the Data Protection Legislation, shall be limited to:
 - 15.3.3.1. £1,000,000 for any and all liability arising under or in connection with Clause 10.2 - Other Obligations;
 - 15.3.3.2. the total Subscription Fees paid for the User Subscriptions during the 12 months immediately preceding the date on which the claim arose for all other claims not included in Clauses 15.3.2.3 above.

16. Termination

- 16.1. Either party may terminate this agreement by notifying the other party of termination, in writing, at least 60 days before the end of the Initial Subscription Term or any Renewal Period, in which case this agreement

shall terminate upon the expiry of the applicable Initial Subscription Term or Renewal Period; or

- 16.1.1. otherwise terminated in accordance with the provisions of this agreement; and the Initial Subscription Term together with any subsequent Renewal Periods shall constitute the Subscription Term.
- 16.2. Without affecting any other right or remedy available to it, either party may terminate this agreement with immediate effect by giving written notice to the other party if:
 - 16.2.1. the other party fails to pay any amount due under this agreement on the due date for payment and remains in default not less than 21 days after being notified in writing to make such payment;
 - 16.2.2. the other party commits a material breach of any other term of this agreement which breach is irremediable or (if such breach is remediable) fails to remedy that breach within a period of 21 days after being notified in writing to do so;
 - 16.2.3. the other party repeatedly breaches any of the terms of this agreement in such a manner as to reasonably justify the opinion that its conduct is inconsistent with it having the intention or ability to give effect to the terms of this agreement;
 - 16.2.4. the other party suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 ;
 - 16.2.5. the other party commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with its creditors other than for the sole purpose of a scheme for a solvent amalgamation of that other party with one or more other companies or the solvent reconstruction of that other party;

- 16.2.6. a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of that other party other than for the sole purpose of a scheme for a solvent amalgamation of that other party with one or more other companies or the solvent reconstruction of that other party;
- 16.2.7. an application is made to court, or an order is made, for the appointment of an administrator, or if a notice of intention to appoint an administrator is given or if an administrator is appointed, over the other party;
- 16.2.8. the holder of a qualifying floating charge over the assets of that other party has become entitled to appoint or has appointed an administrative receiver;
- 16.2.9. a person becomes entitled to appoint a receiver over the assets of the other party or a receiver is appointed over the assets of the other party;
- 16.2.10. a creditor or encumbrancer of the other party attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of the other party's assets and such attachment or process is not discharged within 14 days;
- 16.2.11. any event occurs, or proceeding is taken, with respect to the other party in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in Clause 16.2.5 to Clause 16.2.10 (inclusive);
- 16.2.12. the other party suspends or ceases, or threatens to suspend or cease, carrying on all or a substantial part of its business;
- 16.2.13. in the reasonable opinion of the Client, BrandStencil properly amends its Acceptable Use Policy, or any other policy, the effects of which have a material adverse effect on the Client's use of the Service to that as of the date of this Agreement;
- 16.2.14. either party does anything which, in the reasonable opinion of the other party, brings or may bring the other party into disrepute; or

- 16.2.15. the Client receives notice of an assignment under Clause 25 and, within 30 days of such notice, elects to terminate this agreement by giving written notice to BrandStencil, provided that the assignee has not yet assumed performance of the agreement.
- 16.3. On termination of this agreement for any reason:
 - 16.3.1. all licences granted under this agreement shall immediately terminate and the Client shall immediately cease all use of the Service;
 - 16.3.2. each party shall return and make no further use of any equipment, property, Documentation and other items (and all copies of them) belonging to the other party;
 - 16.3.3. BrandStencil may destroy or otherwise dispose of any of the Input Material in its possession unless it receives, no later than 21 days after the Effective Date of the termination of this agreement, a written request for the delivery to the Client of the then most recent back-up of the Input Material. BrandStencil is under no obligation to supply the Client's Input Material but may at its discretion use reasonable commercial endeavours to deliver the back-up to the Client within 21 days of its receipt of such a written request, provided that the Client has, at that time, paid all fees and charges outstanding at and resulting from termination (whether or not due at the date of termination). The Client shall pay all reasonable expenses incurred by BrandStencil in returning or disposing of Input Material; and
 - 16.3.4. any rights, remedies, obligations or liabilities of the parties that have accrued up to the date of termination, including the right to claim damages in respect of any breach of the agreement which existed at or before the date of termination shall not be affected or prejudiced.

17. Data protection

- 17.1. The Supplier acknowledges that the Client Data is (as between the parties) the property of the Client. To the extent that any Client Data that is Processed by the Supplier under this Agreement includes any Personal

Data, the Supplier shall be a Data Processor acting on the Client's behalf (as Data Controller).

17.2. The Supplier shall, during the Term:

- 17.2.1. comply at all times with the Data Protection Legislation and shall not perform its obligations under this Agreement in such a way as to cause the Client to breach any of its applicable obligations under the Data Protection Legislation;
- 17.2.2. only process Client Data to the extent, and in such a manner, as is necessary for the performance of the Supplier's obligations under this Agreement and in accordance with any instructions from the Client and shall not disclose the same to any third party;
- 17.2.3. implement appropriate technical and organisational measures to protect the Client Data against unauthorised or unlawful processing and against accidental loss, destruction, damage, alteration or disclosure;
- 17.2.4. take reasonable steps to ensure the reliability and trustworthiness of employees or agents which have access to the Client Data;
- 17.2.5. not Process or transfer any Personal Data in or to any Restricted Country without the Client's prior written consent. Where such consent is given, it will be conditional on: (1) any transfer of Personal Data to any Restricted Country being done on the terms of a binding agreement incorporating the EU standard clauses for the transfer of Personal Data from Data Controller to Data Processor entered into between the Client and the relevant transferee (or any other valid transfer mechanism under Data Protection Legislation), (2) the Data Subject having enforceable rights and effective legal remedies, (3) the Supplier complying with its obligations under the Data Protection Legislation by providing an adequate level of protection to any Personal Data that is transferred; and (4) the Supplier complying with instructions notified to it in advance by the Client with respect to the processing of the Personal Data. In relation to (1) above, the Client authorises the Supplier to enter into EU standard clauses in the

Client name and on its behalf. The Supplier will make the executed EU standard clauses available to the Client on request. The Supplier agrees to accept any modifications to such standard clauses which are necessary to comply with applicable law which applies to such data transfer. Such binding agreement shall be without prejudice to the rights of the Supplier under this Agreement; and

- 17.2.6. co-operate as requested by the Client to enable the Client to comply with its obligations under the Data Protection Legislation, including with respect to any exercise of rights by a Data Subject under the Data Protection Legislation.
- 17.3. The Supplier shall notify the Client immediately, and in any event within twenty-four (24) hours, in writing after becoming aware of, or suspecting the occurrence of, any loss or corruption of Client Data or data security breach relating to Client Data.
- 17.4. The Supplier will indemnify the Client from and against any costs, losses, damages, proceedings, claims, expenses, demands, penalties or fines incurred or suffered by the Client which arise as a result of or in connection with any breach of the Supplier's obligations under this Agreement or the Data Protection Legislation.

18. Force majeure

- 18.1. Neither party shall have any liability to the other under this agreement if it is prevented from or delayed in performing its obligations under this agreement, or from carrying on its business, by acts, events, omissions or accidents beyond its reasonable control, including, without limitation, strikes, lock-outs or other industrial disputes (whether involving the workforce of either party or any other party), failure of a utility service or transport or telecommunications network, act of God, war, riot, civil commotion, malicious damage, compliance with any law or governmental order, rule, regulation or direction, accident, breakdown of plant or machinery, fire, flood, storm or default of suppliers or subcontractors,

provided that the affected party notifies the other as soon as reasonably practicable of the event and its expected duration.

19. Conflict

- 19.1. If there is an inconsistency between any of the provisions in the main body of this agreement, any policies referred to in this agreement and any end user licence agreements, the provisions in the main body of this agreement shall prevail however any agreed Order Form will prevail over the terms of this agreement.
- 19.2. If there is any conflict between the terms of the Data Protection Legislation and any policy referred to in this agreement, any End User Licence agreements or the Order Form, the terms of the Data Protection Legislation shall prevail.

20. Variation

- 20.1. No variation of this agreement shall be effective unless it is in writing and signed by the parties (or their authorised representatives).

21. Waiver

- 21.1. No failure or delay by a party to exercise any right or remedy provided under this agreement or by law shall constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.

22. Rights and remedies

- 22.1. Except as expressly provided in this agreement, the rights and remedies provided under this agreement are in addition to, and not exclusive of, any rights or remedies provided by law.

23. Severance

- 23.1. If any provision (or part of a provision) of this agreement is found by any court or administrative body of competent jurisdiction to be invalid, unenforceable or illegal, the other provisions shall remain in force.
- 23.2. If any invalid, unenforceable or illegal provision would be valid, enforceable or legal if some part of it were deleted, the provision shall apply with whatever modification is necessary to give effect to the commercial intention of the parties.

24. Entire agreement

- 24.1. This agreement constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.
- 24.2. Each party acknowledges that in entering into this agreement it does not rely on any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in this agreement.
- 24.3. Each party agrees that it shall have no claim for innocent or negligent misrepresentation based on any statement in this agreement.

25. Assignment and Change of Control

- 25.1. Subject to Clause 25.2, no party shall, without the prior written consent of the other, assign, transfer, charge, sub-contract or deal in any other manner with all or any of its rights or obligations under this agreement.
- 25.2. Where a party agrees to the other party sub-contracting any of its obligations under this agreement the sub-contracting party shall be liable for all of the acts and omissions of its subcontractor as if they were its own.
- 25.3. Subject to the Client's right of termination under Clause 16.2.15, BrandStencil may assign its rights under this agreement to its Affiliates or to any successor entity resulting from a merger, acquisition, or sale of all or substantially all of its business provided that it has given the Client 90 days'

notice and the assignee assumes all BrandStencil's obligations under this agreement.

26. No partnership or agency

- 26.1. Nothing in this agreement is intended to or shall operate to create a partnership between the parties, or authorise either party to act as agent for the other, and neither party shall have the authority to act in the name or on behalf of or otherwise to bind the other in any way (including, but not limited to, the making of any representation or warranty, the assumption of any obligation or liability and the exercise of any right or power)

27. Third party rights

- 27.1. This agreement does not confer any rights on any person or party (other than the parties to this agreement and, where applicable, their successors and permitted assigns) pursuant to the Contracts (Rights of Third Parties) Act 1999.

28. Notices

- 28.1. Any notice required to be given under this agreement shall be in writing and shall be delivered by email or sent by pre-paid first-class post or recorded delivery post to the other party at its contact email or address set out in this agreement, or such other address as may have been notified by that party for such purposes.
- 28.2. Notice shall be deemed to have been received when delivered;
- 28.2.1. by email, if sent before 5pm on a Business Day in the place of receipt then on the Business Day when it is sent, otherwise on the following Business Day.
 - 28.2.2. by pre-paid first-class post or recorded delivery post, at the time at which it would have been delivered in the normal course of post.
 - 28.2.3. by hand, when delivered (or if delivery is not in business hours, at 9 am on the first Business Day following delivery).

29. Governing law

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

30. Jurisdiction

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

Signatures

This Agreement may be executed electronically in counterparts

Signed by BrandStencil:

.....

Name: Melanie Burke
Position: Director
For: BrandStencil Limited
Date: DD/MM/YYYY

Signed by Client:

.....

Name:
Position:
For:
Date: